

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Case No. A16-1666

In the Matter of a Petition for Determination of an
Appropriate Unit and Certification as Exclusive
Representative

Service Employees International Union, Local 284,

Respondent,

vs.

University of Minnesota, Unit 8,

Relator,

Bureau of Mediation Services,

Respondent.

**NOTICE AND PETITION
TO FILE AN *AMICUS
CURIAE* BRIEF BY UMN
FACULTY EXCELLENCE**

Pursuant to Rule 129 of the Minnesota Rules of Civil Appellate Procedure, UMN Faculty Excellence requests leave to file an amicus curiae brief in the above-captioned matter.

UMN Faculty Excellence is comprised of more than one-third¹ of the approximately 1,500 tenured and tenure-track faculty at the University of Minnesota (“University”). The legislature assigned these faculty to the bargaining unit described in Minn. Stat. § 179A.11, subd. 1(8) (“Unit 8”) of the Public Employee Labor Relations Act. The University

¹ This number continues to rise.

contends that the classifications of Lecturer, Teaching Specialist, Senior Lecturer and Senior Teaching Specialist (“Disputed Classifications”) are Academic Professional and Administrative Employees assigned by the legislature to Unit 11. *See* Minn. Stat. § 179A.11, subd. 1(11).

Following a petition from the Service Employees International Union (“SEIU”) for the creation of a new Unit 8, the Bureau of Mediation Services (“BMS”) issued a Unit Determination Order that moved the Disputed Classifications, contemplated by the legislature as part of Unit 11, to Unit 8. In doing so, BMS created a new Unit 8 that is inconsistent with the plain language of the statute and its legislative history, BMS’s prior interpretation of the statute, and the University’s long-standing practices.

BMS’s decision was based on its conclusion that the Disputed Classifications share a “community of interest” with tenured and tenure-track faculty. This conclusion is erroneous for several reasons.

First, the legislature assigned tenured and tenure-track faculty and the Disputed Classifications to different bargaining units for a reason—because these separate and distinct employee groups do not share a community of interest. *See* Minn. Stat. § 179A.11, subd. 1(8), (11); *see also* 1991 Minn. Laws ch. 77, § 1, at 163-65. The legislature never intended to treat these starkly different groups of University faculty interchangeably, as BMS has done.

Second, BMS determined that the Disputed Classifications and tenured and tenure-track faculty share a community of interest because they both engage in teaching. This conclusion ignores several critical elements to the community-of-interest analysis,

including the tripartite function of tenured and tenure-track faculty, which includes teaching, research, and service. These requirements apply only to faculty subject to the University Faculty Tenure Code and not to the Disputed Classifications.

UMN Faculty Excellence contends that BMS's community-of-interest analysis is unsupported by the evidence and contrary to the standard set forth in Minn. Stat. § 179A.09. For these reasons, UMN Faculty Excellence will suggest the reversal of BMS's Unit Determination Order.

UMN Faculty Excellence's interest in this case is both public and private. BMS's decision will have a critical impact on the University as a world-renowned research institute, with the academic freedom of its tenured and tenure-track faculty at issue if they are subject to collective bargaining with an employee group that does not share a community of interest. Moreover, the University's Faculty Tenure Code, which applies only to tenured and tenure-track faculty, will be undermined.

This Court has never interpreted the statutory language creating Unit 8 or determined which faculty members comprise Unit 8. BMS's decision therefore raises an issue of first impression regarding the interpretation of the bargaining units described at Minn. Stat. § 179A.11.

BMS's decision is unprecedented and will have broad-reaching effects. The outcome of this appeal will be closely examined by universities, faculty, and unions across the country. The importance of this case requires that the Court receive full briefing and advice, including from those directly affected by the quasi-legislative actions of BMS in re-drafting and enlarging Unit 8—specifically, from the University's tenured and tenure-

track faculty. This perspective was not fully represented below and is not represented by the parties to this appeal.

Consistent with *State v. Finley*, 243 Minn. 28, 64 N.W.2d 769 (1954), UMN Faculty Excellence's proposed amicus brief will be written in a manner to advise and inform the Court of legal principles pertinent to the issue of whether BMS's conclusion that the Disputed Classifications are included in Unit 8 is contrary to the community-of-interest standard set forth in Minn. Stat. § 179A.09 and the agency's long-standing interpretation of it. UMN Faculty Excellence's contemplated amicus brief will not exceed the applicable length limit set forth in Minn. R. Civ. App. P. 132.01, subd. 3. Because UMN Faculty Excellence's position is most closely aligned with Relator's, its brief would be due seven days after the time allowed for filing Relator's brief. Minn. R. Civ. App. P. 129.02.

Accordingly, UMN Faculty Excellence respectfully requests that the Minnesota Court of Appeals grant this petition to appear as amicus curiae in this case.

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