

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Case No. A16-1985

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 a group of tenured and tenure-track faculty at the University of Minnesota (“University”) concerned about the continued excellence of the institution and its central role in generating economic and cultural vitality

for the state and the region.¹ UMN Faculty Excellence therefore opposes the Service Employees International Union (“SEIU”) unionization drive at the University, and has the executed support of approximately 631 of the 1,500 tenured and tenure-track faculty who are eligible to vote in a possible union election.²

The legislature specifically assigned tenured and tenure-track 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 contends that the classifications of Lecturer, Teaching Specialist, Senior Lecturer and Senior Teaching Specialist (“Disputed Classifications”) are Academic Professional and Administrative Employees and were assigned by the legislature to Unit 11—not Unit 8. *See* Minn. Stat. § 179A.11, subd. 1(11).

Following a petition from 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 8.³ In doing so, the BMS created a new Unit 8 that is inconsistent with the plain language of the statute and its legislative history, the BMS’s prior interpretation of the statute, and the University’s long-standing practices.

¹ More information about UMN Faculty Excellence, including the names of public signers of its open letter opposing the unionization drive, can be found on its website at <http://www.umnexcellence.org>.

² Signatures continue to be collected at the time of this filing.

³ On November 15, 2016, this Court dismissed the University’s prior appeal without prejudice and held that the University could appeal the Unit Determination Order after the BMS ruled on the University’s pending Request for Reconsideration. *See* Order A16-1666 (Nov. 15, 2016). The BMS subsequently denied the University’s Request for Reconsideration and affirmed its prior analysis.

The 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.

The legislature never intended to treat these starkly different groups of University faculty interchangeably. In fact, the legislature assigned tenured and tenure-track faculty to a separate and distinct unit because they do not share a community of interest with others, including those in the Disputed Classifications. *See* Minn. Stat. § 179A.11, subd. 1(8), (11); *see also* 1991 Minn. Laws ch. 77, § 1, at 163-65.

The legislature did not contemplate that various faculty members should be included in the same bargaining unit simply because they all teach. This incredible finding by the BMS belies the clear statutory intent and the manner in which highly respected research institutions, such as the University of Minnesota, operate. Moreover, this conclusion ignores several critical elements to the community-of-interest analysis, including the tripartite function of tenured and tenure-track faculty—teaching, research, and service. These three requirements apply only to tenured and tenure-track faculty and not to the Disputed Classifications.

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

UMN Faculty Excellence's interest in this case is both public and private. The BMS's decision will have a critical impact on the University as a world-renowned research institution, 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.

Additionally, the BMS's decision 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 the 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 fully represented by the parties to this appeal.

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

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 the 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.

ROE LAW GROUP, PLLC

Dated: December 29, 2016

/s/ Jessica L. Roe

Jessica L. Roe (MN #250867)
Shannon N.L. Cooper (MN # 348077)
Kate M. Speer (MN #395225)
60 South Sixth Street, Suite 2670
Minneapolis, MN 55402
Phone: 612-351-8305
Fax: 612-351-8301
jroe@roelawgroup.com
scooper@roelawgroup.com
kspeer@roelawgroup.com