



Bureau of Mediation Services

STATE OF MINNESOTA

November 3, 2016

Jessica L. Roe, Attorney
Roe Law Group
60 South Sixth Street, Suite 2670
Minneapolis, MN 55402

Joel Waldfogel
Frederick R. Kappel Chair in Applied Economics
University of Minnesota
Carlson School of Management, 3-1777
321 19th Ave. S.
Minneapolis, MN 55455

Re: Response to Petition for Exclusion or Severance filed by UMN Faculty Excellence,
Minneapolis, Minnesota

VIA EMAIL (jroe@roelawgroup.com; jwaldfog@umn.edu)

Dear Ms. Roe and Professor Waldfogel,

The Bureau of Mediation Services (Bureau) is denying the Petition for Exclusion or Severance filed by UMN Faculty Excellence based on its determination that:

1. The petition is not authorized by the provisions of Minn. Stat. §179A.11, Subd. 2; and
2. The Bureau is not authorized to create a new subpart to a statutorily defined bargaining unit established at Minn. Stat. §179A.11, Subd. 1.

Minn. Stat. §179A.11, Subd. 2. provides that certain specific groups of employees can sever from the instructional and supervisory units. These groups do not include the tenure and tenure-track faculty of the Twin Cities campuses. There is no provision in the Statute for the Bureau to separate tenure and tenure-track instructional employees from Twin Cities Instructional Unit. On the contrary, Minn. Stat. § 645.19 (2016) provides:

645.19 CONSTRUCTION OF PROVISOS AND EXCEPTIONS.

Provisos shall be construed to limit rather than to extend the operation of the clauses to which they refer. Exceptions expressed in a law shall be construed to exclude all others.

In the matter at hand, statute establishes specific groups of University employees with the right to elect exclusion from Unit 8. Applying the statutory principle of Construction of Provisos and Exceptions,

cited above, the Bureau is not free to create additional groups with the specific and statutorily limited ability to separate from the collective bargaining unit.

The Bureau is not authorized to make structural changes in the statutorily established bargaining units. Therefore, the Bureau is not authorized to create a new subpart to Unit 8 as requested in the petition. The Bureau's authority is to make assignment of previously unassigned or significantly modified classifications based upon community of interest as provided in Minn. Stat. §179A.10, Subd. 4. Where the Bureau has taken such action to separate groups of employees from a bargaining unit, including cases cited in the petition, it related to bargaining units established under the provisions of Minn. Stat. §179A.09 which are not applicable to the statutorily established University of Minnesota bargaining units.

The UMN Faculty Excellence petition is a proposal to sever from unit 8, the instructional unit and not part of the record in BMS Case 16PCE0644. The proposed UMN Faculty Excellence severance petition is a separate matter from BMS Case 16PCE0644. UMN Faculty Excellence has been granted appearance status in that case and as such, the organization has the right under Minn. Rules 5510.1910 to "review exhibits and make statements for the record." They lack standing to intervene in the case.

For these reasons, the Bureau is declining to take any further action related to the Petition for Exclusion or Severance filed by UMN Faculty Excellence filed on October 31, 2016.

Respectfully,

A handwritten signature in black ink that reads "Jill Kielblock". The signature is written in a cursive, flowing style.

Jill Kielblock, Hearing Officer

cc: Commissioner Josh Tilsen
Karen Schanfield
Brendan Cummins