STATE OF MINNESOTA
IN COURT OF APPEALS

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

RESPONDENT SEIU LOCAL 284's MEMORANDUM IN OPPOSITION TO THE UNIVERSITY'S MOTION FOR A STAY OF THE ELECTION PROCEEDINGS

Regents of the University of Minnesota,

Relator,

vs.

Court of Appeals Case No.: A16-1985

Service Employees International Union, Local 284,

and

Bureau of Mediation Services,

Respondents.

INTRODUCTION

The University of Minnesota for the *sixth* time requests a stay of the pending proceedings for a faculty election. The Bureau of Mediation Services ("Bureau" or "BMS") did not abuse its discretion in denying a stay that would further delay and disrupt the election process that has already been protracted for *more than a year*. The University has engaged in a deliberate pattern of conduct designed to delay the faculty election, repeatedly refusing to meet deadlines for producing information set by the Bureau, resisting production of data as ordered by the Bureau, and repeatedly requesting stays of the process. The Court should not allow the University to use this pending appeal as yet another opportunity to delay the election process and deny employees' right to freely choose their bargaining representative. Notably, all of the issues that remain for

decision by the Bureau must be resolved regardless of the outcome of this appeal. Thus, a stay will only put off for months what needs to decided regardless of the Court's decision in this matter. Most importantly, a stay should be denied because it would undermine the fundamental policy of the Public Employment Labor Relations Act ("PELRA") that employees are entitled to exercise their right to vote in timely fashion.

PROCEDURAL HISTORY

I. THE ELECTION PETITION AND THE QUESTION OF ASSIGNMENT OF PREVIOUSLY UNASSIGNED CLASSIFICATIONS

On January 20, 2016, SEIU Local 284 ("the Union" or "SEIU") filed a petition with BMS seeking determination of an appropriate unit and certification as the exclusive representative of instructional employees in the University's "Twin Cities Instructional Unit" ("Unit 8"), Minn. Stat. § 179A.11, Subd. 1(8). BMS requested briefing from the Union and the University on whether certain classifications in question had been previously assigned to a bargaining unit pursuant to Minn. Stat. § 179A.10, Subd. 4. The classifications in question were: Assistant Extension Educator, Assistant Extension Professor, Associate Extension Educator, Associate Extension Professor, Extension Educator, Extension Professor, Lecturer, Teaching Specialist, Senior Lecturer, and Senior Teaching Specialist.

On March 15, 2016, the Bureau issued a pre-hearing ruling finding that the classifications in question had not been previously assigned to a statutory bargaining unit. Thus, the Commissioner ordered a hearing pursuant to Minn. Stat. § 179A.10, Subd. 4 to determine the appropriate unit assignment for the classifications in question. On March 29, 2016, the University filed a petition for certiorari review of the Bureau's March 15, 2016 Pre-Hearing Ruling and Order for Hearing. On April 18, 2016, the Court of Appeals dismissed the University's premature appeal for lack of subject matter jurisdiction.

In April and May 2016, the Bureau held a hearing to determine the community of interest for the classifications in question. On September 20, 2016, the Bureau issued a Unit Determination Order – Community of Interest ("COI Order"). *See Exhibit 1 to Affidavit of Brendan D. Cummins ("Cummins Aff."), dated February 3, 2017.* In the COI Order, the Bureau decided that four of the previously unassigned classifications shared a community of interest with Unit 8 as "instructional employees" and should be assigned to that statutory bargaining unit. Contrary to the University's assertions, the Bureau did not "rewrite" the statute, but instead exercised its authority under Minn. Stat. § 179A.10, Subd. 4 to determine the appropriate unit assignment for previously unassigned classifications based on community of interest. The Bureau also decided that six of the previously unassigned classifications did not share a community of interest with Unit 8, and should not be assigned to that statutory bargaining unit.

On September 28, 2016, the University filed a request for partial reconsideration of the COI Order. On October 17, 2016, the University filed a second petition for certiorari review. In an Order issued on November 15, 2016, the Court dismissed the University's appeal as premature because BMS had not ruled on the pending request for reconsideration.

On November 29, 2016, BMS denied the University's request for partial reconsideration of the COI Order. On December 15, 2016, the University filed its third petition for a writ of certiorari in this matter requesting review of the Bureau's COI Order and its denial of the University's request for partial reconsideration of that Order.

II. THE UNIVERSITY'S EXTENSIVE EFFORTS TO DELAY THE ELECTION PROCEEDINGS

A. The University's Six Requests for Stays

On March 29, 2016 the University filed its first request for a stay of the election proceedings. *Cummins Aff., Ex. 2*. On April 4, 2016, the Bureau issued a decision denying the

University's request for a stay, stating that the "Insuring that representation proceedings occur in a timely fashion is key to executing the public policy embedded in the Public Employment Relations Act…Lengthy delays between the filing of a petition for a representation election and the opportunity for employees to cast ballots is inimical to [this] policy." *Cummins Aff., Ex. 3, p. 2*. The following day – April 5, 2016 – the Employer filed its Motion for Stay of Agency Proceedings with the Court of Appeals. *Cummins Aff., Ex. 4*. The Court did not rule on the request for a stay because the appeal was dismissed as premature.

On September 28, 2016, the University filed yet another request for a stay of the election proceedings with the Bureau. *Cummins Aff., Ex. 5*. The Bureau denied the request for a stay on September 29, 2016. *Cummins Aff., Ex. 6.* On October 17, 2016 the University filed yet another request for a stay with the Bureau. *Cummins Aff., Ex. 7.* The Bureau denied the request for a stay on October 31, 2016. *Cummins Aff., Ex. 8.* On December 15, 2016, the University filed yet another request for a stay of the election proceedings. *Cummins Aff., Ex. 9.* That request was denied on January 3, 2017. *Cummins Aff., Ex. 10.* The University filed the present motion for a stay with the Court of Appeals on January 27, 2017. All told, the University has filed six requests to stay the election proceedings.

B. The University's Pattern of Resistance and Non-Cooperation in the Election Process Following Issuance of the Community of Interest Decision That the University Strongly Rejects

Unsuccessful in obtaining stays from the Bureau or the Court, the University has taken matters into its own hands. The University has engaged in a pattern of delay and resistance in response to the Bureau's orders for production of information necessary to resolve the outstanding issues in the election proceedings. The University's pattern of resistance intensified after the Bureau issued the decision under appeal in this case on September 20, 2016.

On September 23, 2016 the Bureau directed the parties to provide their position statements to the Bureau on September 30, 2016 on eight remaining issues in the election proceedings. *Cummins Aff., Ex. 11*. The Bureau further directed the parties to come to a pre-hearing conference on October 18, 2016 prepared with their positions on the eight remaining issues. *Cummins Aff., Ex. 12*. Despite having a month to prepare for the pre-hearing conference after receiving the Bureau's directive—and ten months since the petition was filed—the University was woefully unprepared to address the central remaining issues, as indicated by the following;

1. The University took the position at the pre-hearing conference that it is unaware of its own "standards" for defining full-time status, and asserted that it will take an undefined amount of time to figure them out.

2. The University claimed to be unaware of which employees it believes are supervisors under PELRA. Notably, the parties began discussing the issue of supervisory status soon after the petition was filed 10 months ago, and seemingly reached agreement on this issue in March 2016. Seven months later the University was evidently raising new supervisory status issues and contending that a hearing will be necessary.

3. The University took the position that it does not know the criteria for defining what is a "primary" appointment for purposes of dual function employees even though the parties had been discussing the issue of dual function employees since the first pre-hearing conference in February 2016.

4. The University was unprepared to provide multiple lists of employees as directed by the Bureau in its letter dated September 23, 2016, and provided only a partial list of employees the University is contending are supposedly "supervisors."

Cummins Aff., Ex. 12. The University had 10 months prior to the October 18, 2016 pre-hearing conference to figure out its own policies on full-time/part-time status, which employees are supervisors, and what its own standard is for a "primary appointment." *Id*. These issues are not unique to the disputed classifications, and especially affect the 277 term faculty members that the University undisputedly placed in Unit 8—*e.g.* adjunct faculty, contract faculty, visiting faculty, and temporary faculty. *Id*.; *Cummins Aff., Ex. 1, pp. 9-11*.

Following the unproductive October 18 prehearing conference, the Bureau sought the parties' input before setting a deadline for the University to produce data on FTE (full-time equivalent) assignments of unit employees for purposes of determining eligibility to vote under PELRA's threshold for part-time employees under Minn. Stat. § 179A.03, Subd. 14(5). *Cummins Aff., Exs. 13-15*. This issue is relevant not only for the disputed classifications but also for the 277 "term faculty" who make up 18% of the bargaining unit and work on a temporary or contract basis but are undisputedly in Unit 8. *Cummins Aff., Ex. 1, pp. 7, 9-11*. The Union took the position that such data could be provided within two weeks of October 27, 2016. *Cummins Aff., Ex. 14*. The University took the position in letters dated October 24, 2016 and October 31, 2016 that it needed until December 1, 2016 to produce the data because "complex algorithms" were required. *Cummins Aff., Exs. 13, 15*. On October 31, 2016 the Bureau issued an Order setting a deadline of November 29, 2016 for production of the required FTE data. *Cummins Aff., Ex. 16*. Nonetheless, the University produced none of the required FTE data on November 29, 2016, and instead produced different data regarding "standard hours." *Cummins Aff., Ex. 17*.

The Bureau pointed out the University's failure to produce any of the required FTE data and gave the University an extension until December 9, 2016. *Cummins Aff., Ex. 17*. The University refused to comply with this deadline, so the Bureau again extended the deadline until December 12, 2016. *Cummins Aff., Exs. 18-19*. The University once again refused to comply. The University then took the position that it needed until at least March 1, 2017 to produce the FTE data ordered by the Bureau on October 31, 2016. The University explained that it has no general FTE standard and that the standards would need to be determined by each Department and/or College on an individualized basis as to each employee. *Cummins Aff., Ex. 20, p. 2*.

In response to the University's repeated flouting of the Bureau's deadlines for production of data on FTE status, and the University's representation that such data does not exist and would need to be generated for purposes of this proceeding on an individualized basis over a matter of several months, the Bureau ordered written arguments about adopting an appropriate credit hour standard instead in an order issued on December 12, 2016. *Cummins Aff., Ex. 20.* The Bureau adopted this revised Order in response to the University's failure to produce data timely as directed and its admissions that the University lacks an objective, discernible, uniformly applicable FTE standard for employees that can be produced within a reasonable amount of time.

Once again, the University resisted compliance with the Bureau's order and strenuously objected. *Cummins Aff., Exs. 21-22.* To accommodate the University's concerns, the Bureau set up a meeting of the parties on December 23, 2016. *Cummins Aff., Ex. 23.* Following the meeting, the Bureau permitted the University to submit a proposed revised order for production of information. *Cummins Aff., Ex. 24.* On January 12, 2017 the Bureau issued a revised Order providing additional time for the University to produce information. *Cummins Aff., Ex. 25.* In response, the University again strenuously objected to the Bureau's Order for production of information on January 18, 2017. *Cummins Aff., Ex. 26.*

ARGUMENT

I. THE BUREAU DID NOT ABUSE ITS DISCRETION IN DENYING THE REQUEST FOR A STAY OF THESE ELECTION PROCEEDINGS TO PROTECT EMPLOYEES' RIGHT TO VOTE IN TIMELY FASHION UNDER PELRA

Pursuant to Minn. R. Civ. App. P. 108.01 an agency has "**broad authority…to determine whether and on what terms to grant a stay**." DRJ, Inc. v. City of St. Paul, 741 N.W.2d 141, 144 (Minn. Ct. App. 2007) (emphasis added). A judgment or order is typically not

stayed during the pendency of an appeal. See Minn. R. Civ. App. P. 108.01, Subd. 1. "An appellate court reviewing a decision regarding a stay pending appeal ***will interfere only when there is a demonstrated abuse of discretion***." DRJ, Inc., 741 N.W.2d at 144 (emphasis added). The abuse of discretion standard is highly deferential to the agency's decision. Id. at 145. In ruling on a request for a stay, the BMS may exercise discretion in balancing the "appealing party's interest in preserving the status quo, so that effective relief will be available if the appeal succeeds, against the interests of the… prevailing party in enforcing the decision and ensuring that they remain secure in victory while the appeal is pending." DRJ, 741 N.W.2d at 144.

In DRJ, Inc. the court upheld the City Council's decision to deny the motion to stay proceedings, finding that the decision was not an abuse of discretion. In balancing the interests of the respondent against the relator's interest in preserving the status quo, the court determined that the City Council provided sufficient support for its decision to deny the stay as well as its conclusion that, despite the financial impact of denying the stay upon the relator, the denial was justified by public safety concerns. Id. at 145.

Here, in its Order denying a stay on January 3, 2017, the Bureau appropriately balanced the parties' respective interests consistent with this Court's precedent in DRJ., Inc. *Cummins Aff., Ex. 10, pp. 2-3.* The University's asserted interest was to avoid the additional administrative burdens of the election process that may be unnecessary if the University prevails on appeal. *Id.* The Union's asserted interest was to protect employees' right to exercise their right to vote in timely fashion and, in the words of the Court in DRJ, Inc., to enforce the BMS decision and "remain secure in victory while the appeal is pending." *Id.* In balancing the relative interests, the Bureau reasoned as follows:

"As we noted in a prior denial of request for stay, an important principle underlying the PELRA is the right of employees to freely choose:

> Insuring that representation proceedings occur in a timely fashion is key to executing the public policy embedded in the Public Employment Labor Relations Act (PELRA) at Minn. Stat. § 179A.01 (c)(1) "granting public employees certain rights to organize and choose freely their representatives". Lengthy delays between the filing of a petition for a representation election and the opportunity for employees to cast ballots is inimical to the policy cited above…It is highly possible that such a long delay may affect the outcome of the election. Thus, we conclude that if a stay pending appeal is granted, and the University does not prevail, it is very likely that SEIU will not be "secure in victory." (Ruling on Request for Stay, BMS Case No. 16-PCE-0644, p. 2-3 (April 4, 2016)).

This statutory mandate outweighs the University's interest in [avoiding] further effort and administrative expense involved in participating in the statutory administrative process to the point of a final agency determination. Therefore a Stay will not be granted." *Cummins Aff., Ex. 10, p. 3* (emphasis in original).

In this manner, the Bureau balanced the relative interests at issue in the case, just as the Court did in the DRJ case, and made an appropriate decision rooted in its interpretation of PELRA. See In re Excess Surplus Status of Blue Cross & Blue Shield of Minn., 624 N.W.2d 264, 278 (Minn. 2001) ("Judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing."). The Bureau's decision was entirely reasonable and well-founded, and the Bureau did not abuse its discretion.

The University is not entitled to a stay merely because it vehemently disagrees with the Bureau's decision. "Where there is room for two opinions on a matter, the decision to accept one over another is not arbitrary and capricious. The burden is on the appealing party to demonstrate the arbitrariness of the [agency's] action." In re Grocery & Tobacco Dealer License Held by Uncle Bill's Mkt., Inc., No. A06-1916, 2007 WL 4303498, at *2 (Minn. Ct. App. Dec. 11, 2007).

The University has not met its burden to demonstrate that the Bureau abused its discretion, and therefore its request for a stay should be denied.

The University suggests that a stay should be granted because the Bureau's decision supposedly "rewrites" PELRA. However, the Bureau has the explicit statutory authority and obligation to assign previously unassigned classifications to University of Minnesota bargaining units pursuant to Minn. Stat. § 179A.10, Subd. 4. The exercise of the Bureau's statutory duty to assign unassigned classifications hardly constitutes "rewriting" PELRA—instead the Bureau did what PELRA expressly requires. In effect, the University invites the Court to decide the merits of this appeal as a basis to grant a stay to consider the appeal. This puts the cart before the horse. The University assumes that it has a winning argument on appeal, overlooking the high legal standard that applies. "Generally, decisions of administrative agencies . . . enjoy a presumption of correctness and will be reversed only when they reflect an error of law or where the findings are arbitrary, capricious, or unsupported by substantial evidence." CUP Foods, Inc. v. City of Minneapolis, 633 N.W.2d 557, 562 (Minn. Ct. App. 2001).

The University argues that it supposedly will not have a meaningful right to appeal if a stay is denied. This is clearly not the case. The appeal will determine the University's rights and duties even if it is decided after the election, which is typically when such appeals are resolved under PELRA and in other states. See City of Bloomington v. AFSCME Council 5, 2013 WL 3491133 (Minn. Ct. App. July 15, 2013); Certain Employees of the University of Minnesota Crookston Campus and University of Minnesota and University Education Association ("UEA"), BMS Case No. 97-PCE-444, 1997 WL 243439 (Minn. Ct. App. May 13, 1997); see also City of Wood Dale v. Illinois State Labor Relations Bd., 520 N.E.2d 1097, 1101 (Ill. Ct. App. 1988) (citing cases compiled from other jurisdictions). Employee elections are supposed to be subject

to an efficient administrative process—not to proceed at the ponderous pace of the judicial system. The Bureau has recognized that conducting an election while an appeal is pending is appropriate to implement the fundamental policy of PELRA of protecting employees' right to vote in a timely manner. See, e.g., Matter of a Petition for Transfer of Certification of Exclusive Representative Status, BMS Case No. 03-PTR-860 (Sept. 16, 2003), *attached as Exhibit 27 to Cummins Aff*. For example, the Bureau denied the Hutchinson School District's request to stay an election, despite the District's arguments that it would be "imprudent to proceed with a new representation election until this issue is finally resolved" and proceeding with the election would create a "risk of [employee] confusion." Id. at *1. As in this case, the BMS articulated a rationale for denying the request for a stay that was firmly grounded in the public policies underlying PELRA:

> Based upon the evidence presented, the Bureau believes that the election in this case should go forward. ***While conducting an election under the specter of pending judicial action is not ideal, the alternative is less desirable. As we have stated in the past, "...unnecessary delays work against fair representation elections. This fact is a well-established principle of labor relations.*** Some employees become frustrated which often changes votes and others simply leave their jobs. Such factors influence the outcome of representation elections.". . . For the above reasons, it is proper to proceed with an election in this matter as quickly as possible.

Id. at *2 (emphasis added).

Further, BMS precedent clearly indicates that limiting expenditure of time and resources ***does not*** constitute a sufficient interest to grant a stay. In City of Bloomington, BMS denied the city's request for a stay despite its assertion that further participation constituted a waste of public resources while its appeal was pending before the Court of Appeals:

> It is true that if the City prevails some public resources expended on bargaining may have been spent in vain. However, the City currently negotiates labor agreements with exclusive representatives representing other groups of employees including another bargaining unit represented by Council 5. **Therefore, the City**

> **is experienced at labor negotiations and normally devotes some resources to this function. <u>On the other hand, if majority employee support for Council 5 is lost due to further delay, neither the Court nor the Bureau can provide truly effective relief</u>**.

<u>City of Bloomington</u>, BMS Case No. 12-PCE-1115, *Ruling on Request to Reconsider Stay*, p. 4 (Dec. 13, 2012) (emphasis added), *attached as Exhibit 28 to Cummins Aff.* The University is a large, sophisticated institution with thousands of employees and significant resources. The University is also a party to a number of collective bargaining agreements and is thus well-versed in labor relations issues and more than sufficiently equipped to carry out the tasks necessary to comply with further BMS orders in the ongoing representation process. On the other hand, if majority support for unionization is lost due to further delay, neither the Court nor the Bureau can provide effective relief.

Although the Bureau's decision denying a stay noted that this appeal is premature—a premise that this Court has since rejected—that observation was not necessary to the Bureau's decision. *Cummins Aff., Ex. 10, p. 2*. Instead, the Bureau relied on the required balancing of interests under <u>DRJ, Inc</u>. as an independent and sufficient basis of decision. *Id., pp. 2-3*; <u>see Williams v. Nat'l Football League</u>, 794 N.W.2d 391, 395 (Minn. Ct. App. 2011) ("Appellate courts are free to affirm for reasons other than those on which a decision is based."); <u>see also Kahn v. State</u>, 289 N.W.2d 737, 745 (Minn. 1980) ("We will not, however, reverse on appeal a correct decision simply because it is based on incorrect reasons."). Here, the Bureau independently and properly concluded that protection of employees' right to vote under PELRA outweighed the University's asserted concerns about potentially unnecessary administrative burdens. Accordingly, the Bureau did not abuse its discretion in denying the request for a stay.

II. A STAY SHOULD BE DENIED BECAUSE ALL OF THE REMAINING ISSUES IN THE ELECTION PROCEEDINGS WILL NEED TO BE RESOLVED REGARDLESS OF THE OUTCOME OF THIS APPEAL

The University asserts that a stay is supposedly necessary to avoid employee confusion. However, a stay would only enhance confusion of the faculty by postponing indefinitely the resolution of multiple remaining issues that need to be resolved regardless of the outcome of this appeal.

In particular, the issue that has resulted in the largest claimed administrative burden on the University—the threshold for defining part-time employees—will have to be decided regardless of the outcome of this appeal. *Declaration of Sumanth Gopinath ("Gopinath Decl."), ¶ 5; Declaration of Erin Trapp ("Trapp Decl."), ¶ 5.* Indeed, the University employs ***277 "term faculty" members*** who, like the disputed classifications, are non-tenure-track and hired on a short-term and contract basis but are ***undisputedly in Unit 8***. *Cummins Aff., Ex. 1, pp. 7, 9-10.* "Term faculty" comprise 18.4% of the bargaining unit and include adjunct faculty, contract faculty, visiting faculty, and temporary faculty. *Id.* These faculty members who are undisputedly in Unit 8 raise precisely the same questions as the disputed classifications regarding part-time status and require the University to provide information relevant to determining the applicable standard for applying the PELRA definition of part-time status. *Id. at 9-10; Gopinath Decl. ¶ 5; Trapp. Decl. ¶ 5.*

Because of the fact that term faculty who are hired on a contract basis are undisputedly in the unit, all the remaining issues in these proceedings will need to be resolved regardless of the outcome of this appeal. On September 23, 2017, the Bureau set forth the following remaining issues:

1. What is the standard that should be used to decide if an individual meets the definition of a "public employee" under Minn. Stat. §179A.02, Subd. 14(a)(5). That is how should it

be determined whether or not an employee works more than 14 hours per week or 35 percent of the normal work week in the employee's appropriate unit?

2. While the Bureau will make the determination of whether any election will be conducted on-site or by mail ballot, please state whether you prefer one method over the other.

3. What method should be used to determine whether or not "dual function" employees are included in the bargaining unit – the part-time definition or some other standard?

4. If employees receive wages from the University but benefits from a third-party do you believe they are considered University employees or not?

    a. The University should be prepared to identify by name and job classification which employees are included in this category.

5. Which of the incumbents now defined in Unit 8 meet the definition of a supervisory employee pursuant to Minn. Stat.§179A. meaning the individual has the who has the authority to undertake a majority of the following supervisory functions in the interests of the employer: hiring, transfer, suspension, promotion, discharge, assignment, reward, or discipline of other employees, direction of the work of other employees, or adjustment of other employees' grievances on behalf of the employer.

    a. The University should be prepared to identify by name and job classification which employees are included in this category.
    b. Please note that the Bureau is not necessarily in agreement with conducting the election and impounding the ballots cast by the incumbents in the identified positions but will consider it as part of the election discussions when we reach the point of conducting an election.

6. Are the positions identified as being part of the Hormel Institute included in Unit 8?

    a. The University should be prepared to identify by name and job classification which employees are included in this category.

7. Are the positions identified as being part of a Research and Outreach Center (North Central in Grand Rapids, Northwest in Crookston, Southeast in Lamberton, Southern in Waseca and West Central in Morris) included in Unit 8?

    a. The University should be prepared to identify by name and job classification which employees are included in this category.

8. What should be the cutoff date for determining voter eligibility?

Cummins Aff., Ex. 11.

These issues that remain for resolution must all be resolved regardless of the outcome of this appeal. *Gopinath Decl. ¶ 5; Trapp. Decl. ¶ 5.* Most of the issues have nothing to do with whether an employee is part-time or full-time or tenure-track or non-tenure-track. The two issues that are particularly relevant to the disputed classifications—numbers 1 and 3 (part-time definition and dual function employees)—will have to be resolved regardless of the outcome of this appeal because of the hundreds of term faculty that are undisputedly in Unit 8 and may work part-time (e.g., adjuncts from outside the University) and have dual appointments (as in the case of adjuncts from within the University). *Cummins Aff., Ex. 1, pp. 7, 9-10; Gopinath Decl. ¶ 5; Trapp. Decl. ¶ 5.* If the election is to be conducted in a timely manner consistent with PELRA's policy, it makes no sense to postpone all of these issues that will need to be decided regardless of the outcome of this appeal for many months while this appeal process unfolds.

III. THE COURT SHOULD NOT ALLOW THE UNIVERSITY YET ANOTHER OPPORTUNITY TO IMPOSE DELAY ON THESE ALREADY PROTRACTED ELECTION PROCEEDINGS WHICH HAS RESULTED IN A DESTRUCTIVE IMPACT ON EMPLOYEES' RIGHT TO FREELY CHOOSE THEIR REPRESENTATIVE

As set forth in detail above, the University has engaged in extensive efforts to delay these proceedings. In addition to its six requests for a stay, the University has taken matters into its own hands and repeatedly refused to comply with Bureau deadlines and resisted complying with Bureau Orders. All of this conduct has resulted in a destructive impact on the morale of the bargaining unit and the employees' right to organize and freely choose a bargaining representative under PELRA. The University should not be permitted to obtain yet another indefinite delay while these proceedings are pending.

As confirmed by the declaration of Senior Lecturer Erin Trapp submitted with this Memorandum, the seemingly endless delays caused by the University have "exacerbated this

environment of uncertainty and made it difficult for myself and my colleagues to build a positive vision for our work and our University." *Trapp Decl.*, ¶ *3.* Senior Lecturer Trapp emphasized that due to turnover in term faculty and the disputed classifications, "as time goes by there is a constant need to educate hundreds of individuals who have been hired by the University since we filed for an election the filing last year. This has created an unfair burden for those who have been working to move the union effort ahead and build a community with colleagues for our union." *Trapp Decl.*, ¶ *4.*

The University's delays have caused significant confusion among the employees in the bargaining unit, as explained by Ms. Trapp:

> [A]s a result of the University administration's delays we have waited many months for clarity around who meets the part-time threshold for inclusion in the union and whether teaching staff with full-time appointments elsewhere in the university will be included in our faculty union. Despite what the University administration has said about the ruling on teaching specialists and lecturers being included, this issue also impacts non-tenure track faculty who are undisputedly in the bargaining unit, including those with the titles visiting faculty, contract faculty, adjunct faculty, temporary faculty, and research faculty.

Trapp Decl., ¶ *5.* For all of these reasons, "a stay of the election proceedings pending appeal would have a devastating impact on our organizing efforts, and our right to vote in timely fashion, by delaying an already protracted election process by an indeterminate amount of time." *Trapp Decl.*, ¶ *6.*

Similarly, Associate Professor Sumanth Gopinath confirms the concerns he shares with his colleagues about the impact of the University's delay tactics on the right to freely choose a bargaining representative:

> The ongoing delay of this union election due to the actions of the University Administration negatively affects me and my colleagues and distracts from the mission of the University. A stay pending appeal would only make matters much worse. The protracted election process is an enormous drain on the time and energy of faculty who are working on the process—indeed, both for and against unionization. I am concerned for our students and the well-being of the institution. An unresolved antagonism hangs

> like a pall over the campus climate, and the University administration should recognize that their actions are affecting its employees' morale—which, in turn, could have an unintended negative, trickle-down effect on students. These delays are unnecessary and potentially harmful to all involved. . . . It is my belief that a stay of the election proceedings pending appeal would have a destructive impact on our organizing efforts, on faculty morale, and on our right to vote in timely fashion . . . ."

Gopinath Decl., ¶¶ *3-5*. The Court should not allow the University to use this pending appeal as yet another opportunity to delay the election process and avoid exacerbating the impact of the delays that have already occurred on employees' right to freely choose a representative.

CONCLUSION

In summary, the Bureau did not abuse its discretion in denying the University's request for a stay pending appeal. A stay would result in substantial additional delay in a process that has already been protracted for more than a year, thereby undermining the fundamental policy of PELRA of protecting employees' right to vote in a timely manner. The Bureau balanced the need to protect employees' rights under PELRA against the University's claimed administrative burden, and properly concluded that the fundamental policy of PELRA outweighs the University's claimed administrative burden. Notably, all of the issues that remain for decision by the Bureau must be resolved regardless of the outcome of this appeal. Thus, a stay will only put off for months what needs to decided regardless of the Court's decision in this matter. Accordingly, the University's motion for a stay should be denied.

Dated: February 3, 2017

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