

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
CASE TYPE: CIVIL OTHER

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University of Minnesota Faculty Excellence,  
Plaintiff,

Civil File No. \_\_\_\_\_

v.

Minnesota Bureau of Mediation Services and  
Todd Doncavage, in his official capacity as  
Acting Commissioner of the Minnesota Bureau  
of Mediation Services,

**COMPLAINT**

Defendants.

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TO: THE ABOVE-NAMED DEFENDANTS.

Plaintiff, for its cause of action against the above-named Defendants, states and alleges as follows:

**PARTIES**

1. Plaintiff University of Minnesota Faculty Excellence (“UMN FE”) is a Minnesota Nonprofit Corporation comprised of University of Minnesota (“University”) Faculty concerned about the continued excellence of the institution and its central role in generating economic and cultural vitality for the state and region. UMN FE’s registered address is in the County of Hennepin.

2. Defendant Minnesota Bureau of Mediation Services (“BMS”) is a state agency that administers programs in Minnesota relating to labor relations including mediation, representation

and decertification, arbitrator referral, labor-management cooperation, and labor relations training, including the conduct of representation and decertification elections among public employee bargaining units. The BMS is located at 1380 Energy Lane, Suite Two, St. Paul, MN 55108 in the County of Ramsey.

3. As a state agency, the BMS is a “government entity” for purposes of the Minnesota Government Data Practices Act (“MGDPA”). *See* Minn. Stat. § 13.02, subd. 7a.

4. Defendant Todd Doncavage is Acting Commissioner of the BMS (“Commissioner”).

5. The Commissioner of the BMS is the “Responsible Authority” for the BMS pursuant MGDPA. *See* Minn. Stat. § 13.02, subd. 16.

6. This action is brought pursuant to Minn. Stat. § 13.08 on the basis that Defendants have willfully, wrongfully, and unreasonably refused to produce public information requested by Plaintiff under the MGDPA, Minn. Stat. § 13.01, *et seq.*, and that Defendants must therefore be compelled to immediately produce the requested information.

7. Venue in this County is proper pursuant to Minn. Stat. § 13.08, Subd. 3.

### **FACTUAL BACKGROUND**

8. On January 20, 2016, Service Employees International Union, Local 284 (“SEIU”) filed a Petition for Determination of Appropriate Unit and Certification of Exclusive Representative (“Petition”) with the BMS.

9. After SEIU filed its Petition, SEIU informally asked the BMS to reassign selected University job classifications to the Proposed Unit for the union election purposes. The University

objected, and the BMS requested briefing and held hearings in BMS Case No. 16PCE0644. The Commissioner issued a Unit Determination Order on September 20, 2016.

10. Plaintiff was granted “Appearance Status” in BMS Case No. 16PCE0644 on or about October 12, 2016.

11. In its Petition, SEIU described the proposed unit as “The Twin Cities Instructional Unit established in Minnesota Statutes Section 179A.11, Subd. 1(8)” (“Proposed Unit”). SEIU further identified that 2,500 University employees were covered by the request.

12. Such petitions must be accompanied by a statement that at least 30 percent of the employees in the proposed unit wish to be represented by the petitioner pursuant to Minn. Stat. § 179A.12, subd. 3. This support is demonstrated by providing the commissioner with authorization signatures. Minn. Stat. § 179A.12, subd. 6. Valid authorization signatures must be in the form of authorization cards including a statement of the employee’s support of the petition, the employee’s printed name, the employee’s signature, and the date of the employee’s signature. Minn. Admin. R. 5510.0810, subp. 2. Signatures must be dated within six months of the petition date or are considered invalid. Minn. Admin. R. 5510.0810, subp. 3. The commissioner “shall not include invalid authorization cards in determining whether a petition was the necessary showing of interest.” Minn. Admin. R. 5510.0810, subp. 4.

13. If there is evidence that authorization cards were obtained in a fraudulent manner, the commissioner of the BMS must deny the petition and impose a one-year election ban. Minn. Admin. R. 5510.0810, subp. 4.

14. SEIU stated in its Petition that at least 30 percent of the employees in the Proposed Unit wished to be represented by it.

15. Plaintiff has reasonable evidence that SEIU may have submitted authorization signatures from University employees not part of the proposed bargaining unit, and that authorization cards may have been dated more than six months prior to the Petition.

16. Joel Waldfogel, Ph.D., a Professor and Frederick R Kappel Chair in Applied Economics Strategic Management & Entrepreneurship at the University's Carlson School of Management, analyzed Plaintiff's concerns using publicly available information:

- a. SEIU began its organizing campaign in at least March of 2015. Because authorization signatures must be dated within six months of the Petition, UMN FE believes that SEIU may have submitted authorization signatures collected before July 20, 2016, which are therefore invalid; and
- b. While UMN FE needs additional information from the University, it appears as if approximately 70% of the non-tenure-track faculty on the Twin Cities campus of the University worked less than the 35 percent full-time schedule required to be eligible to vote in a union election. Additionally, it appears that roughly half of the faculty listed by SEIU as public supporters on its website taught less than 35 percent time during the 2015-16 academic year. If SEIU submitted authorization signatures from employees ineligible to vote, those employees will not be in the Proposed Unit and therefore those signatures are invalid.

17. The Commissioner cannot include invalid authorization cards in determining whether a petition has the necessary showing of interest. Minn. Admin. R. § 5510.0810. Therefore, SEIU's Petition cannot be considered if it failed to submit valid authorization signatures sufficient

to demonstrate interest from at least 30 percent of eligible voters as required by Minn. Stat. § 179A.12, subd. 3.

18. On November 4, 2016, Plaintiff sent a letter to the Commissioner detailing its concerns about these irregularities in the collection of authorizations signatures by SEIU submitted with its Petition.

19. In order to fully analyze the sufficiency of SEIU’s showing of interest, Plaintiff—well within the scope of the MGDPA—requested the following information in its November 4, 2016 correspondence:

- a. The total number of authorization signatures or cards SEIU submitted in support of its Petition;
- b. The total number of authorization signatures dated prior to July 20, 2015;
- c. A numerical breakdown by job classification of those who provided authorization signatures; and
- d. An attestation from the BMS that, using publicly available data, it verified the employment status of each individual who submitted an authorization card to ensure that the individual was a member of the proposed unit at the time the Petition was filed.

20. This requested data is public pursuant to the MGDPA, which deems “[a]ll government data collected, created, received, maintained or disseminated by a government entity shall be public” unless classified as nonpublic or “with respect to data on individuals, as private or confidential.” Minn. Stat. § 13.03, subd. 1.

21. “Data on individuals” is defined by the MGDPA as “all government data in which any individual is or can be identified as the subject of that data.” *See* Minn. Stat. § 13.02, subd. 5.

22. Authorization signatures submitted in support of a petition contain data on individuals and are considered privileged and confidential information available to the commissioner only. Minn. Stat. § 179A.12, subd. 6. The only other BMS data deemed nonpublic is data received or maintained by the BMS during the course of providing mediation services. *See* Minn. Stat. § 13.7908.

23. Plaintiff’s November 4, 2016 MGDPA request to the BMS sought government data necessary to substantiate SEIU’s purported showing of interest in its Petition. The request did not seek the authorization signatures themselves or any data in which an individual could be identified as the subject of the data. Accordingly, Plaintiff’s request is for government data deemed public by Minn. Stat. § 13.03, Subd. 1.

24. Nonetheless, the BMS denied Plaintiff’s request for information On November 7, 2016, claiming it requested “privileged and confidential information available to the commissioner only” pursuant to Minn. Stat. § 179A.12, subd. 6.

25. On November 8, 2016, Plaintiff sent another letter to the BMS further reiterating its MGDPA request and detailing why the data requested is public.

26. The BMS did not respond to Plaintiff’s November 8, 2016 MGDPA request.

27. Plaintiff again requested the public information detailed herein on December 7, 2016.

28. The BMS did not respond to Plaintiff’s December 7, 2016 MGDPA request.

29. Plaintiff made its MGDPA request again on January 19, 2017. Plaintiff noted in this letter that the BMS's "complete lack of explanation regarding its refusal to provide the information that is it required to provide continues to astound UMN FE. In fact, it begs the question of neutrality."

30. The BMS responded on January 20, 2017, indicating that "the Bureau cannot disclose data on or about the authorization cards."

31. Subsequently, UMN FE learned that SEIU aggressively sought authorization cards from the University extension office in St. Cloud, MN. Given that SEIU's Petition described the Proposed Unit as the "Twin Cities Instructional Unit," this information cast further doubt on the sufficiency of SEIU's showing of interest.

32. On March 3, 2017, UMN FE wrote to the BMS regarding its knowledge of the St. Cloud solicitation and again made its request for public data pursuant to the MGDPA. Plaintiff also made an additional request for public data to the BMS, asking for "a breakdown of those authorization cards from the Twin Cities campus and those that are not."

33. On March 6, 2017, Jill Kielblock, Mediator for the BMS, responded to Plaintiff indicating that it is the "Bureau's position that the information you requested is not public information" and that the BMS would not provide the requested information. Additionally, the BMS indicated that further requests would not "alter the Bureau's position as the confidentiality of data related to the authorization cards."

34. Minnesota law does not deem "data *related to* the authorization cards" as nonpublic, confidential, or private, nor did the BMS provided any supporting authority for its assertion that it does.

35. If the responsible authority for a government entity subject to the MGDPA determines that requested data is non-public, it must “cite the specific statutory section” on which the determination is based. Minn. Stat. § 13.03, subd. 3(f).

36. Plaintiff reiterated its request for public information on March 6, 2017, and asked the BMS to “please indicate specifically why the BMS believes such data cannot be released, indicate what about the requested data is confidential and provide us with that which the BMS believes it can legally release.” The BMS did not respond.

37. On March 23, 2017, Plaintiff notified the Office of the Minnesota Attorney General of the BMS’s continued blanket refusals to provide Plaintiff with public data pursuant to the MGDPA.

38. On March 29, 2017, Assistant Attorney General Caitlin M. Micko responded, confirming that UMN FE was correct to direct its data requests to the Commissioner, who is the BMS’s “responsible authority” pursuant to Minn. Stat. § 13.02, subd. 16. Ms. Micko further stated that the Office of the Attorney General does not have authority to respond to data requests on behalf of the Commissioner so it is appropriate for UMN FE to follow up with the Commissioner.

39. The MGDPA requires that “[u]pon request to a responsible authority or designee, a person shall be permitted to inspect and copy public government data at reasonable times and places” and “[t]he responsible authority or designee shall provide copies of public data upon request.” Minn. Stat. § 13.03, subd. 3(a), (c) (emphasis added).

40. Plaintiff made written requests for public data to the Commissioner, the responsibility authority for the BMS, on the following dates:

- a. November 4, 2016;
- b. November 8, 2016;
- c. December 7, 2016;
- d. January 19, 2017;
- e. March 3, 2017; and
- f. March 6, 2017.

41. The BMS also received a copy of Plaintiff's May 23, 2017 letter to the Office of the Minnesota Attorney General.

42. The BMS has not provided the public data to Plaintiff in violation of the MGDPA.

43. Plaintiff has suffered and will continue to suffer damages due to the BMS's failure to comply with its obligation under the MGDPA.

44. An appeal of the Commissioner's findings in the Unit Determination Order is before the Minnesota Court of Appeals, Case No. A16-1985. Pending resolution of the appellate matter, a certification election could occur as early as fall of 2017.

45. Without the public data Plaintiff requested from the BMS, Plaintiff will be unable to sufficiently analyze the validity of the showing of interest SEIU submitted in support of its Petition before a certification election.

46. The outcome of a certification election directly affects Plaintiff, the University and its Faculty, the State of Minnesota, and the region.

**COUNT 1**  
**Injunction - Minnesota Government Data Practices Act**  
**(Minn. Stat. § 13.08, Subd. 2)**

47. Plaintiff incorporates the foregoing Paragraphs herein.

48. Plaintiff requested public data pursuant to the Minnesota Government Data Practices Act (“MGDPA”). *See* Minn. Stat. § 13.03, subd. 1.

49. Defendants failed to provide the public data requested by Plaintiff in violation of the MGDPA. *See* Minn. Stat. § 13.03, subd. 3.

50. Defendants’ violation has willfully and wrongfully prevented Plaintiff from receiving public data to which it is entitled.

51. Because Defendants have violated and are continuing to violate the MGDPA, the Court should issue an injunction directing Defendants to immediately produce the requested public data in accordance with the MGDPA. Minn. Stat. § 13.08, subd. 2.

**COUNT 2**  
**Action to Compel Compliance – Minnesota Government Data Practices Act**  
**(Minn. Stat. § 13.08, Subd. 4)**

52. Plaintiff incorporates the foregoing Paragraphs herein.

53. Defendants’ failure to provide the public data requested by Plaintiff violates Minn. Stat. § 13.03, subd. 3.

54. Defendants have willfully and wrongfully prevented Plaintiff from receiving public data to which it is entitled under the MGDPA.

55. Pursuant to Minn. Stat. § 13.03, subd. 4, Plaintiff requests that this Court issue an order compelling Defendants to comply with their statutory obligations to produce the requested

public data pursuant to Minn. Stat. §§ 13.03, subs. 1 and 3. Plaintiff further requests recovery of its costs and disbursements, including reasonable attorneys' fees, and imposition of a civil penalty against the BMS.

**COUNT 3**  
**Action for Statutory Damages – Minnesota Government Data Practices Act**  
**(Minn. Stat. § 13.08, Subd. 1)**

56. Plaintiff incorporates the foregoing Paragraphs herein.

57. Defendants' failure to provide the public data requested by Plaintiff violates Minn. Stat. § 13.03, subd. 3.

58. Defendants have willfully and wrongfully prevented Plaintiff from receiving public data to which it is entitled under the MGDPA.

59. As a result of Defendants' willful and wrongful violation, Plaintiff requests damages, including costs and reasonable attorneys' fees, as well as exemplary damages in an amount to be determined by this Court.

**COUNT 4**  
**Injunctive Relief Pursuant to Rule 65**  
**of the Minnesota Rules of Civil Procedure**

60. Plaintiff hereby incorporates the foregoing Paragraphs herein.

61. Plaintiff is entitled to injunctive relief under Minn. R. Civ. P. 65.

62. Minn. Stat. § 13.01, *et seq.*, establishes the relationship of the parties to this dispute and puts Defendants on notice that their violation of the MGDPA may be enjoined.

63. Plaintiff is being harmed by Defendants' refusal to produce the requested data because without said data, Plaintiff's ability to further and adequately analyze the sufficiency of

SEIU's showing of interest in its Petition is severely impaired.

64. Plaintiff is likely to succeed on the merits of its claim that Defendants are violating the MGDPA.

65. Compelling Defendants to comply with their statutory duties is in the public interest.

66. The administrative burdens of compelling compliance are minimal.

67. Because Plaintiff can demonstrate that: (a) Defendants are violating the MGDPA; (b) Plaintiff will suffer irreparable harm if the requested data is not immediately produced; and (c) compelling Defendants to comply with the MGDPA is in the public interest, Plaintiff is entitled to an order from this Court compelling Defendants to immediately produce the requested data.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor, including, but not limited to:

1. Ordering and declaring that Plaintiff has a statutory right to immediately obtain all public data requested;

2. Enjoining Defendants' wrongful and willful refusal to produce the requested data;

3. Compelling Defendants to immediately provide all public data requested by Plaintiff;

4. Awarding Plaintiff statutory damages pursuant to Minn. Stat. § 13.08, subd. 1; and

5. Ordering all other equitable, statutory and legal relief to which Plaintiff may be

entitled, including an award of attorneys' fees and costs pursuant to Minn. Stat. § 13.08, subs. 1 and 4; and

6. Awarding Plaintiff any and all other relief deemed equitable and appropriate by the Court.

**ROE LAW GROUP, PLLC**

Date: June 1, 2017

/s/ Jessica L. Roe  
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## ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211 subd.1. The undersigned certifies: (1) That the attached pleading is not being presented for any improper purpose; (2) That the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) That the allegations and other factual contentions have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and, (4) That the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

By: /s/ Jessica L. Roe  
Jessica L. Roe (MN No. 250867)