

# BMS

BUREAU OF MEDIATION SERVICES  
State of Minnesota

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IN THE MATTER OF A PETITION FOR  
DETERMINATION OF AN APPROPRIATE  
UNIT AND CERTIFICATION AS EXCLUSIVE  
REPRESENTATIVE

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VIA EMAIL  
AND  
U.S. MAIL

June 5, 2012

University of Minnesota, Unit No. 10, Minneapolis, Minnesota (Employer)  
- and -  
Graduate Student Workers United/UAW, Minneapolis, Minnesota (Union)

BMS Case No. 12PCE0753

## RULING ON UNFAIR ELECTION PRACTICE CHARGE

### FACTS AND PROCEDURAL BACKGROUND

On January 17, 2012, the State of Minnesota, Bureau of Mediation Services (Bureau) received a petition (Petition) filed by the Graduate Student Workers United/UAW, Minneapolis, Minnesota (Union). The petition requested certification as exclusive representative for the statutorily established appropriate unit of graduate assistants employed by the University of Minnesota, Minneapolis, Minnesota (Employer). (See Minn. Stat. §179A.11, Subd. 1(10)(2004). On February 8, 2012 and February 21, 2012, the Bureau conducted Pre-Hearing Conferences (Conference). On March 1, 2012, the Bureau issued a Certification Unit Determination Order and an Election Order providing for the conduct of an on-site election among eligible voters in the appropriate unit. In accordance with the Election Order, the Bureau conducted an on-site election on the Employer's campuses during the week of March 19-23, 2012. On March 26, 2012, the ballots were tabulated at the Bureau of Mediation Services Office with representatives of the Union and Employer in attendance as witnesses to the election tabulation. On the same day, the Bureau issued a Certification of the Results of Tabulation Order (Order). The election results were as follows:

<b>Eligible Employees</b>	<b>(4,395)</b>
<b>Votes for Graduate Student Workers United/UAW</b>	<b>(1,142)</b>
<b>Votes for No Representative</b>	<b>(1,857)</b>
<b>Total Votes Tabulated</b>	<b>(2,999)</b>

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An Equal Opportunity Employer

On April 5, 2012 the Union filed an Unfair Election Practice Charge (Charge) alleging the University of Minnesota through its agents and representatives committed unfair labor practices within the meaning of Minn. Stat. §179A.12, Subd. 11, and Minn. Stat. 179A.13, Subd. 2, and committed unfair election practices within the meaning of Minn. Rules 5510.2110, which affected the results of the election set forth in the Order.

On April 10, 2012, as provided by Minn. Rules 5510.2110, the Bureau issued a Stay of Certification of Results of Tabulation Order pending an investigation and ruling by the Bureau on the alleged charges.

On April 12, 2012, the Bureau issued an Order directing the Union to submit in writing answers to Bureau questions about evidence supporting the Charge:

1. The University rule that promulgated a discriminatory and overbroad rule specifically targeting and restricting graduate assistant union organizing.
2. Specific evidence regarding the dissemination of the rule throughout the pool of eligible voters beginning August 2011 up to and through the week of the election.
3. Specific evidence as to how the alleged rule unlawfully prohibited graduate assistants from exercising their statutory rights to engage in union organizing activity in graduate assistant workplaces.
4. Specific evidence as to how the alleged rule affected the election results certified on March 26, 2012.
5. The Offer of Proof must be received in the Office of the Bureau of Mediation Services not later than April 23, 2012.
6. The Employer shall file a written response to the Union's Offer of Proof not later than May 3, 2012.

The Bureau received the Offer of Proof from the Union and the Employer in answer to the Bureau's Order requesting answers to specific charges of Unfair Election Practices. Also, on April 23, 2012, the Bureau received a request from the Union offering to submit legal points and authorities they would offer to the Bureau as legal standards the Bureau should apply to this case.

As part of the Bureau's investigation of the alleged unfair election practices, the Bureau requested the Union and Employer to exclusively and specifically address arguments regarding the legal authority and standards the Bureau should apply in administering Minn. Stat. 179A.12, Subd. 11. The Bureau received the Employer and Union arguments on May 21, 2012. The Bureau then received on May 23, 2012 a letter from the Employer formally requesting the Bureau disregard the Union's points and authorities and dismiss the Charge.

**ISSUE**

Did the employer engage in an unfair employer election practice that materially affected the outcome of the election?

**APPLICABLE STANDARDS**

Minnesota Rules **5510.2110 UNFAIR ELECTION PRACTICES. Provides as follows:**

Subpart 1. Definition of charges.

The following acts are prohibited and constitute unfair election practices if committed by an employer or its agents, an employee organization or its agents, or an employee:

- A. campaigning on the day of the on-site election;
- B. congregating in or near the polling place during the time the polls are open;
- C. coercing or intimidating or otherwise unlawfully attempting to influence any eligible voter;
- D. committing an unfair practice as defined by Minnesota Statutes, section 179A.13;
- or
- E. violating an election order.

Subp. 2. Filing charges. A party to an election may file a charge of an unfair election practice with the commissioner. A copy of the charge shall be served by the charging party on all other parties to the election. A charge shall be filed within ten calendar days from the date of the certification of election results. The charge shall be in writing, be signed by the charging party, and state the name and address of the party against whom made. The charge shall specify the alleged unfair election practice and the facts supporting the charge. If a charge of an unfair election practice is filed, the commissioner may:

- A. stay the election results pending conduct of a hearing or investigation if the alleged unfair election practice appears to have materially affected the election results;
- B. conduct a hearing or investigation; and
- C. rescind the certification of exclusive representative or the certification of election results.

Subp. 3. Determination. Based on a hearing or investigation, the commissioner shall issue an order. If an unfair election practice is established, the election may be voided and a new election may be ordered.

Minn. Stat. 179A.12, Subd. 11 Unfair Labor Practices.

If the Commissioner finds that an unfair labor practice was committed by an employer or representative candidate or an employee or group of employees, and that the unfair labor practice affected the result of an election, or that procedural or other irregularities in the conduct of the election may have substantially affected its results, the commissioner may void the election

result and order a new election.

Minn. Stat. 179A.13, Subd. 2(1) Employers. Public employers, their agents and representatives are prohibited from:

- (1) Interfering, restraining, or coercing employees in the exercise of the rights guaranteed in sections 179A.01 to 179A.25;

### **Discussion**

The Charge alleges that the University of Minnesota (Employer) through its agents and representatives committed unfair labor practices within the meaning of Minn. Stat. 179A.12, Subd. 11 and Minn. Stat. 179A.13, Subd. 2(1) and committed unfair election practices within the meaning of Minn. Rule 5510.2110 which affected the results of the election. Further, the Union asserts that “the Employer promulgated a discriminatory and overbroad rule specifically targeting and restricting graduate student organizing.” The Union further contends that “the Employer repeatedly and widely disseminated this rule throughout the pool of eligible voters during the months leading up to the election.”

The Employer asserts that no unfair election practices were committed on the part of the University, the election results were not affected and the petition by the Union should be dismissed by the Bureau. The Employer further asserts that “the directive issued because of graduate student complaints to the University Human Resources Office simply asks that Union representatives not solicit graduate assistants in University work spaces during work time, limit solicitation activities to public spaces, employee break areas and non-work time.” They further stated that “at no time were graduate assistants told they could not discuss the union amongst themselves and they did not interpret it as such.” They further state that they notified the Union in writing on October 17, 2011 asking them to inform union representatives that they may not solicit in University work spaces during work time. The Employer contends they did not receive a response to the letter until January 13, 2012 when the Union objected to the Employer’s directive.

On January 17, 2012 the Union petitioned for an election with the Bureau, and on the same day, graduate assistants sent a letter to University President, Eric Kaler, (Employer Ex.5). The letter invited the University to file a joint petition to the Bureau along with the Graduate Student Workers United requesting a joint submission for union certification without an election stating a majority of graduate assistants have signed cards to form a union. The letter to President Kaler from the graduate students further stated as follows; ...“Over the course of the past two years, we graduate employees have had thousands of conversations with each other about the need for unionization. These conversations constitute a lively, inclusive decision-making process in the best tradition of American liberal democracy and critical, participatory citizenship.” The letter indicates that between October 17, 2011 when the Union was notified of the policy in question, and January 17, 2012, the date of the Union letter to President Kaler, the atmosphere for organizing at the University was satisfactory.

The University chose not to file a joint petition and instead an on-site election was conducted by the Bureau over a period of five days, March 19 -23, at several University locations including UMD and the St. Paul campus.

Of the 4,395 eligible voters, 2,999 votes were tabulated or 68% of eligible voters participated in the election. Of those votes cast, 1,857 votes were cast for no representation, 62% ; versus 1,142 votes cast for representation, 38%.

The Union asks that the Bureau look to National Labor Relations Board standards and recent rulings regarding unfair labor practice charges. The University is a public employer in the State of Minnesota. In such cases the Bureau is guided by legislative intent and the public policy of this state; as set forth in the Minnesota Public Employment Labor Relations Act (PELRA) and Minnesota Rules Chapter 5510 regarding public employers and their employees. These standards require that an unfair labor practice affected the result of an election or that procedural or other irregularities may have substantially affected its results.

The Bureau conducted a thorough investigation and gave the Employer and the Union opportunity to submit Offers of Proof on Unfair Election Practice Charges and to also submit arguments as to Points and Authorities the Bureau should use for guidance regarding the legal standard to be applied in this case. The results of this investigation disclose no substantial evidence that the Employer policy in question affected or may have substantially affected the election results.

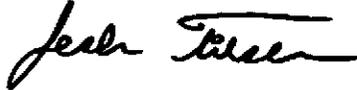
### **FINDING AND ORDER**

1. The Bureau finds no Employer unfair election practice that materially affected the outcome of the election.
2. The Charge is dismissed.
3. The Stay of Certification of Results of Tabulation Order is lifted.
4. The March 26, 2012, Certification of the Results of Tabulation Order. is reinstated.
5. The Maintenance of Status Quo Order is hereby lifted.

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6. The Employer shall post this Order at the work places of affected employee.

Josh Tilsen

A handwritten signature in black ink, appearing to read "Josh Tilsen", written in a cursive style.

Commissioner  
State of Minnesota, Bureau of Mediation Services

cc: Patti Dion (2 – Hard Copies)  
Richard Kaspari  
Maureen Boyd  
Sherry Stone  
Shelley Carthen Watson