

# **BMS**

**BUREAU OF MEDIATION SERVICES**  
State of Minnesota

**IN THE MATTER OF PETITIONS FOR  
INVESTIGATION AND DETERMINATION OF  
APPROPRIATE UNITS AND CERTIFICATION AS  
EXCLUSIVE REPRESENTATIVE**

September 6, 2012

City of Bloomington, Minnesota  
- and -

American Federation of State, County and Municipal Employees, Minnesota Council 5,  
South St. Paul, Minnesota

BMS Case Nos. 12PCE1115 and 12PCE1116

## **CERTIFICATION UNIT DETERMINATION ORDER**

### **INTRODUCTION**

On June 22, 2012 the State of Minnesota, Bureau of Mediation Services (Bureau), conducted a hearing pursuant to two petitions filed by the American Federation of State, County and Municipal Employees, Minnesota Council 5, South St. Paul, Minnesota (Council 5). The petitions requested determination of appropriate units and certification as exclusive representative for two bargaining units of employees of the City of Bloomington, Minnesota (City). The Parties agreed to a briefing schedule and timely briefs were received as of July 10, 2012 at which time the record was considered closed.

### **APPEARANCES**

At the hearing Frank Madden, Attorney, appeared on behalf of the City; and Alan Kearney, Lead Organizer and Thom Boik, Organizer, appeared on behalf of Council 5.

### **AGREEMENTS OF THE PARTIES**

At the hearing the parties agreed to the following:

- A. The cutoff date for voter eligibility shall be the date of the hearing, June 22, 2012.
- B. If the bargaining units proposed by Council 5 are found to be appropriate units by the Bureau, the lists of employees submitted by the Employer on April 30, 2012 are acceptable with the exception of Gary Lien, Meter Reader.
- C. The parties have stipulated to exclude "supervisory" personnel from the appropriate units as defined under PELRA, Minn. Stat. §179A.03, Subdivision 17 (2012).

### **ISSUES**

1. What shall be the definition of the appropriate unit(s)?
2. Has Council 5 submitted the required showing of interest to warrant the conduct of an election in the appropriate unit(s)?
3. What is the appropriate unit status for Gary Lien, Meter Reader?

### **POSITIONS OF THE PARTIES**

Council 5 asserts that its proposal for two bargaining units within the City's Public Works Department, is appropriate within the meaning of the Minnesota Public Employment Labor Relations Act (PELRA), Minn. Stat. §179A.01, (2012) *et seq.* Council 5 argues the Bureau's duty is to determine "an" appropriate unit not "the" most appropriate unit, citing City of Virginia and AFSCME Council 65, BMS Case No. 86-PR-126 (January 10, 1986). They argue a bargaining unit proposed by the petitioning employee representative should not be denied simply because another bargaining unit may be more appropriate.

The City asserts a wall-to-wall unit of the entire Public Works Department constitutes an appropriate unit. The City argues the classifications of the Public Works Department employees contained within the City's proposed appropriate unit share a community of interest and Council 5 did not bear the burden of demonstrating that their Petitions include appropriate units.

## DISCUSSION

### Applicable Standards

Minn. Stat. §179A.09, Subdivision 1, (2012) sets forth the standards the Bureau is to use in determining appropriate units. The statute provides:

179A.09 Unit determination. Subdivision 1. Criteria. In determining the appropriate unit, the commissioner shall consider the principles and the coverage of uniform comprehensive position classification and compensation plans of the employees, professions and skilled crafts, and other occupational classifications, relevant administrative and supervisory levels of authority, geographical location, history, extent of organization, the recommendation of the parties, and other relevant factors. The commissioner shall place particular importance upon the history and extent of organization, and the desires of the petitioning employee representatives.

Council 5 further argued that Council 5, Local 2828 currently represents professional and technical employees in the City's Assessing Division, Community Development Department, and Animal Control Officers in the Police Department (Council 5 Ex. 1). Council 5 also stated that this fact supports Council 5's contention that a grouping of classifications consisting of segments of the workforce can comprise an appropriate unit. Council 5 also asserted that this shows that an appropriate unit need not include the entirety of a department as the City argues.

Council 5 seeks the following job classifications within the Park Maintenance unit: Maintenance Worker, Parkkeeper I, and Parkkeeper II. Council 5 seeks the following job classifications within the Water Operating unit: Utility Operator and Senior Utility Operator.

### COMMUNITY OF INTEREST ANALYSIS

In terms of the criteria enumerated at §179A.09, Subdivision 1, (2012) the record reveals the following:

- a) Principles and coverage of uniform comprehensive position classification and compensation plans of the employees.

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All Bloomington employees are part of a uniform comprehensive position classification and compensation plan of the City. All employees included within the City's proposed unit are classified within the Skilled Operators and Related Classifications sections of the City's Compensation Plan, they are covered by similar pay ranges, and they are non-exempt, hourly paid employees with the same terms and conditions of employment, covered by the same employment rules and provided the same benefits. This factor favors the City.

b) Professions and skilled crafts, and other occupational classifications.

The classifications within the Public Works Department demand similar skills and abilities and are provided the same training. Cross-training is provided across work groups and division lines. While acknowledging licensures may vary somewhat across work groups, several of the licensures take only a short time to obtain; this enables the City to quickly cross-train other employees as needed and more effectively serve the public. The minute differences raised by the Union do not warrant its proposed splintered units. The skills, knowledge, and abilities for all of the employees in question are very similar. This factor favors the City.

c) Relevant administrative and supervisory levels of authority.

All employees within both of the proposed Council 5 bargaining units share a common and sole first-line supervisor structure within their own work group. However, these employees share the supervision and direction of higher management within the department.

There is a common hierarchy from line staff to supervisory levels to Public Work Director to City Manager. The Public Works organizational structure has been largely unchanged since the 1970's. Additionally as none of the City proposed unit classifications are supervisory this further supports the City's proposed unit; therefore, this factor favors the City.

d) Geographical location.

Council 5 argues the petitioned for employees spend the bulk of their time in geographic locations (city parks and sanitary sewers) that are unique to each employee group.

The City argued that all employees in the Public Works Department work at the Public Works facility located at 1700 West 98<sup>th</sup> Street, Bloomington. This is where they begin and end their work day and where they receive their work direction, and where they each have a personal locker; the only exception being the Water Quality/Water Treatment section employees, who are located at the Water Treatment Plant.

This factor favors neither party.

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e) History.

On February 23, 1973, the Bureau certified an appropriate unit of the City Public Works Employees described as:

All employees of the Public Works Department in the classifications of Maintenance Man, Parkkeeper I, Meter Repairman, Equipment Operator I, Auto Serviceman, Utility Operator I, Assistant Mechanic, Parkkeeper II, Utility Operator II, Equipment Operator II, Mechanic, Utility Operator III, and Utility Operator IV who work more than 14 hours per week and more than 100 work days per year, excluding all other employees as agreed to between the parties. (City of Bloomington and International Union of Operating Engineers, Local No. 49, BMS Case No. 73-PR-401A).

The City and Local 49 never reached a collective bargaining agreement and this unit was decertified on May 10, 1974 (BMs Case No. 74-PR-0389-A).

In Anoka County and AFSCME Council 14, (BMS Case No. 02-PCE-894 March 27, 2002). in very similar fact circumstances, BMS held that "history means history of collective bargaining and accorded no weight to a previously certified bargaining unit that never resulted in a collective bargaining agreement."

The City's bargaining history with its professional employees in Council 5, Local 2828 is of significance. Local 2828 represents some, but not all, professional employees scattered among multiple administrative units. Council 5's history at the City began on April 16, 1973 when they filed a petition seeking to represent the Protective Inspectors at the City, apprising approximately 12 employees according to the petition.

On June 27, 1973 an appropriate unit was determined to be "all employees of the Community Development Department . . . excluding supervisory, confidential, and clerical-technical employees." Based on the record it appears this ruling favored the City's broader unit position. By Bureau Order of July 12, 1973 the issue of supervisory, confidential and technical people in the unit was resolved; Council 5 had the sufficient showing of interest so an election was ordered for August 3, 1973. Based on the election results the unit was NOT certified, as the majority of the 23 eligible members voted for no representation. (BMS Case NO. 73-PR-492-A, August 8, 1973) Attempts to organize same or similar employees in the first half of 1974 were dismissed as untimely barred by the Bureau one year decision rule.

Another AFSCME petition was filed on August 12, 1974 seeking a unit of Inspectors only. The City argued for a citywide technical unit. The unit description was litigated at hearing on October 8, 1974 with the City's broader definition prevailing with the Order citing (in regards AFSCME's request for a smaller unit): "A unit determination under Case No. 73-PR-492-A was issued by the Bureau of Mediation Services on July 12, 1973. The record of this hearing fails to show sufficient reason for changing that unit as originally determined." On January 30, 1975 the Union won an election and was certified as the exclusive representative for a unit of "all employees of the Community Development department . . . excluding supervisory, confidential and clerical employees."(BMS Case NO. 75-PR-248-A)

By Bureau Order of September 17, 1975 an appropriate unit was determined to be "all civilian dispatchers of the Bloomington Police Department . . . excluding all other employees," however, as Council 5 did not have a proper showing of interest no election was conducted. Here, Council 5 sought a unit consisting of police dispatchers, animal wardens and clerks of the Police Department. The Order held the clerical employees did not have a community of interest with the other employee groups, and the animal wardens did not share a community of interest with dispatchers, thus the dispatchers were certified as an essential unit by themselves.

On December 11, 1975 after winning the election, AFSCME was certified as the exclusive representative for a unit comprised of "all appraisers, animal wardens and all employees of the Community Development Department . . . excluding supervisory, confidential, and clerical employees." (BMS Case No. 76-PR-277-A) This was a merger of a previously certified unit with the failed animal wardens and appraisers classifications, a unit of 8 employees.

This was the unit description until the parties stipulated to a broader unit in BMS Case No. 80-PN-111-A, which covered 22 classifications across three City departments. This unit was expanded by Bureau Order in January 13, 1981 to include the Dispatchers (BMS Case No. 81-PR-365-A). The Dispatchers inclusion was reconfirmed by Bureau Order on March 10, 1986. By Bureau Order of March 23, 1999, the Dispatchers were deemed essential employees due to the PELRA defining dispatchers as essential and removed from this unit. (BMS Case No. 99-PCL-517).

Thus, the history in the City supports Council 5's Petitions for more narrowly defined units, ones that would actually allow those employees who wish to bargain collectively to do so, and would reflect the current status of how the City bargains with its professionals.

f) Extent of organization.

Extent of organization refers to that group of employees whom the Council 5 has sought to organize, explained as "how widely support for the union is extended among the employees,"

citing Anoka County and AFSCME Council 5, BMS Case No. 09-PCE-0159 (December 1, 2008). Council 5 points out employee support within their proposed units is strong and evident, whereas support outside those proposed units has not been. Thus, Council 5 argues this supports them on this factor.

The standard to be applied is whether Council 5's proposed bargaining group is "an" appropriate unit not "the" most appropriate unit. Therefore, in addressing such questions the Bureau first determines if the Union's proposal is "an" appropriate unit before considering alternative proposals. Extent of organization means the groupings of employees among whom the union has support and upon which it has focused its organizing efforts. State of Minnesota, State Board of Public Defense and Teamsters Local 320, BMS Case No. 98-PCE-490 (March 3, 1999); and City of Brooklyn Park and American Federation of State, County and Municipal Employees, Minnesota Council 5, South St. Paul, Minnesota, BMS Case. No 11PCE1282 (June 5, 2012).

This factor favors Council 5.

g) The recommendation of the parties.

The Parties have contradictory recommendations which offset each other. Thus, this factor is neutral and lends no weight to the Bureau's consideration.

h) Other relevant factors.

In a Bureau case: IUOE, Local No. 49 and Independent School District No. 742, St. Cloud, Minnesota, BMS Case No. 87-PR-190 (December 30, 1986) "other relevant factors" were detailed as:

1. Degree of functional integration
2. Nature of employee skills and occupational functions
3. Interchangeability and contact among employees
4. General working conditions
5. Hours of work
6. The number of employees affected
7. Work location
8. The nature of their compensation, and
9. Common supervision.

As to "degree of functional integration" the Public Works Department employees are regularly assigned between divisions, sections and various work groups to fill both long-term and short-term staffing needs.

As to the nature of the employee skills and occupational functions, there are similar minimum requirements for new hires, only one certified list of candidates is created from which employees are hired for openings in multiple work groups within the Utilities Division, staff are commonly reassigned from one work group to another, and promotional opportunities within are often posted for internal candidates only and they are provided to all Public Works Department staff and are not limited to only one work group or one job classification.

As to interchangeability and contact among employees cross-training provides the necessary interchangeability to meet the unexpected needs that arise throughout the year. Regular contact occurs among the employees when receiving the daily assignments, at lunch time and when materials and equipment are picked up.

As to hours of work, typical work hours are Monday through Friday from 7:00 a.m. to 3:00 or 3:30 p.m., the only exception being Water Treatment Plant operators and Water/Wastewater work group staff, where employees work shifts to cover the Water Plant 24 hours per day, 7 days a week.

Prior Bureau decisions show similarity to, or even more narrow than, what Council 5 is proposing: water treatment plant employees in City of Rochester and IUOE Local #34, BMS Case No. 72-PR-1659 (June 20, 1972); park employees in City of Rochester and IUOE Local 49, BMS Case No. 66-PR-338 (February 2, 1966); elevator maintenance, construction, and inspection personnel in City of St. Paul and International Union of Elevator Constructor No. 9, BMS Case No. 73-PR-475-A (April 13, 1973); seasonal park trainees in Minneapolis Park and Recreation Board, and City Employees Union, Local No. 363, BMS Case No. 92-PCE-843 (June 19, 1992); even multiple bargaining units found appropriate and certified within a Water Department, such as water meter servicemen, watershed laborers, and filtration plant maintenance men in City of St. Paul and United Association of Plumbing & Pipefitting, Local No. 34, BMS Case No. 86-PR-951 (May 14, 1986), City of St. Paul and Construction and General Laborers Union Local No. 132, 72-PR-262 (November 4, 1971), City of St. Paul and International Laborers Union Local No. 132, 68-PR-76 (September 21, 1967), respectively.

Analysis: Other relevant factors are neutral.

The commissioner shall place particular importance upon the history and extent of organization, and the desires of the petitioning employee representatives.

This factor supports Council 5's proposed bargaining unit structure.

Statutory considerations supporting the City are the principles and the coverage of uniform comprehensive position classification and compensation plans of the

employees, professions and skilled crafts, and other occupational classifications, relevant administrative and supervisory levels of authority, geographical location.

Statutory considerations supporting Council 5 include history, and extent of organization and desires of the petitioning employee organization. The recommendation of the parties and other relevant factors are viewed as neutral. On balance we find that the appropriate unit proposed by Council 5 is appropriate. The City already has an established Professional bargaining unit with Council 5 that includes some employees but not others across City departments. We also find persuasive the fact that an appropriate unit consisting of the entire public works department was certified in 1973 and the parties never reached a collective bargaining unit. We take this as strong evidence that the bargaining unit proposed by the City is not appropriate and would not lead to stable and constructive labor relations.

#### **STATUS OF GARY LIEN, METER READER**

Evidence was presented at the hearing to justify the exclusion of Gary Lien, Meter Reader, from either unit based on a different compensation plan; lines of supervision; geographic location; knowledge, skills and abilities in comparison to the other Water Operating division employees.

#### **FINDINGS AND ORDERS**

1. The agreements of the parties are appropriate.
2. The appropriate units are described as:

All Park Maintenance Division employees of the Public Works Department, City of Bloomington, Minnesota, who are public employees within the meaning of Minn. Stat. 179A.03, subd. 14, excluding professional, clerical, technical, administrative, managerial, supervisory and confidential employees.

All Water Operating Division employees of the Public Works Department, City of Bloomington, Minnesota, who are public employees within the meaning of Minn. Stat. 179A.03, subd. 14, excluding professional, clerical, technical, administrative, managerial, supervisory and confidential employees.

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3. The Bureau shall conduct a mail ballot election in each of the appropriate units in accordance with the attached Mail Ballot Election Order.
4. Gary Lien, Meter Reader, is excluded from both bargaining units.
5. The City shall post this Order at the work locations of all affected employees.

STATE OF MINNESOTA  
Bureau of Mediation Services

JOSH L. TILSEN  
Commissioner



Steven G. Hoffmeyer  
Hearing Officer

cc: Kay McAloney (2)  
(Includes Posting Copy)  
Frank Madden  
Kate Fisher  
Alan Kearney  
Thom Boik