

BMS

BUREAU OF MEDIATION SERVICES
State of Minnesota

**IN THE MATTER OF A PETITION
FOR INVESTIGATION AND DETERMINATION
OF PUBLIC EMPLOYEES APPROPRIATE UNIT
AND CERTIFICATION OF EXCLUSIVE
REPRESENTATIVE**

March 28, 2012

American Federation of State, County and Municipal Employees, Council No. 65, Nashwauk,
Minnesota

- and -

Great River Regional Library, St. Cloud, Minnesota

BMS Case No. 11PCE0630

RECONSIDERATION OF CERTIFICATION UNIT DETERMINATION ORDER

INTRODUCTION AND BACKGROUND

A petition (Petition) was filed on January 14, 2011 by the American Federation of State, County and Municipal Employees, Council No. 65, Nashwauk, Minnesota (Council 65), BMS Case No. 11PCE0630. The Petition requested determination of an appropriate unit and certification as exclusive representative for certain employees of the Great River Regional Library, St. Cloud, Minnesota (Library). The Bureau issued a Maintenance of Status Quo Order on January 18, 2011. On June 9, 2011, the State of Minnesota, Bureau of Mediation Services (Bureau), conducted a hearing in this matter. Following the close of the hearing, briefs were timely filed by each party. On August 9, 2011 the Bureau issued a Certification Unit Determination Order.

On August 15, 2011 both Council 65 and the Library filed a timely Request for Reconsideration of the Bureau's decision citing grounds supporting the request, in accordance with Minnesota Rules 5505.1500 (2011). On August 16, 2011 the Bureau issued a Stay of Certification Unit Determination Order, pending a determination of the Requests.

Soon after the Stay of Certification Unit was issued by the Bureau, Council 65 requested the Bureau on August 29, 2011 to withdraw their original Petition, BMS Case No. 11PCE0630 and they filed a new Petition which the Bureau docketed as BMS Case No. 12PCE0152. On August 30, 2011 the Library filed a written objection to the Council 65 request asking for withdrawal of their Petition, BMS Case No. 11PCE0630.

The Commissioner of the Bureau of Mediation Services sent a letter to the parties on August 31, 2011 requesting the parties address specific questions regarding the request of Council 65 to withdraw the Petition. The parties responded accordingly.

On December 7, 2011 the Bureau issued a Ruling denying the request of Council 65 to withdraw the original Petition, BMS Case No. 11PCE0630 as untimely as per Minnesota Rule 5510.0610, Withdrawal (2011). The Bureau Findings and Order regarding the Withdrawal Request are as follows:

1. The request of Council 65 to withdraw their original petition, BMS Case No. 11PCE0630 is denied.
2. The subsequent petition filed by Council 65, BMS Case No. 12PCE0152, is hereby dismissed.
3. The Maintenance of Status Quo Order issued by the Bureau in BMS Case No. 12PCE0152, on August 29, 2011 is hereby vacated in its entirety.
4. The Bureau will issue a ruling on the parties' Request for Reconsideration of the Certification Unit Determination Order issued by the Bureau on August 9, 2011 under separate cover.
5. The Library will post this Order at the work locations of all affected employees.

ISSUES

1. Did the Bureau err in the August 9, 2011 Certification Unit Determination Order?
2. If so, what is the appropriate remedy?

APPLICABLE STANDARDS

Minn. Rules 5510.2210 provide procedures for parties to request the Commissioner of the Bureau to reconsider a determination.

5510.2210 REQUEST FOR RECONSIDERATION.

Subpart 1. **General.** A party may file a request for reconsideration of orders issued by the commissioner.

Subpart 2. **Timeliness of request.** A request shall be filed within ten calendar days following the date of the order.

Subpart 3. **Form of request.** The request shall be filed in writing and contain a statement of the request and the grounds supporting the request. Unfair election practice charges shall not be a ground for reconsideration.

Subpart 4. **Staying of order.** If the commissioner determines that the request raises substantial and material issues, the challenged order may be stayed until a hearing or investigation has been held and a decision is issued.

It is the policy of the Bureau to grant timely requests for reconsideration if we find that such request is based upon a claimed error of fact or law which was not adequately developed or articulated during the hearing or in the agency order. A Request for Reconsideration will not normally be granted for the purpose of merely rearguing a case or point or for the purpose of admitting evidence which was within the capacity of the parties to introduce during the original hearing.^{1/}

DISCUSSION

The expectation of the parties to a hearing is that testimony will be presented, stipulations if any will be received and so noted, data will be received as requested by the Bureau and the Bureau will issue an order based on factual conclusions and the evidence presented.

It is uncontested that the Bureau erred in the Order issued on August 9, 2011. Both the Library (Employer) and Council 65 (Union) requested a Reconsideration of the August 9, 2011 order due to claimed errors of fact. The Bureau acknowledges the errors and must determine what is the appropriate remedy.

^{1/} City of Slayton and AFSCME, Council 65, Naswauk, Minnesota, BMS Case No. 85-PR-107-A, October 9, 1984 and City of White Bear Lake and Minnesota Teamsters, Local No. 320, BMS Case No. 89-PR-2079, March 30, 1989.

The Bureau acknowledges it erred as follows:

1. It did not include the stipulation of the parties that **Library Aides** should be excluded from the appropriate unit.
2. It failed to determine the supervisory status of two **Patron Services Specialist** positions. Both parties acknowledged the omission of a Bureau ruling on this issue in the Order.
3. The Bureau failed to require and determine a list of eligible voters based on confidential, supervisory and public employee status.
4. The Bureau failed to provide sufficient time for Council 65 to receive a list of employees, review and challenge the eligibility of employees, if in question.

The Bureau does not take lightly the fact that it erred in this case. As per Minn. Stat. 179A.01 Public Policy (a) it is the public policy of the state and the purpose of sections 179A.01 to 179A.25 to promote orderly and constructive relationships between all public employers and their employees.

In this case, a group of employees petitioned the Bureau to determine an appropriate unit and conduct an election deciding majority wishes of the majority on the question of unionization on January 14, 2011. At this writing nearly fifteen months have elapsed since the initial employee petition.

Due to the significant Bureau errors in this case and the length of delays, it is no longer possible to fairly determine the wishes of the employees who initiated the original petition. Therefore, in the interest of public policy in promoting orderly and constructive relationships between public employers and their employees, the Bureau deems it appropriate to vacate its order of August 9, 2011 and dismiss the petition in this matter.

FINDINGS AND ORDERS

1. The Bureau hereby vacates the Order issued August 9, 2011 in BMS Case No. 11PCE0630.
2. The Bureau hereby dismisses the Petition for Determination of an Appropriate Unit filed by Council 65 on January 11, 2011, BMS Case No. 11PCE0630.

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3. The Maintenance of Status Quo Order issued by the Bureau in BMS Case No. 11PCE0630, on January 18, 2011 is hereby vacated in its entirety.
4. The Library shall post a copy of this Order at the work locations of the employees involved.

STATE OF MINNESOTA
Bureau of Mediation Services



JOSH L. TILSEN
Commissioner

cc: Kirsty Smith (2)
(Includes Posting Copy)
Frank Madden
Leanne Kunze
Dean Tharp