

# **BMS**

**BUREAU OF MEDIATION SERVICES**  
**State of Minnesota**

## **IN THE MATTER OF A PETITION FOR REPRESENTATION ELECTION**

February 20, 2014

City of Minneapolis, Minnesota

- and -

Minnesota Public Employees Association, Roseville, Minnesota

- and -

AFSCME Minnesota Council 5, South Saint Paul, Minnesota

- and -

Minnesota Teamsters Public and Law Enforcement Employees Union, Local 320,  
Minneapolis, Minnesota

BMS Case No. 14PRE0167

### **RULING**

#### **INTRODUCTION**

On September 3, 2013, the Bureau of Mediation Services (BMS) received a representation petition (Petition) filed by the Minnesota Public Employees Association, Roseville, Minnesota (MNPEA). The Petition requested an election to determine the majority status of an exclusive representative of an existing appropriate unit of employees of the City of Minneapolis (City), currently represented by AFSCME Minnesota Council 5, South Saint Paul, Minnesota (Council 5). On September 6, 2013, BMS issued a Representation Unit Determination Order (Order). On October 3, 2013, Council 5 filed a Complaint concerning the status of MNPEA as a labor organization within the meaning of PELRA. On October 17, 2013, the Bureau issued an Order appointing Arbitrator Stephen Befort as Neutral Labor Referee to hear and

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decide Council 5's Complaint. On November 17, Minnesota Teamsters Public and Law Enforcement Employees Union, Local 320 (Local 320), filed a showing of interest sufficient to intervene in the Petition. Two days of hearing were conducted by Referee Befort on November 14, 2013 and January 9, 2014. By agreement of Council 5 and MNPEA, a written transcript of each day of hearing was prepared. On February 3, 2014, Council 5 filed a notice withdrawing its October 3, 2013, Complaint with prejudice. On the same day, Local 320 withdrew its objection to the status of MNPEA.

Due to the fact that the Complaint was withdrawn, on February 3, 2014, the Bureau dismissed the Complaint with prejudice and directed an election order be issued on the original Petition filed by MNPEA

In a series of letters and emails dated January 31, February 10, and February 14, 2014, MNPEA made two motions asking the Commissioner of BMS to:

1. Clarify the February 3, 2014, Dismissal Order, by issuing a finding whether it "reasonably appears", that MNPEA has failed to comply with Minn. Stat. § 179.18-25.
2. Order that Council 5 bear the entire cost of producing the transcript of the hearing.

## **ISSUES**

1. Which Party(s) should bear the cost of producing the transcript of the hearings conducted pursuant to the Bureau's October 17, 2013?
2. Does the February 3, 2014, Order Dismissing Complaint, substantively dispose of the issues raised in Council 5's October 3, 2013, Complaint?

## **DISCUSSION**

### **Transcript Cost**

On November 20<sup>t</sup>, 2013, near the beginning of the first day of hearings conducted by the Referee Befort, the question of who should pay for the cost of the transcript was discussed among the Parties. Following this discussion, Referee Befort stated "I think the two principal parties should pay for the cost of the transcript." (November 20, 2013 transcript page 6 {1-3}). This finding is consistent with established Bureau practice and Rules. The principal parties were Council 5 and MNPEA and they are responsible for the cost of the transcript.

MPEA Status

Council 5's October 3, 2013, Complaint alleged that MNPEA failed to meet the definition of an "employee organization" set forth at Minn. Stat. § 179A.03, Subd 6. It also alleged that MNPEA's constitution and by-laws failed to comply with the requirement for election of officers set forth at Minn. Stat. § 179.19.

Minn. Stat § 179.231 provides in relevant portion:

**Subdivision 1. Commissioner may appoint referee.**

Whenever it reasonably appears to the commissioner that a labor organization has failed to comply with any of the requirements of sections 179.18 to 179.231, the commissioner may appoint a labor referee to act in the dispute.

The allegations contained in Council 5's Complaint raised an appearance that MNPEA had failed to comply with this statute and persuaded the commissioner to invoke procedures for investigation of alleged violations of Minn. Stat. § 179.18-179.31. Since the Order for these proceedings was issued on October 3, 2013, two full days of hearing were held and a transcript of the hearing was prepared and delivered to the parties. On January 29, 2014, Labor Referee Befort established February 19, 2014, as the date for submission of final post-hearing briefs. On February 3, 2014, Council 5 withdrew its complaint with prejudice, and the Bureau issued a Dismissal Order. MNPEA asks for a clear statement whether it still reasonably appears to the commissioner that it has failed to comply with any of the requirements of the Labor Union Democracy Act (179.18-231). MNPEA is entitled to such a clarification.

Because Council 5 has withdrawn its Complaint with prejudice it may not file a Complaint on this basis again in the future. However, because Minn. Stat. § 179.231, charges the commissioner of the Bureau to determine if it reasonably appears that a labor organization has failed to comply with requirements of the Labor Union Democracy Act, that question must be answered. Upon reviewing the transcript of Labor Referee's hearings, and MNPEA's current by-laws on file with the Bureau, it does not reasonably appear that MNPEA has failed to comply with the requirements of Minn. Stat. 179.18-231.

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1. Council 5 and MNPEA shall share equally, the cost of the hearing transcription.

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2. There is not a reasonable appearance that MNPEA presently fails to comply with any of the requirements of sections 179.18 to 179.231

STATE OF MINNESOTA  
Bureau of Mediation Services

A handwritten signature in black ink, appearing to read "Josh Tilsen". The signature is fluid and cursive, with a long horizontal stroke at the end.

JOSH TILSEN  
Commissioner

cc: Tim Giles  
Greg Corwin  
Mike Bloom  
Rob Fowler  
Tom Perkins  
Kevin Beck  
Brian Aldes  
Stephen Befort  
Eric Lehto