

CASE NO. A06-0892

State of Minnesota

IN COURT OF APPEALS

REGENTS OF THE UNIVERSITY OF MINNESOTA,

Relator,

v.

**CERTAIN EMPLOYEES OF THE UNIVERSITY OF
MINNESOTA, UNIT 9, CROOKSTON, MN,**

and

**UNIVERSITY EDUCATION ASSOCIATION,
EDUCATION MINNESOTA (UEA),**

and

BUREAU OF MEDIATION SERVICES (BMS),

Respondents.

BRIEF OF RESPONDENT UEA

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ISSUES

1. *Is the University of Minnesota a party?*

Respondent Bureau of Mediation Services (“BMS”) found that Relator University of Minnesota (“Relator University” or “University”) is a party.

Apposite statute:

Minnesota Statute §179A.07 (2004) (rights and obligations of employers).

Apposite rule:

Minn. R. 5510.0310, subpt. 16 (definition of “party”).

Apposite cases:

Edina Community Lutheran Church, et al. v. State, 673 N.W.2d 517 (Minn. App. 2004) (standing);

State by Humphrey v. Philip Morris, Inc., 551 N.W.2d 490 (Minn. 1996) (standing).

2. *Is Unit 9 one unit?*

The BMS found that Unit 9 is one unit that includes the faculty at the Crookston and Duluth campuses of the University of Minnesota.

Apposite statutes:

Minn. Stat. §179A.11, subd. 1(9) (2004) (defining Unit 9);

Minn. Stat. §179A.11, subd. 2 (2004) (rights to sever from University units);

Minn. Stat. §179A.12, subd. 3 (2004) (decertification).

Apposite rules:

Minn. R. 5510.0310, subpt. 9 (defining decertification petition);

Minn. R. 5510.0710, subpt. 2 (petition requirements).

Apposite cases:

County of Scott v. PERB, 461 N.W.2d 503 (Minn. App. 1990) *review denied* (Minn. Dec. 20, 1990);

Hibbing Educ. Ass'n v. PERB, 369 N.W.2d 527 (Minn. 1985);

Anoka-Hennepin Educ. Ass'n. v. Anoka-Hennepin ISD No. 11, 305 N.W.2d 326 (Minn. 1981).

STATEMENT OF THE CASE

Respondent University Education Association (“Respondent UEA” or “UEA”) agrees with the Statement of the Case contained in the brief submitted by Relator University of Minnesota (“Relator University or “University”).

STATEMENT OF THE FACTS

The facts are not in dispute. Under Minnesota’s Public Employment Labor Relations Act (PELRA), Minnesota Statutes chapter 179A, the Commissioner of Respondent Bureau of Mediation Services (BMS) has various mandated duties. Minn. Stat. §179A.04 (2004). These include accepting and investigating petitions for certification or decertification of exclusive representatives of bargaining units, conducting elections, and certifying the final results of any election or other voting procedure conducted under PELRA. Id.

In January 2005, pursuant to this authority, the BMS conducted an election to determine whether faculty members at the Crookston campus of the University of Minnesota wanted to be included within the University's "outstate instructional unit." Minn. Stat. §179A.11, subd. 1(9) (2004). Also known as "Unit 9", the outstate instructional unit is one of the thirteen bargaining units mandated by PELRA for University of Minnesota employees and positions, as follows:

Units. The following are the appropriate units of University of Minnesota employees. All units shall exclude managerial and confidential employees. Supervisory employees shall only be assigned to unit 13. No additional units of University of Minnesota employees shall be recognized for the purpose of meeting and negotiating.

- (1) [Law Enforcement Unit].
- (2) [Craft and Trades Unit].
- (3) [Service, Maintenance, and Labor Unit].
- (4) [Health Care Nonprofessional and Service Unit].
- (5) [Nursing Professional Unit].
- (6) [Clerical and Office Unit].
- (7) [Technical Unit].
- (8) [Twin Cities Instructional Unit].

(9) The Outstate Instructional Unit consists of the positions of all instructional employees with the rank of professor, associate professor, assistant professor, including research associate or instructor, including research fellow, located at the Duluth campus, provided that the positions of instructional employees of the same ranks at the Morris, Crookston, or Waseca campuses shall be included within this unit if a majority of the eligible employees voting at a campus so vote during an election conducted by the commissioner, provided that the election shall not be held until the Duluth campus has voted in favor of representation. The election shall be held when an employee organization or group of employees petitions the commissioner stating that a majority of the eligible employees at one of these campuses wishes to join the unit and this petition is supported by a showing of at least 30 percent support

from eligible employees at that campus and is filed between September 1 and November 1.

Should both units 8 and 9 elect exclusive bargaining representatives, those representatives may by mutual agreement jointly negotiate a contract with the regents, or may negotiate separate contracts with the regents. If the exclusive bargaining representatives jointly negotiate a contract with the regents, the contract shall be ratified by each unit.

(10) [Graduate Assistant Unit].

(11) [Academic Professional and Administrative Staff Unit].

(12) [Noninstructional Professional Unit].

(13) [Supervisory Employees Unit].

Minn. Stat. §179A.11, subd. 1 (2004).

As the language regarding Unit 9 shows, and as relevant to the pending appeal regarding instructional employees at the Crookston campus, such employees shall only be included in Unit 9 if two things occur. First, the instructional employees at the Duluth campus must have already voted in favor of representation. Such a vote occurred in 1980, when the Duluth campus faculty voted in favor of representation by Respondent UEA. BMS Case Nos. 76-PR-1058-A and 78-PR-758-A (cited by the BMS in its decision below at p. 4, Relator University's Appendix (RL App.) at 80). Since that time, Respondent UEA has been the exclusive representative for Unit 9.¹ Among other things, this means that Respondent UEA and Relator University negotiate for collective bargaining agreements that govern the terms and conditions of employment for

¹ From 1982 until the Waseca campus closed in 1992, the instructional employees at the Waseca campus were also part of Unit 9. The Waseca campus faculty had joined Unit 9 as a result of the same kind of election as the election conducted by the BMS for the Crookston campus faculty in the present case. BMS Case No. 80-PR-1399-A (cited by the BMS in its decision below at p. 4, RL App. at 80).

the employees whose positions are in Unit 9. Minn. Stat. §179A.03, subd. 8 (2004) and Minn. Stat. §179A.07 (2004).

Second, the instructional employees at Crookston shall only be included in Unit 9 if a majority of the eligible employees voting at the Crookston campus so vote during an election conducted by the BMS. Minn. Stat. §179A.11, subd. 1(9) (2004). In the election conducted by the BMS in early 2005, a majority of the eligible employees voting at the Crookston campus did vote to be included in Unit 9. BMS Case No. 05-PCE-353 (Feb. 1, 2005) (cited by the BMS in its decision below at p. 4, RL App. at 80). By so doing, the employees were also voting to be represented by Respondent UEA, the exclusive representative for Unit 9.² On February 1, 2005, the BMS certified both the election results and the UEA as the exclusive representative for Unit 9, to which the Crookston campus faculty had been statutorily-accreted.³ Id.

Once certified, an exclusive representative can also be “decertified.” Minn. Stat. §179A.12, subd. 3 (2004). In February 2006, the BMS received a document identified as a “Petition for Decertification of Exclusive Representative”

² The ballot wording was: MARK AN “X” (OR “√”) IN ONE BOX ONLY.

QUESTION: DO YOU WISH TO BE INCLUDED WITHIN UNIT 9, OUTSTATE INSTRUCTIONAL UNIT OF THE UNIVERSITY OF MINNESOTA EXCLUSIVELY REPRESENTED BY THE UNIVERSITY EDUCATION ASSOCIATION?

YES NO

³ In the usual accretion case, a group of unrepresented employees is added by the governing agency (here, the BMS) to an existing bargaining unit by operation of law without the holding of an election, based on the agency’s determination that the group shares a community of interest with the existing bargaining unit. See, e.g., County of Scott v. PERB, 461 N.W.2d 503 (Minn. App. 1990), *review denied* (Minn. Dec. 20, 1990). Here, PELRA presumes and designates a community of interest by providing that the only unit that the Crookston faculty group can be added to is Unit 9. Although a vote is required before this can occur, the vote is between “No representation” and “Representation by [the existing exclusive representative for Unit 9].” Thus, the addition of the Crookston faculty to Unit 9 is still analogous to an accretion, but an accretion that occurs because of a statutory directive.

from a group identified as “Certain Employees of the University of Minnesota, Unit 9, Crookston, Minnesota” (Certain Employees).⁴ The document asked the BMS to conduct an election to decertify Respondent UEA as the exclusive representative for the Unit 9 positions located on the Crookston campus, but not for the Unit 9 positions located on the Duluth campus. In short, the document asserted that for purposes of its request for a decertification election, the BMS should treat Unit 9 not as one bargaining unit, but two.

The BMS deemed the document to be a petition for decertification and asked the UEA, Certain Employees, and the University of Minnesota to brief the timeliness of the petition and whether, for the purpose of decertification, Unit 9 should be considered one unit that includes the Duluth and Crookston campuses, or as two separate units. Relator University and Certain Employees argued that the petition was timely and that the campuses should be treated as two separate units. Respondent UEA argued that the petition was untimely, that Unit 9 is only one unit for all relevant purposes, and that the University is not a party to the proceeding. Respondent UEA further moved for dismissal of the petition based on an inadequate showing of interest in support of the petition.

The BMS ruled that the University is a party to the proceeding. However, the BMS agreed with Respondent UEA that Unit 9 is one unit for all relevant

⁴ Certain Employees’ petition also asserted that it was supported by at least 30% of the faculty at the Crookston campus.

purposes. Accordingly, the BMS dismissed the petition due to a lack of the required 30% showing of support.⁵ This appeal from Relator University followed.

ARGUMENT

I. Standard Of Review.

The appellate courts can reverse an agency decision “only if it reflects an error of law, the determinations are arbitrary and capricious, or the findings are unsupported by the evidence.” County of Scott v. PERB, 461 N.W.2d 503, 504 (Minn. App. 1990) (citations omitted), *review denied* (Minn. Dec. 20, 1990).

Because the present appeal involves a question of statutory interpretation, the only possible basis for reversal is if the BMS erred as a matter of law. Hibbing Educ. Ass’n v. PERB, 369 N.W.2d 527, 529 (Minn. 1985) (the construction of PELRA is a question of law).

Further, in considering whether an agency’s decision was based on an error of law, although the appellate courts are not bound by the agency’s interpretation or construction of a statute, “the agency’s decision is presumed to be correct and courts give deference to the agency’s expertise and special knowledge in the field of its technical training, education, and experience.” Id. (citation omitted); ISD No. 621 v. PERB, 268 N.W.2d 410, 412 n.5 (Minn. 1978) (citations omitted).

⁵ The BMS did not rule on the timeliness issue because it determined that its dismissal of the petition rendered that issue moot.

II. The University Is Not A Proper Party To This Petition.

The BMS erred in including Relator University as a party to the proceedings on the petition filed by Certain Employees. Accordingly, the pending appeal should now be dismissed because the appealing party had no standing below.

The governing administrative rule defines a “party” as “any exclusive representative, employee organization, or public employer recognized by the [BMS] commissioner whose legal rights, duties, and privileges will be *directly determined* in the proceedings; or any public employee who has filed a fair share fee challenge or decertification petition.” Minn. R. 5500.0310, subpt. 16 (emphasis added).

Relator University is a “public employer.” Minn. Stat. §179A.03, subd. 15 (Supp. 2005). Its obligations include bargaining with the exclusive representatives that represent each of the thirteen bargaining units and dealing appropriately and legally with those University employees who are not represented by an exclusive representative. Minn. Stat. §179A.07 (2004) and Minn. Stat. §179A.08 (2004). The University must comply with all the requirements of PELRA with respect to Respondent UEA as the exclusive representative for all Unit 9 faculty at both the Duluth and Crookston campuses.

The proceedings regarding the petition filed by Certain Employees will not directly affect or determine Relator University’s legal rights or duties as outlined above, or as otherwise found in PELRA. Regardless of the outcome of the proceedings generated by Certain Employees’ petition, Respondent UEA will still

be the exclusive representative of Unit 9 and Relator University's obligations towards Respondent UEA will continue as before. At most, Relator University's rights, duties, and privileges as a public employer will be indirectly affected. They were not and will not be "directly determined" by the BMS' ruling on the Petition for Decertification or by this appeal.

Further, Relator University lacked "standing" to be a party to the BMS proceedings on Certain Employees' petition:

Standing is a necessary prerequisite before a party may seek relief from a court. State by Humphrey v. Philip Morris, Inc., 551 N.W. 2d 490, 493 (Minn. 1996). "Standing is acquired in two ways: either the plaintiff has suffered some 'injury-in-fact' or the plaintiff is the beneficiary of some legislative enactment granting standing."

Edina Community Lutheran Church, et al., v. State, 673 N.W.2d 517, 521 (Minn. App. 2004).

Relator University has suffered no injury-in-fact. Furthermore, although Certain Employees certainly suffered an injury-in-fact when its petition was dismissed, and although Respondent UEA would have suffered such an injury-in-fact if the petition had been granted, the University will not and did not. Relator University will simply have an ongoing duty to comply with PELRA with respect to Respondent UEA and to abide by University policies and applicable laws with respect to outstate faculty who are not represented by Respondent UEA. Complying with ongoing and fundamental statutory obligations is neither an injury-in-fact nor even an "injury-in-theory." And, as already discussed above, the applicable BMS rules do not grant the University "party" status, the other way

in which an entity acquires standing. Accordingly, Respondent UEA respectfully asks the Court of Appeals to dismiss the appeal due to Relator University's lack of standing and lack of party status.

III. "Unit 9" Is One Unit.

A. *Unit 9 Is One Of Thirteen Statutorily-Defined Units Of The University Of Minnesota.*

PELRA specifically identifies Outstate Instructional Unit 9 as one bargaining unit. Minn. Stat. §179A.11, subd. 1(9) (2004). The governing statute prescribes the formation of "*the outstate instructional unit.*" *Id.* (emphasis added). Throughout this section, the unit is described as one entity. *Id.* The language is unambiguous and speaks for itself, leaving no room for judicial construction. Anoka-Hennepin Educ. Ass'n. v. Anoka-Hennepin ISD No. 11, 305 N.W.2d 326, 329 (Minn. 1981). Allowing different outstate campuses to be in different units or to be treated or considered in any way as though they are in separate units would violate the clear language of the very section of PELRA that identifies and defines the thirteen bargaining units that exist at the University of Minnesota. Unit 9 is and can only be one unit, including when there is an attempt to decertify the exclusive representative for the unit.

The faculty at each of the outstate University of Minnesota campuses may vote to join Unit 9. If they do, their vote is limited to two choices: to join the already-represented unit, or not. Minn. Stat. §179A.11, subd. 1(9) (2004). In 2004, the Crookston faculty voted to join the unit. Since making that choice, they

have been subject to PELRA's mandate that all outstate faculty are part of, and included in, one single outstate bargaining unit. Id. As the BMS explained in its Order:

It is clear from the statute that the employees at Crookston, Waseca, and Morris are not free to choose their own exclusive representative for collective bargaining. The three campuses outside of Duluth are permitted to independently determine through a Bureau conducted election whether the campus employees wish to join Unit 9, and are included within Unit 9, but they are not permitted to form bargaining units independent of the Duluth campus.

BMS Order at pp. 5-6 (reprinted in RL App. at 81-82).

Relator University argues that such an interpretation violates PELRA's announced purpose of helping public employees "freely choose their representatives." Relator's Brief at 13 (citing In Re: An Investigation of Unfair Election Practice Objections (Rosemount), 461 N.W.2d 215, 217-18 (Minn. 1990)). Not only does Relator University lift this quote out of the context in which it was used by the Minnesota Supreme Court in 1990⁶, but it also ignores other relevant language in the same PELRA sentence: "the legislature has determined that overall policy is best accomplished by: (1) granting public employees *certain* rights to organize and choose freely their representatives." Minn. Stat. §179A.01 (2004) (emphasis added). "Certain" rights do not equal unfettered rights. More specifically, for the bargaining unit known as "Unit 9" at the University of

⁶ In the Rosemount case, a party challenged the BMS Commissioner's authority to invalidate election results because of procedural irregularities attributable to his own office. The Court cited PELRA's announced purpose of helping public employees choose freely their representatives to emphasize that the Commissioner's efforts to correct his own mistakes were in furtherance of that purpose and were, therefore, proper. Rosemount, 461 N.W.2d at 217-18.

Minnesota, the legislature has been quite precise as to those rights. Such rights do not include the right to separate out one campus from the others for purposes of a decertification petition or for any other similar or related purpose.

The legislature made several exacting choices regarding the rights of outstate campus faculty. In its wisdom, the legislature granted the faculty at the Crookston faculty the right to join the Duluth faculty, but only if and when the Duluth faculty had already organized and freely chosen a representative. Minn. Stat. §179A.11, subd. 1(9) (2004). In its wisdom, the legislature determined that the Crookston campus could chose to join Unit 9, but that such a choice also meant choosing to be represented by the exclusive representative that the Duluth faculty had already chosen. Id. In its wisdom, the legislature determined that if the Crookston faculty made these choices, it would make further representation decisions as part of the larger group and not independently from the rest of the unit. Id. and Minn. Stat. §179A.12 (2004). Perhaps most importantly, each of these determinations flows from the initial determination that although the faculty at each of the non-Duluth outstate campuses is free to join Unit 9, none of these is free to be its own unit separate from Unit 9. Id. Relator University argues that there “is no reason to conclude that the legislature did not intend each campus to determine its own status both for purposes of certification and decertification.” Relator’s Brief at 14. The plain language of the statute provides ample reason to conclude exactly this.

B. *There Is Only One “Appropriate” Unit For The Crookston Campus Faculty.*

Relator University further argues that there is no express statutory language either prohibiting or allowing the Crookston faculty from being considered “the appropriate unit” for purposes of decertifying its exclusive representative, and that the Court should therefore permit the Crookston faculty to be the “appropriate unit” for such a purpose. It also asks the Court to infer from the presence of different adjectives in PELRA and its administrative rules modifying “unit” that the “appropriate” unit may differ from the “unit” or the “established unit” described in the section of PELRA that identifies and defines the University of Minnesota units.

As discussed in the previous section, Relator University’s assertions regarding the legislature’s purpose in enacting PELRA are both unsupported and easily contradicted. Further, Relator provides no basis or support for the grammatical inference that it asks the Court to make. First, the inference disregards the unambiguous opening line of the governing section: “The following are *the* appropriate units of University of Minnesota employees.” Minn. Stat. §179A.11, subd. 1 (2004) (emphasis added).

Second, PELRA’s definitions state: “‘Appropriate unit’ or ‘unit’ means a unit of employees determined under sections 179A.09 to 179A.11.” Minn. Stat. §179A.03, subd. 2 (2004). Together with PELRA’s description of the appropriate units at the University of Minnesota, the definition of “unit” shows there is no

basis for considering Respondent University's idea that somehow Unit 9 should be modified or treated differently for purposes of a decertification petition offered by certain faculty from one of the outstate campuses.⁷

Respondent's proposal also ignores the express statutory language regarding decertification petitions and the decertification process:

An individual employee or group of employees in a unit may obtain a decertification election upon petition to the commissioner stating the certified representative no longer represents the majority of the employees in an established unit and that at least 30 percent of the employees wish to be unrepresented.

Minn. Stat. §179A.12, subd. 3 (2004). This language supports and makes absolutely clear that a decertification petition affecting Unit 9 or any established unit must be supported by at least 30% of the employees in that unit, not just a portion of the unit or one campus of the unit.

In summary, PELRA provides only one "appropriate unit" for the Crookston campus faculty. The statute defines the "appropriate" units of University of Minnesota employees. Minn. Stat. §179A.11, subd. 1 (2004). That statute creates, defines, and "establishes" thirteen units for the University of Minnesota.⁸ The BMS order from February 2005 certified Unit 9 as including the faculty at both the Duluth campus and the Crookston campus and certified Respondent UEA as the exclusive representative for the unit. For purposes of the

⁷ Because the University units are pre-determined in Section 179A.11, they are not subject to the "community of interest" factors used by the Commissioner when determining appropriate units under Section 179A.09. Neither the Commissioner nor this Court should consider or apply those factors to either University bargaining units or State of Minnesota bargaining units. Accordingly, Respondent UEA will not address those factors, and Relator University erred by doing so on pages 22-29 of its brief.

⁸ See n. 7.

decertification statute, the “established unit” in the pending case is Unit 9, a unit that includes both the Duluth campus and the Crookston campus.

C. *The Crookston Campus Faculty Cannot “Sever” From Unit 9 For Any Purpose.*

Relator University claims that Respondent UEA confuses severance from a bargaining unit with a decertification election. Rather, Relator University misconstrues and/or ignores Respondent UEA’s reason for referencing PELRA’s severance language, which is to point out that the Crookston faculty is not one of the few subgroups identified by PELRA as having the right to “sever” from its group. Minn. Stat. §179A.11, subd. 2 (2004) (certain University groups); Minn. Stat. §179A.10, subd. 3 (2004) (certain State of Minnesota groups). Specifically, in its wisdom, the legislature gave certain subgroups, including the two subgroups of faculty who teach law and health sciences at either the Twin Cities instructional unit (Unit 8) or the outstate instructional unit (Unit 9), to sever from their respective units.⁹ Id.

If the legislature had wanted to allow subgroups of faculty to sever based on geographic location, the legislature would have provided for this. It did not. The legislature simply did not provide the Crookston faculty with the ability to separate in any way from Unit 9, not by “severing”, and not by decertifying the exclusive representative. The exceptions for certain subgroups to sever from

⁹ The other example exists in the State of Minnesota. Minn. Stat. §179A.10, subd. 3 (2004) (allowing specified subgroups of the general professional, health treatment, or general supervisory State of Minnesota units to separate from their prescribed units if they follow the proper procedure). Again, absent explicit statutory authority to sever, all subgroups belong to and remain in their prescribed units.

their units are exactly that – exceptions to the general rule. The Crookston campus faculty group is not such an exception.

Relator University then says that it is not asking the Court to completely sever the Crookston campus from Unit 9, but only to “define” Unit 9 as two units for the purpose of decertification, “just as it does for representation.” Relator’s Brief at 15. However, Relator University is unable to cite to any statutory authority for such a definition of Unit 9. Moreover, Relator University fails to state what status it believes the Crookston campus faculty would have if the Court were to grant its wish to decertify its exclusive representative, yet not be completely severed from Unit 9. Under the statute, a group that is entitled to sever from its unit has no right to meet and negotiate if it exercises that right. Minn. Stat. §179A.11, subd. 2 (2004). It retains only the right to meet and confer with the appropriate officials on any matter of concern to the group. *Id.* Is Certain Employees seeking that same status? No matter: PELRA is silent on the question because it does not allow the Crookston faculty group to separate itself from Unit 9 in the first place.

D. The Effect Of Campaign Rhetoric On The 2005 Election Is Both Irrelevant And Untimely To The Question Of Statutory Interpretation.

Relator University argues that Respondent UEA should be estopped from defining Unit 9 as including faculty from both campuses because of certain representations made during Respondent UEA’s campaign to add the Crookston campus faculty to Unit 9. Specifically, Relator University cites to an emailed

answer provided by one of Respondent UEA's representatives to a question from a faculty member regarding what would happen if the Crookston faculty voted to join Unit 9 and later there was an effort to "reverse the process."¹⁰ The representative wrote that each campus "has the ability to make its own decision." RL App. at 34, item 13(b).

This pre-election campaign statement provides no basis for estoppel or reversal. First, the BMS:

cannot rely upon statements made during campaigns as a guide to interpreting the statute. The [BMS] must read the statute and interpret the statute so that all of its provisions are consistent. The [BMS] will not add to or subtract from the plain language of the statute.

BMS Order at p. 7, reprinted in RL App. at 83. Second, the statement itself is too vague and broad to provide the basis for any meaningful challenge. Neither the question nor the statement defines "the reversal process."

Further, the statement most certainly does not say that all that was needed to decertify Respondent UEA as the exclusive representative of Unit 9 was a majority vote by the Crookston faculty. Third, the appropriate time to challenge the statement was during the campaign or in a challenge to the election results. Minn. R. 5510.2110, subpt. 1 (listing acts that are prohibited and that constitute unfair election practices). The time to file such a challenge has long since

¹⁰ Relator University cites to various other statements and information generated by Respondent UEA during the campaign, but this is the only statement that is even remotely on point.

expired. Id. at subpt. 2 (unfair election practice charges must be filed within ten calendar days from the date of the certification of election results).

E. The BMS' Application of Statute Is Consistent With Prior Interpretations.

Finally, Relator University argues that the BMS' reliance on its previous order regarding a petition to decertify the UEA as exclusive representative of Unit 9 is misplaced. At that time, Unit 9 included faculty from the Waseca and Duluth campuses. In its 1986 Order, the BMS dismissed a decertification petition filed by a group employees identified as Certain Employees of the University of Minnesota (Duluth and Waseca Campuses). BMS Case No. 87-PR-360 (Dec. 10, 1986), reprinted in RL App. at 86-87. In that Notice of Dismissal, the BMS treated the Unit 9 as one unit for representation purposes. Id.; See also BMS Order below at p. 7, reprinted in RL App. at 83. Citing the rule requiring that such a petition be accompanied by at least a 30% showing of interest, the BMS dismissed the petition. Id.

Relator University asserts that this situation is different from the earlier one because in 1986 the UEA had already negotiated a contract covering both the Waseca and Duluth campuses, while in the present case there is no contract in place for the Crookston faculty (plus a Minnesota district court order concluding that the existing UEA-University of Minnesota contract does not automatically apply to the Crookston faculty). The issue decided by the BMS and now on appeal before this Court has nothing to do with the status or history of

bargaining, the existence of one or more contracts, or the obligation to bargain contracts. It has only and solely to do with whether PELRA permits faculty from a two-campus unit of the University of Minnesota to decertify its exclusive representative without a showing of 30% support from the entire two-campus unit. As amply explained by the BMS in its Order, and in this brief, the answer is no.¹¹

CONCLUSION

For all the reasons expressed above, Certain Employees' petition was invalid and was properly dismissed by the BMS because it was based on the impossible premise that Unit 9 only includes the instructional faculty at the Crookston campus. Outstate Instructional Unit 9 is presently comprised of the total number of instructional employees at both the Duluth *and* Crookston campuses. Certain Employees of the Crookston campus did not submit authorization cards substantiating the required showing of interest in support of the Petition by at least 30% of *the unit*. The petition was improper, outside the scope of PELRA's intent, purpose, and unambiguous language, and was properly and summarily dismissed. Respondent UEA therefore respectfully asks the Court to affirm the BMS Order dismissing Certain Employees' petition. In the

¹¹ The only language in PELRA regarding Unit 9 and collective bargaining agreements is language that allows the exclusive representatives of Unit 8 (the Twin Cities instructional unit) and Unit 9 (the outstate instructional unit), by mutual agreement, to jointly negotiate a contract with the regents, or to negotiate separate contracts with the regents. Minn. Stat. §179A.11, subd. 1(9) (2004). However, the only relevance of this section to the issue on appeal is that it presumes and reinforces that PELRA provides for only one Twin Cities faculty bargaining unit and one outstate faculty bargaining unit.

alternative, Respondent UEA asks the Court to dismiss the appeal on the grounds that Relator University did not have standing as a party in the proceedings before BMS and therefore has no ability or standing to appeal.

Respectfully submitted,

EDUCATION MINNESOTA

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