

STATE OF MINNESOTA
IN COURT OF APPEALS

Superior Development, Inc.,

Relator,

vs.

RELATOR'S REPLY BRIEF

No. A11-1888

Daniel Haugen,

Respondent,

Department of Employment and
Economic Development,

Respondent.

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Relator,

vs.

**CERTIFICATE REGARDING
WORD COUNT**

No. A11-1888

Daniel Haugen,

Relator,

Department of Employment and
Economic Development,

Relator.

Pursuant to Minnesota Rule of Appellate Procedure 132.01, subd. 3,
undersigned counsel for Relator hereby certifies that the number of words in the
attached Relator's Reply Brief, excluding the Table of Contents and Table of
Authorities, as counted by the Microsoft Word program (Version 2003), is 5,013.

March 5, 2012

Respectfully submitted,



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I. Response to Pages 8-15 of DEED's Brief—
Haugen Did Not Give his Employer an Opportunity to Address the Alleged
Adverse Condition and He Does not Qualify for the Statutory Exception

A. Haugen Did not Have Good Cause to Quit

Both Haugen and relator agree that he was initially hired on a **part-time basis** to work 28 hours a week. (Appendix at A-10, A-68, hereinafter cited as “A-__”) They also agree that shortly thereafter, Haugen’s hours increased to 40 hours a week due to the press of work. Both parties also agree that he maintained this weekly average until relator reduced his hours to 32 a week in November 2010. (A-10) However, even after that time, to carry out his job duties, Haugen sometimes exceeded 32 hours of paid work a week, sometimes even working as much as 40 hours a week. (A-10)

In mid-April 2011 (sometime around April 15, since Haugen established a UI benefit account with DEED on April 17, 2011 (A-18, A-31, A-70)), relator reduced Haugen’s hours to 24 hours a week, stating that relator was losing money and could not longer afford to employ Haugen for more than 24 hours a week. (A-10) Haugen said he knew he “could have quit that day, but I thought I’d give it a try and see what happens.” (A-70) Haugen continued to work for relator **for two and a half months after his hours were reduced**, working at least 24 hours a week, until he quit on June 29, 2011. (A-31-32)

Throughout his over two and a half years of employment, Haugen continuously earned \$15 an hour plus a two percent commission on all rents collected (A-10), as a property manager for relator.

As stated, Haugen continued work for **two and a half months** after his hours were reduced to 24 hours a week in mid-April 2011. During that time he voiced no concern or complaint with his weekly hours or any other working condition. This two and a half month period of work at 24 hours a week served as a matter of law to modify any agreement between the parties that might have existed that Haugen would work more than 24 hours a week. The performance of his duties for relator was an acceptance of relator's offer of continued employment at 24 hours a week. Dissatisfaction with compensation or hours, when the rate of pay or amount of hours is within the employee's agreement, does not constitute good cause to quit. *See Ryks v. Nieuwsma Livestock Equip.*, 410 N.W.2d 380, 382 (Minn. App. 1987) (no good cause to quit job shown where evidence failed to show that employer breached employment agreement).

In addition, Haugen was originally hired to work part-time for relator. Granted, this was later modified to full-time employment, but subsequently it was reduced again to part-time employment (32 hours a week) and subsequently again (to 24 hours week). Haugen voiced no objections to any of this modifications of the original agreement and continued to perform under the varying work week requirements, until he quit abruptly on June 29, 2011.

If Haugen considered any of these changes in his work week hours "adverse to . . . [him]," Minn. Stat. § 268.095, subd. 1(a)(2), he certainly never said so to relator, nor did he quit at any prior time when they increased or decreased.

Moreover, if Haugen ever did consider any diminution in his weekly hours

to be “adverse” to him, it is clear that he did not give his employer a reasonable opportunity to correct the asserted hardship caused to him by the reduction in his work schedule at any time, including, importantly for his appeal, the reduction to 24 hours a week in mid-April 2011. Haugen concedes that he never told his employer that he was considering quitting before he actually quit on June 29, 2011. (A-65, 69) When he stated that “I thought I’d give it a try and see what happens,” (A-70), this was in mid-April, 2011, two and a half months before he quit, allegedly because his hours were reduced to 24. Any statement made by Haugen in mid-April cannot reasonably be taken to be compliance on June 29, 2011, with Minn. Stat. § 268.095, subd. 3(c), which requires a worker to “complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.” Haugen’s performance of his duties for relator for two and a half months at the reduced level of 24 hour waives any legal effect that the statement “I thought I’d give it a try and see what happens,” may have had as compliance with Minn. Stat. § 268.095, subd. 3(c).

Rather than ask his employer to address the situation, Haugen simply telephoned relator on June 29, 2011, and said he was quitting and later that same day hand-delivered a written resignation letter, noting how much he was owed as

his final paycheck. (A-47-50) For this reason alone, Haugen cannot qualify for this statutorily created exception. *See* Minn. Stat. Sec. 268.095, subd. 3(c).¹

B. Haugen Did not Quit Because of a Reduction in Hours.

Haugen insists that relator gave him good reason to quit by reducing his weekly work schedule of hours from 32 to 24 in mid-April of 2011. As discussed above, Haugen continued to work for two and a half months after his work schedule was reduced to 24 hours, quitting on June 29, 2011. (A-70)

In some cases, a pay decrease may influence a reasonable employee's decision whether to remain employed and Haugen faced a reduction in scheduled work hours beginning in mid-April 2011. But the reduction in pay or hours must be the real reason the employee quit, and not one asserted as an after-the-fact make weight rationale.

¹ The legislative policy of the Unemployment Law, Chapter 268 of the Minnesota Statutes, allows a worker who changes job and finds the new job unsuitable for him or her only 30 days before the worker must quit and still be eligible for UI benefits. Haugen's continued employment for about 74 days after his hours were reduced to 24 a week goes far beyond any legislative policy of "try a job out" but still being able to quit and be eligible for UI benefits.

Minn. Stat. Section 286.095, subd. 1 (3) states that "An applicant who quit employment is ineligible for all unemployment benefits according to subdivision 10 except when:

.....

(3) the applicant quit the employment within 30 calendar days of beginning the employment because the employment was unsuitable for the applicant; . . ."

The record makes clear that Haugen quit primarily because his feelings were hurt and he was offended by what he considered to be unwarranted comments made by the owner of relator during a hearing before an ULJ (not part of this appeal) on June 29, 2011, when Haugen was seeking partial UI benefits to compensate him for the loss of income attributable to the reduction in his scheduled hours from 32 to 24 in mid-April 2011.

Haugen testified at the hearing: “But, when it come down to the 24 hours, that was basically my breaking point. I could not make it on that. I knew I couldn’t and I told them that. And that’s really the main reason I quit because, and then everything else got piled on after that. A felt they lost trust in me for all this stuff and value I gave of myself, I felt that they were almost forcing me to quit in sense by making the conditions worse. I thought we had a very good relationship with each other. . . . I felt I had a relationship with him [relator’s owner, Mr. Olson], but after that April meeting, maybe it was my perception, but I felt things changed. The conditions of the work changed.” (A-69) Within ten minutes after the conclusion of the hearing before the ULJ on June 29, 2011, Haugen called relator and quit. (A-47)

Haugen alleges that he quit because of a reduction in scheduled work hours, but the record demonstrates that this was not his real reason for quitting. He testified that he did not quit immediately after his scheduled hours were reduced from 32 to 24 because “I thought I’d give it a try and see what happens.” (A-70) Haugen worked under the reduced schedule for two and a half months, but quit

immediately after the UI hearing on his wage claim because he felt relator no longer had any trust in him. (A-69)

The plain language of the statute demands that the record support the conclusion that Haugen quit “because of” the adverse changes that had occurred two and half months earlier. *See* Minn. Stat. § 268.095, subd. 1(1) (stating that the employee must “quit the employment because of a good reason caused by the employer.”).

While Haugen’s alleged workplace perceptions may have been good personal reasons and may actually have motivated in part his quitting employment with relator, they do not rise to the level of what our legislature has defined as a good reason caused by his employer.

Therefore, Haugen’s argument that the ULJ did not err in not applying the average reasonable worker standard is without merit. Because Haugen quit his employment and because his reason for quitting does not fit within any of the statutorily created exceptions entitling him to unemployment compensation, his claim for UI benefits must fail. Because the record does not support the ULJ’s factual findings regarding Haugen’s reason for quitting, the ULJ’s decision must be reversed.

C. The Statutes Provide a Remedy for Employees Whose Scheduled Work Falls Below 32 Hours a Week and It is Not Quitting Employment

Haugen argues that the reduction in scheduled work hours (from 32 to 24 a week) gave him good cause to quit because his weekly total wages were reduced.

A *substantial wage deduction* may provide an employee with a good reason for quitting if under Minn. Stat. Sec. 268.095, subd. 1 (a) (3), it “would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.”

Prior to August 1, 2004, Minn. Stat. Sec. 268.095, subd, 1 (c), provided that: “A substantial adverse change in the wages, hours, or other terms of employment by the employer shall be considered a good reason caused by the employer for quitting unless the change occurred because of the applicant's employment misconduct.” *See Rootes v. Wal-Mart Associates, Inc.*, 669 N.W.2d, 416, 418-19 (Minn. App. 2003).

In 2004, the legislature eliminated this provision and thereby repealed presumption that an employee acts reasonably merely because he quits employment as the result of a “substantial adverse change in . . . wages, [or] hours.. . .” *Id.* The statutory scheme now requires that the “analysis required [to determine the reasonableness of an employee’s decision to quit employment] . . . must be applied to the specific facts of each case.” Minn. Stat. Sec. 268.095, subd. 1(b). No longer is an employee presumed to act reasonably whenever he or she quits because of a reduction in wages or hours. Instead, the question is whether the average, reasonable person, when faced with a similar choice, would have chosen to remain employed. *Id.* The statute requires individualized consideration of each case where an applicant claims he or she quit for good reason caused by the employer. That is why cases such as *Danielson Mobil*,

Inc. v. Johnson, 394 N.W.2d 251 (Minn. App. 1986), cited by the Department in its brief, are inapposite, since they were decided under the old version of the statute, which did not require individualized fact-finding.

Here, the record reveals that the wage deduction was neither substantial nor unwarranted. Haugen was originally hired on a part-time basis to work 28 hours a week. (A-10, 68) His actual weekly hours worked often exceeded that amount between late 2008 and mid-April 2011 due to the press of business. (A-10) So when relator reduced Haugen's hours to 24 in April 2011, the reduction was only four hours fewer than the originally agreed on amount of 28 weekly work hours between Haugen and relator. This amounts to a 14% reduction in scheduled hours (28 to 24).

Moreover, it is inherently unreasonable and against public policy for an employee subject to a four hour per week reduction in scheduled hours (from 28 hours to 24 hours) to quit employment, when the UI laws provide a remedy for any resulting reduction in pay.

Since 2004, the legislature has provided for UI benefits for employees whose scheduled hours are reduced to below 32 hours a week under section 268.035, subd. 26. This statute evidences the state's public policy that it is better to stay employed, even part time, than to become unemployed. When a worker's weekly wages fall below the worker's expected weekly

unemployment benefit amount, the state UI trust account makes up the difference.

The fact that UI benefits are available to an employee whose hours are reduced to fewer than 32 hours demonstrates that it is unreasonable for an employee in Haugen's circumstances, whose hours are reduced to 24 hours and who files for UI benefits for the difference (as Haugen did in the UI hearing held on June 29, 2011), to choose to become unemployed instead of continuing to work the 24 hours scheduled hours and collecting UI benefits for any difference resulting from the reduction in scheduled hours.

Minn. Stat. § 268.03 declares that it is the established public policy of the state that workers become and remain employed and that UI benefits should be available only when a worker becomes unemployed "through no fault of" of the worker.² This avowed public policy is not advanced when a worker such as Haugen is allowed to quit employment that pays him more than his weekly benefit amount.

² Minn. Stat. § 268.03 declares in part: "The public good is promoted by providing workers who are unemployed through no fault of their own a temporary partial wage replacement to assist the unemployed worker to become reemployed."

The ULJ's conclusion that Haugen quit his employment with good reason caused by relator is unsupported by substantial evidence in view of the entire record as submitted and thus must be reversed and Haugen found to be ineligible for UI benefits. Because the evidence does not supports the ULJ's decision that Haugen quit his job without good reason attributable to his employer, the ULJ's decision must be reversed.

II. Response to Pages 15-21 of DEED's Brief—

Corporations May Appear without Counsel in the Court of Appeals.

In pages 15-21 of the brief, it appears that the Department is arguing that the court of appeals, having been created at the pleasure of the legislature, can now dispense with consideration of or conformance with any legislative pronouncements of its creator, as it sees fit. But there is no gainsaying that just as the legislature decided to create the court of appeals, it may just as easily and without any impediment abolish its statutory creation on a whim and whenever it might so choose.³

³ The concept has wide play. “Can I not do with you, Israel, as this potter does?” declares the LORD. ‘Like clay in the hand of the potter, so are you in my hand, Israel.’” Jeremiah 18:6 (New International Version)

The legislature has in no uncertain terms provided that **corporate employers**, like relator, may appear in this court without incurring the expense of retaining counsel. Minn. Stat. Sec. 481.02, subd. 2, since 1931, has clearly allowed corporations to appear in actions in all Minnesota state courts in which they are **named parties**. Putting aside proceedings in the district courts and the supreme court, both of which courts were created by the state constitution and not by the legislature, the situation is fundamentally different in the court of appeals, which is a creature solely of legislation. As a creature of statute and not a constitutional court, thus subject to the vagaries of legislative enactments, including complete abolition if the legislature so decided, the court of appeals must abide by *all* statutory pronouncements, not just those it agrees with.

When it comes to one such legislative enactment of the body that created the court of appeals, however, the court has steadfastly refused to follow that enactment. This is the provision of Minn. Stat. Sec. 481.02, subd. 2, which relates to who may appear in the courts of the state.

That statute currently reads in part as follows:

Sec. 481.02 Unauthorized Practice of Law.

.....

Subd. 2. Corporations.

No corporation, organized for pecuniary profit, . . . by or through its officers or employees or any one else, shall maintain, conduct, or defend, **except in its own behalf when a party litigant**, any action or proceeding in any court in this state. . . (emphasis added)

While the supreme court has stated that a corporation must appear in the district courts and before the supreme court only with aid of counsel, it has never held that section 481.02, subd 2, requires that corporations appear in the court of appeals only with aid of counsel. This court is itself clearly allowed to interpret enactments of the legislature when they pertain to proceedings before this court.⁴

Whatever the merits of the supreme court's interpretation of section 481.02, subd. 2, insofar as it relates to the district courts and the supreme court, it is not relevant to the ability of a corporation to appear *pro se* before *this court*, which is a statutory creature of the legislature. As a legitimate and proper pronouncement of the legislature, section 481.02, subd. 2, of the statutes must be given effect by this court. And, the only fair and scrupulous reading of the plain words of the statutes is that a "corporation by or through its officers or employees or any one else . . . [may] maintain, conduct, or defend, . . . in its own behalf when a party litigant, any action or proceeding in any court in this state. . . ." *Id.*

If the language of subdivision 1 of section 481.02 allows *individuals* to appear *pro se* in proceedings before this court, then the almost identical language in subdivision 2 allows *corporations* likewise to appear *pro se* in proceedings before this court. Only interpretive legerdemain could read identical statutory provisions in contradictory ways.

⁴ In *Contemporary Systems Design v. Commissioner of Jobs and Training*, 431 N.W.2d 133 (Minn. App. 1988), cited by DEED (Br. at 15, 20), the court of appeals did not cite or address Minn. Stat. Sec. 481.02, subd. 2, and so it is not controlling of the argument made in this appeal by relator.

Underlying the legislative assertion of subdivision 2 of section 481.02 is a manifest intent that corporations, when they are appearing on their own behalf when a party litigant, enjoy the legal capacity to appear before a court for the purpose of asserting or defending their own corporate rights without being represented by professional counsel, and likewise enjoy the capacity to chose to litigate with or without counsel, in the exercise of the discretion conferred by the permissive language of the statute.

Being a statutory creature, this court must abide by all statutory pronouncements including the one contained in section 481.02, subd. 2, which allows corporations, such as relator, to appear before this court without aid of counsel.

As a result, the court should give effect to Minn. Stat. Sec. 481.02, subd. 2, and declare that appealing corporate employers may appear *pro se* in this court.

III. Response to Pages 21-26 of DEED's Brief—
Minn. Stat. Sec. 268.105, subd. 7 Provides Unequal
Access to Justice and Violates Equal Protection

To determine whether a statutory classification violates such equal protection, the court must consider (1) the classification's character, (2) the individual interests affected by the classification, and (3) the governmental interests asserted in support of it. *LaFreniere-Nietz v. Nietz*, 547 N.W.2d 895, 899 (Minn. App.1996).

(1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and

substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

See Gluba by Gluba v. Bitzan & Ohren Masonry, 735 N.W.2d 713, 721 (Minn.2007) (quotations omitted).

An *employee* who desires to file a petition for certiorari under Minn. Stat. Sec. 268.105, subd. 7, to contest a ULJ's decision is not required to pay the customary filing fee in this court of \$550; is not required to post a bond on appeal; is entitled to a written, verbatim copy of the transcript of any hearings before the ULJ at *no* expense to the employee; and either can appear *pro se* in the court of appeals or retain counsel. In essence, the expense to an appealing employee, if the employee chooses to represent himself or herself is zero. Minn. Stat. Sec. 268.105, subd. 7(c).

Appealing employers are entitled to none of these privileges. Employers must pay the filing fee of \$550 or no appeal is possible; they must post a cost bond (relator posted a bond of \$500 (A-82)); they must pay a per page fee for a copy of a transcript of any hearings before the ULJ (relator paid \$144 for a copy of the transcript of the UI hearing (A-83)); and, as discussed in the previous section, if the employer is a corporate body, it must retain counsel at its own expense in order to prosecute an appeal before the court of appeals (relator retained counsel on October 19, 2011). *See* especially the Order of this court in this matter, filed on

November 23, 2011, which found that relator could not file a petition for certiorari *pro se* or appear *pro se* in this court, but because it had cured that defect in a timely manner, it could proceed with counsel in this appeal. (A-5) *See also* Minn. Stat. Sec. 286.105, subd. 7(b).⁵

While Minn. Stat. Sec. 268.069, subd. 2, states the standard of equality before the UI law of both applicant and employer (“There is no presumption of entitlement or nonentitlement to unemployment benefits.”), the legislature has not provided for even-handed treatment of employees and employers once the administrative process within DEED is completed and one party is aggrieved by the outcome and wants to appeal to the court of appeals. The parties are treated as equals within the DEED UI process, but are not treated as equals once they enter the judicial system under Minn. Stat. Sec. 268.105, subd. 7.

Providing a cost-free judicial forum for aggrieved employee challenges to ULJ decision, while denying the same privilege to aggrieved employers, fundamentally violates ordinary concepts of equal protection and governmental fairness. The corresponding burdens placed on judicial resources by appealing employees and employers are identical for both classes of appellants. In both

⁵ DEED makes a feckless attempt to salvage its position by citing Rule 109 of the Minnesota Rules of Civil Appellate Procedure. DEED Br. at 23-24. On its face, Rule 109.02 shows the clear inapplicability of this Rule. The Rule clearly contemplates only appeals from district trial courts and is not applicable to administrative appeals, such as one contesting UI benefits under section 269.105, subd. 7.

instances, DEED must appear in support of the party that prevailed before the ULJ. *See* Minn. Stat. Sec. 268.105, subd. 7 (e). It is irrational and arbitrary for the legislature to provide for a judicial process at the court of appeals level to adjudicate efficiently and effectively appeals of ULJ decisions, but to afford different and less burdensome requirements for appealing employees than for appealing employers.

It is important to recall the government action that is actually at issue in this case. The action challenged here is not the state's decision to allow aggrieved applicants to appeal their determination of ineligibility for UI benefits to the court of appeals without the payment of any fees or other expenses and to represent themselves before the court if they so choose. The sole decision challenged here is the State's decision to withhold similar relief from employers, including relator, simply because they are **corporate employers**. And the primary justification the state has offered for that decision is the state's interest in preserving financial resources.⁶

The state's decision in 1995 to explicitly set apart appealing employees and employers after a ULJ's decision is what is at issue here, not the decision first enacted in 1937 and continuously adhered to since of allowing aggrieved employees to appeal to the court of appeals without expense or need for counsel.

⁶ DEED has explicitly affirmed that the public policy behind the differing treatment of appealing employees and employers is not the deterrence of frivolous appeals. DEED Br. at 25.

To withstand scrutiny under the rational-basis review, the state's classification must be rationally related to a legitimate state interest. Here, however, the state's classification—appealing employer vs. appealing employer—bears no relationship whatsoever to any government interest advanced in Chapter 268 or by DEED in this appeal. DEED in passing states that the differing treatments of appealing employees and employers is “based on the general truth that to require costs and fees would likely prevent most unemployed applicants from pursuing an appeal.” DEED Br. at 25. But this begs the question of **why appealing employers are not treated similarly**. Is it not equally true that many employers lay off employees when profits decline so that generally they are equally likely as laid-off employees to be unable to afford the fees and costs, and the attorney fees, involved in an appeal to the court of appeals? The state has an expressed interest in seeing that UI benefits are paid only when an applicant is clearly entitled to such benefits under Chapter 268. Minn. Stat. Sec. 268.18, subd. 1(a) states that whenever an employer is successful in an appeal under 268.105 to the court of appeals, an employee who has received UI benefits to which he or she is not entitled “must promptly repay any unemployment benefits to the trust fund.” Clearly, appeals by employers to the court of appeals of wrongly decided ULJ decisions are an important part of the state UI system and the integrity of the UI trust fund.

Although unacknowledged by DEED in its brief, the only real reason for charging employers fees and costs to appeal under section 268.105, subd. 7, is to

conserve state assets. To waive fees and costs for employers would be to forego dollars coming into the state coffers and to conserve the expenditure of state funds, for instance, for preparing the transcript and providing it free of charge to the employer.

But “a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources.” *Plyler v. Doe*, 457 U.S. 202, 227 (1982).

The United States Supreme Court has applied this commonsense principle in the context of equal protection challenges. In *Williams v. Vermont*, 472 U.S. 14 (1985), for example, the Court addressed a taxation scheme that provided a tax credit exclusively to automobile owners who were Vermont residents at the time they paid their auto use tax. Revenue raised through the tax was intended to improve the state’s highway system and pay principal and interest on government bonds. Applying rational-basis review, the Court held that the state’s user-fee rationale was not rationally furthered by the discriminatory tax. *Id.* at 25-27. The Court, therefore, rejected the argument that the simple desire to raise or preserve funds constituted a rational basis for discriminatory treatment.

Similarly, in *Zobel v. Williams*, 457 U.S. 55 (1982), Alaska residents challenged a statutory scheme that distributed natural-resources income from the state’s “Permanent Fund” to citizens based on their length of residence. Striking down the law under the rational-basis review, the Court dismissed the state’s

asserted interest in “assuring prudent management of the Permanent Fund”—i.e., its interest in saving money use to provide government benefits. *Id.* at 61.

In fact, there never has been a case where government action was found to be so expensive to treat people equally that the constitutional promise of equality had to give way.

The clear lesson from these cases is that a mere desire to preserve resources cannot justify a discriminatory appeals scheme if the classifications themselves lack any rational relationship to some other *legitimate* objective. The reason for that rule is self-evident. The core concern of the Equal Protection Clause is to act as a shield against arbitrary classifications. If an interest in preserving revenue constitutes a sufficient basis for discriminatory treatment, however, then every discriminatory fee and expense treatment—no matter how arbitrary—would pass constitutional muster. After all, a desire to preserve revenue is presumably the reason why governmental authorities impose different fee structures in the first place. Such circular logic—that a fee and expense scheme intended to save the state money is rational because it was intended to save money—cannot possibly serve as a rational basis for a discriminatory fee and expense system.

A preservation of resources rationale therefore lacks any limiting principle in the court fees and expenses category. A government could impose a higher fees and expenses structure on employers whose corporate names begin with a vowel than those that begin with a consonant. The result of such an arbitrary scheme would be to bolster the state’s coffers. If the cost-savings rationale advanced by

DEED is accepted, such palpably arbitrary fees and expenses schemes would evade constitutional scrutiny.

In *Lindsey v. Normet*, 405 U.S. 56 (1972), the Court invalidated under rational-basis review a state statute that required some appellants to post a greater appeal bond than others. The Court rejected the state's argument that the requirement served to screen out frivolous appeals, noting that the statute "not only bars nonfrivolous appeals by those who are unable to post the bond but also allows meritless appeals by others who can afford the bond." *Id.* at 78.

The Court stated that "when an appeal is afforded, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause." *Id.* at 77.

It cannot be denied that the fees and cost requirement heavily burdens the statutory right of an employer to appeal under Chapter 268. Under section 268.105, subd. 7, the state automatically has significantly increased the stakes when an employer seeks to appeal an adverse judgment in a DEED UI proceeding. The discrimination against cash short and revenue poor employers that cannot post the required bond and pay the required filing and transcript fees and secure counsel of record, is particularly obvious. For them, as a practical matter, appeal is foreclosed no matter how meritorious their case may be. The discrimination against the class of UI appellants (always exclusively employers) is arbitrary and irrational, and the bond, filing fee, transcript fee and counsel of record

requirements of Minn. Stat. Sec. 268.105, subd. 7, and this court violate the Equal Protection Clause.

CONCLUSION

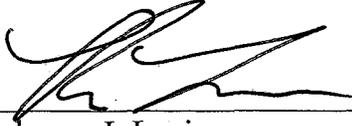
The ULJ erred by determining that Haugen is eligible for benefits because he quit for a good reason caused by his employer. Therefore, this court must reverse the ULJ's determination of eligibility and conclude that Haugen is ineligible to receive unemployment benefits.

The court also should give effect to Minn. Stat. Sec. 481.02, subd. 2, and declare that appealing corporate employers may appear *pro se* in this court in UI petitions for certiorari.

The court should also declare that, for all the reasons discussed, relator has established that there is no rational basis for the different statutory requirements for filing fees and other costs required of appealing employees and employers, and the differing abilities of aggrieved employees and employers to appear *pro se*, and, as a result, that section 268.105, subd. 7, violates equal protection principles and cannot stand.

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Respectfully submitted,



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