

BMS

BUREAU OF MEDIATION SERVICES
State of Minnesota

**IN THE MATTER OF A PETITION
FOR CLARIFICATION OF AN
APPROPRIATE UNIT**

July 5, 2012

Minnesota Teamsters Public and Law Enforcement Employees, Local No. 320, Minneapolis,
Minnesota

- and -

City of Coon Rapids, Minnesota

BMS Case No. 12PCL0486

RULING ON REQUEST FOR RECONSIDERATION ORDER

INTRODUCTIO AND BACKGROUND

On November 14, 2011 the State of Minnesota, Bureau of Mediation Services (Bureau), received a Petition for Clarification or Amendment of Appropriate Unit filed by the Minnesota Teamsters Public and Law Enforcement Employees, Local No. 320, Minneapolis, Minnesota (Local 320). The petition requested clarification of the appropriate unit status of certain employees of the City of Coon Rapids, Minnesota (City). On April 19, 2012 the Bureau issued a Unit Clarification Order (Order) which defined a number of temporary or seasonal employees as meeting the definition of public employees and including them within the Local 320 bargaining unit.

On April 30, 2012 the Bureau received a written Request for Reconsideration (Request) of the Order from the City. The City cited the following grounds for requesting reconsideration:

- 1) No hearing was conducted;
- 2) The Order included named individuals rather than positions; and
- 3) Included individuals within a bargaining unit without consideration of the "community of interest" factors outlined in Minn. Stat. §179A.09 (2011).

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On May 1, 2012 the Bureau issued a Stay of Unit Clarification Order and ordered Local 320 to respond to the City's issues in writing by 4:30 p.m. Friday, May 11, 2012. Local 320 did timely respond. On June 4, 2012 the Bureau notified the City that they should respond to Local 320's response and they had until June 18, 2012 to do so. On June 26, 2012 the City did respond but did not specifically to Local 320's rebuttal, replying:

The City's position was fully outlined in their initial letter.

ISSUE

Whether the Unit Clarification Order was properly issued?

DISCUSSION

A hearing is not required by Minn. Stat. §179A.04 (2011) and Minn. Stat. §179A.12 (2011). The City asserted the employees at issue were not public employees, not that they did not share a community of interest with the bargaining unit. The City argued that Minn. Stat. §179A.12, subd. 5 (2011) requires the Bureau to conduct a hearing in this matter. However, Subdivision 5 refers to petitions filed under Minn. Stat. §179A.12, subd.3, (2011) regarding representation elections; the petition filed in the instant case concerns the clarification of an existing unit. Additionally, Minnesota Rule 5510.1910, subpart 4 (2011) states that "(u)pon receipt of a petition, the commissioner shall hold hearings or conduct an investigation as required . . ." Here, consistent with Bureau practice in similar cases, the payroll records were the only documents necessary for review to determine whether the employees in question had worked a sufficient number of days to meet the "public employee" definition.

Nothing limits Bureau Orders to classification titles and not employee names, especially, such as here, where employees in the same classification may be included or excluded from a bargaining unit based on the number of days worked.

The City's objection to the Bureau not reviewing the employees by a "community of interest" standard was not raised during the Bureau investigation, but only after the Order was issued. Bureau practice has been to reject newly-raised issues on Reconsideration. Finally, Local 320 correctly points out that the parties' collective bargaining agreement includes temporary/seasonal employees.

FINDINGS AND ORDER

1. The Order of April 19, 2012 was properly issued.
2. The Stay of Unit Clarification Order issued on May 1, 2012 is hereby rescinded.
3. The City shall post this Order at the work locations of the employees affected.

STATE OF MINNESOTA
Bureau of Mediation Services



JOSH L. TILSEN
Commissioner

cc: Matt Fulton (2)
(Includes Posting Copy)
Michael J. O'Donnell
Paula R. Johnston
Scott M. Lepak

ATTACHMENT A

Local No. 320 & City of Coon Rapids for 2011 PUBLIC EMPLOYEE SPREADSHEET				
2011				
Name	Greater or equal to 68 days worked (ER#1)	# Weeks Worked	# of Weeks Worked 14 hours or more	Recommendation:
Kevin Chesler	72	15	15	IN
Delbert Christen	97+23*	28	28	IN
David Cormier	119	26	26	IN
Andrew Disch	112	24	24	IN
Anthony Hamm	107	25	24	IN
Alex Hill	102	22	22	IN
Adam Larson	72	16	16	IN
Chad Mack	80	17	17	IN
Erik Sahlin	69	15	15	IN
Jason Sandquist	68	15	15	IN
Kathleen Smalley	118	26	26	IN
Jason Wadsen	109	24	24	IN
Tate Wagner	120	26	26	IN

*Worked two positions

3/5/2012 SGH

1. Did they work greater than 67 days?
2. Did they work greater or equal to 14 hours in the majority of the weeks worked?

If "NO" to either question then they are not "IN" the union.

If "YES" to both questions, then they are "IN" union.