



IN THE MATTER OF A PETITION FOR
REPRESENTATION ELECTION

October 9, 2023

Minnesota Management & Budget,
State of Minnesota,
St. Paul, Minnesota
- and -
Law Enforcement Labor Services, Inc.,
Brooklyn Center, Minnesota
-and-
American Federation of State, County, and
Municipal Employees, Council 5,
South St. Paul, Minnesota

BMS Case No. 24PRE0022

RULING ON REQUEST FOR RECONSIDERATION
- AND -
UNFAIR ELECTION PRACTICE

INTRODUCTION

On July 3, 2023, the State of Minnesota, Bureau of Mediation Services (Bureau), received a petition filed by Law Enforcement Labor Services, Inc., Brooklyn Center, Minnesota (LELS). The petition requested certification as exclusive representative for certain employees, employed by the State of Minnesota, Minnesota Management and Budget, St. Paul, Minnesota (Employer). The employee unit in question is State Unit 17, public safety radio communications operator unit, currently represented by the American Federation of State, County, and Municipal Employees, Council 5, South St. Paul, Minnesota (AFSCME).

1380 Energy Lane, Suite 2, St. Paul, MN 55108
651-649-5421 | FAX: 651-643-3013 | TTD: 1-800-627-3529 | mn.gov/bms
An Equal Opportunity Employer

On July 21, 2023, the Bureau issued a Certification of Exclusive Representative Order in the above-entitled matter. This Order determined the card check election verified a majority of the employees within the appropriate unit had elected LELS as its exclusive representative.

On July 26, 2023, the Bureau received a Request for Reconsideration filed by the AFSCME. The Request for Reconsideration asks the Commissioner to reconsider the determination that a majority showing of the employees within Unit 17 have selected LELS as their exclusive representative.

On July 27, 2023, the Bureau issued a Ruling on Request for Stay Pending Appeal granting AFSCME's request to stay the Bureau's July 21, 2023, Order. The Employer and LELS were given an opportunity to submit arguments related to AFSCME's Request for Reconsideration. LELS submitted a response, while the Employer declined to respond.

On July 31, 2023, the Bureau received an unfair election practice claim from the AFSCME, stating the Employer unfairly influenced the outcome of the election.

ISSUES

1. Is the Request for Reconsideration filed by the AFSCME timely?
2. If so, does the Request for Reconsideration meet the standards required to grant reconsideration?
3. Is the charge of Unfair Election Practice timely?
4. Has an Unfair Election Practice been committed that substantially affected the results of the election?

APPLICABLE STANDARDS

Reconsideration

5510.2210 REQUESTING RECONSIDERATION.

Subpart 1. Filing request. Unless otherwise provided, a party may file a request for reconsideration of a commissioner order under parts 5510.0110 to 5510.2310.

Subp. 2. Filing deadline. A request must be filed within ten calendar days after the order date.

Subp. 3. Required form and service.

A. The request must:

(1) be filed in writing with the commissioner;

(2) be served on all other parties; and

(3) contain a statement of the request and the grounds supporting the request required under part 5510.5290, subpart 1, item A.

B. A charge of an unfair election practice is not grounds for reconsideration.

Subp. 4. Staying commissioner order. If the commissioner determines that the grounds supporting the request are raised under part 5510.5290, subpart 1, item A, the challenged order must be stayed until a hearing or investigation according to part 5510.1910 has been held and a decision is issued.

Unfair Election Practice.

179A.12 EXCLUSIVE REPRESENTATION; ELECTIONS; DECERTIFICATION.

Subd. 11. Unfair labor practices. If the commissioner finds that an unfair labor practice was committed by an employer or representative candidate or an employee or group of employees, and that the unfair labor practice affected the result of an election, or that procedural or other irregularities in the conduct of the election may have substantially affected its results, the commissioner may void the election result and order a new election.

5510.0310 DEFINITIONS.

Subp. 23. Unfair election practice. "Unfair election practice" means a practice or action that affects the result of a certification, representation, or decertification election, specifically:

A. any prohibition defined in part 5510.2110 or a violation of a commissioner-issued election order; and

B. any unfair practice as defined under Minnesota Statutes, section 179A.13, committed by an:

(1) employer or its agents;

(2) employee organization or its agents; or

(3) employee.

5510.2110 UNFAIR ELECTION PRACTICES.

Subpart 1. Defining unfair election practice. The following acts are prohibited and constitute unfair election practices if committed by an employer or its agents, an employee organization or its agents, or an employee:

- A. campaigning on the day of an on-site election;*
- B. congregating in or near a polling place while the polls are open;*
- C. coercing or intimidating or otherwise unlawfully attempting to influence an eligible voter; or*
- D. violating an election order.*

Subp. 2. Filing charges.

A. A party to an election may file with the commissioner a charge of an unfair election practice, and a copy of the charge must be served by the charging party on all other parties to the election. A charge must:

- (1) be filed within ten calendar days from the date the election results are certified;*
- (2) be in writing, be signed by the charging party, and state the name and address of the party against whom the charge is made; and*
- (3) specify the alleged unfair election practice and the facts supporting the charge.*

B. If a charge of an unfair election practice is filed, the commissioner must:

- (1) stay the election results pending a hearing or investigation according to part 5510.1910 if the commissioner finds that the alleged unfair election practice may have materially affected the election results;*
- (2) conduct a hearing or investigation on the charge according to part 5510.1910; and*
- (3) rescind:*
 - (a) the certification of exclusive representative if the commissioner determines an unfair election practice occurred;*
 - or*
 - (b) the certification of election results according to subpart 3.*

Subp. 3. Commissioner determination. Based on a hearing or investigation under subpart 2, item B, the commissioner must issue an order on the charge. If the commissioner determines an unfair election practice occurred, the commissioner must void the election and order a new election according to Minnesota Statutes, section 179A.12, subdivision 11.

DISCUSSION

1. Is the Request for Reconsideration filed by the AFSCME timely?

The AFSCME Request for Reconsideration seeks to rescind the July 21, 2023 Order certifying the LELS as the exclusive representative for Unit 17 and continue the AFSCME as the certified exclusive representative. In this case, the ten calendar day time period began on July 22, 2023, and ended on July 31, 2023. Accordingly, the AFSCME's request is timely.

2. Does the Request for Reconsideration meet the standards required to grant reconsideration?

The submission claims the Bureau erred in the application of 2023 Session Law, Chapter 53, Article 11, Section 18.

In its Request for Reconsideration, the AFSCME argues the Bureau applied a provision of Session Law not yet enacted and additionally the section is not applicable to a "disputed question of representation under PELRA."

It is the policy of the Bureau to grant timely requests for reconsideration of a determination, if we find such request is based upon a claimed error of fact or law which was not adequately developed or articulated during the agency's hearing. See Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320 and University of Minnesota, BMS Case No. 94-PCL-1529 (May 9, 1995) citing City of White Bear Lake, Minnesota and Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320, Minneapolis, Minnesota, BMS Case No. 89-PR-2079 (March 30, 1989).

In review of the AFSCME's argument that the section of statute does not become effective until August 1, 2023, we look to the controlling statutory language of Minn. Stat. §645.02, which reads:

645.02 EFFECTIVE DATE AND TIME OF LAWS.

Each act, except one making appropriations, enacted finally at any session of the legislature takes effect on August 1 next following its final enactment, unless a different date is specified in the act. A special law required to be approved by the local government unit affected before it goes into effect becomes effective as to the approving unit the day following the day on which the certificate of approval prescribed by section 645.021 is filed with the secretary of state, unless a later date is specified in the act. When approval of such a special law is required by two or more local government units before it may become effective, the day after the day when the last of the required certificates is filed is the effective date, unless a later date is specified in the act.

An appropriation act or an act having appropriation items enacted finally at any session of the legislature takes effect at the beginning of the first day of July next following its final enactment, unless a different date is specified in the act.

Each act takes effect at 12:01 a.m. on the day it becomes effective, unless a different time is specified in the act.

The statutory provision which the AFSCME argues was not yet applicable, is 2023 Minnesota Session Laws, Chapter 53, Article 11, Section 18:

Sec. 18. Minnesota Statutes 2022, section 179A.12, is amended by adding a subdivision to read:

Subd. 2a. Majority verification procedure. (a) Notwithstanding any other provision of this section, an employee organization may file a petition with the commissioner requesting certification as the exclusive representative of an appropriate unit based on a verification that over 50 percent of the employees in the proposed appropriate unit wish to be represented by the petitioner. The commissioner shall require dated representation authorization signatures of affected employees as verification of the employee organization's claim of majority status.

(b) Upon receipt of an employee organization's petition, accompanied by employee authorization signatures under this subdivision, the commissioner shall investigate the petition. If the commissioner determines that over 50 percent of the employees in an appropriate unit have provided authorization signatures designating the employee organization specified in the petition as their exclusive representative, the commissioner shall not order an election but shall certify the employee organization.

Chapter 53 is the final enactment of Senate File No. 3035, which is “An act relating to state government; establishing a biennial budget for jobs, labor, and economic development; appropriating money for the Department of Labor and Industry, Department of Employment and Economic Development, Bureau of Mediation Services, and Workers' Compensation Court of Appeals; . . .” Article 19, Section 4, appropriates the Bureau’s budget for the upcoming biennium. In accordance with §645.02, “an appropriation act or an act having appropriation items enacted finally at any session of the legislature takes effect at the beginning of the first day of July next following its final enactment, unless a different date is specified in the act.”

Section 18 of Article 11, in Chapter 53 does not contain an effective date, therefore becomes effective on the first day of July next following the date of enactment, which was May 23, 2023. This effective date is in accordance with §645.02 given the Chapter is an appropriations act and also an act having appropriation items enacted. The Bureau did not error in determining the proper effective date of the act.

We then turn to the AFSCME argument in the request for reconsideration that the revised Subdivision 2 (now Subdivision 2a) is not applicable to a disputed question of representation of established units under PELRA. The LELS argues that the language in Minn. Stat. §179A.12, Subd. 2a, must apply to all petitions requesting certification as the exclusive representative of an appropriate unit, rather than to only those petitions seeking the certification for a proposed unit.

It does not go without notice, as the AFSCME argues, the substitution of a card check verification process in lieu of secret ballot elections is unique among labor relations schemes throughout the country. It is a fact that Minnesota's public sector labor relations laws differ significantly from most other labor relations laws in other States. Minnesota Statutes §179A.12, provides for the certification of exclusive representation status. Subdivision 3 was not amended when Subdivision 2a was enacted.

Subd. 3. Obtaining elections.

Any employee organization may obtain a certification election upon petition to the commissioner stating that at least 30 percent of the employees of a proposed appropriate unit wish to be represented by the petitioner. Any employee organization may obtain a representation election upon petition to the commissioner stating that the currently certified representative no longer represents the majority of employees in an established unit and that at least 30 percent of the employees in the established unit wish to be represented by the petitioner rather than by the currently certified representative. 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.

Subdivision 3 continues to provide that an employee organization may obtain an election in three scenarios: (1) upon a petition to the commissioner stating that at least 30 percent of the employees of a proposed appropriate unit wish to be represented by the petitioner; (2) upon a petition to the commissioner, stating that the currently certified representative no longer represents the majority of employees in an established unit and that at least 30 percent of employees in the established unit wish to be represented by the petitioner rather than the currently certified representative; and (3) upon a petition from an individual employee or group of employees in a unit stating that 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.

Once a petition is submitted and a sufficient showing of interest has been established, the Bureau must then verify a majority preference of the employees within the unit. It is within the rights afforded an appropriate unit to obtain a representation election if they believe the currently certified representative no longer represents the majority. The question at hand is the format for the election to verify majority support. Should the election require a mandatory card check under §179A.12, Subd, 2a, as amended by Chapter 53, or a mail ballot process, under §179A.12, Subd. 3?

§179A.12, Subdivision 3 provides for a representation election where an employee organization states the currently certified representative no longer represents a majority of the employees. It also distinguishes between proposed units (scenario 1, above) and established units (scenario 2, above) for the purpose of obtaining an election. For established units, a petitioner must state

that the currently certified representative no longer represents the majority of employees in the unit and that at least 30 percent of employees in the unit wish to be represented by the petitioner. Because with its petition, LELS submitted the requisite showing of interest during the open window period that employees in Unit 17 wished to be represented by the LELS rather than the AFSCME, a certification election should be conducted under §179A.12, Subdivision 3.

The remaining question is whether the LELS can bypass a mail ballot election under subdivision 3 and have its representation certified under the majority verification procedure outlined in subdivision 2a.

§179A.12, Subd. 2a, as amended by Chapter 53, provides the commissioner will accept petitions from an exclusive representative wishing to represent "an appropriate unit" where over 50 percent of the employees "in the proposed appropriate unit" so indicate. The AFSCME argues that the language "proposed appropriate unit" does not apply to established units that are already represented by a certified representative. Whether LELS is entitled to a majority verification under subdivision 2a is thus a matter of statutory interpretation.

The first step in statutory interpretation is to determine whether the language is ambiguous. *Moore v. Robinson Env'tl.*, 954 N.W.2d 277, 281 (Minn. 2021). A statute is ambiguous if it is subject to more than one reasonable interpretation. *Id.* If the language is unambiguous, the court must enforce the plain meaning of the statute. *Id.* Words and phrases in a statute are construed according to their common and approved usage, and courts may consider dictionary definitions to determine a word's common and ordinary meaning. Minn. Stat. § 645.08(1) (2022); *State v. Thonesavanh*, 904 N.W.2d 432, 436 (Minn. 2017). Furthermore, "general words are construed to be restricted in their meaning by preceding particular words." Minn. Stat. § 645.08(3). Statutes "must be construed as a whole and the words and sentences therein are to be understood...in light of their context." *State v. Boecker*, 893 N.W.2d 348, 351 (Minn. 2017); *see also* Minn. Stat. § 645.16 (stating that laws must be construed to give effect to all their provisions); *State v. Friese*, 959 N.W.2d 205, 212 (Minn. 2021) (explaining that the whole-statute canon requires that a statute be read and construed as a whole so as to harmonize and give effect to all its parts),

Here, the reference to "the proposed appropriate unit" in subdivision 2a clarifies which type of "an appropriate unit" the Exclusive Representative wishes to represent. The legislature's use of the words "proposed unit" indicates the majority verification procedure in subdivision 2a is applicable only to new units. The case at hand, however, is for the certification of an exclusive representative of "an established unit", not a "proposed" unit. The Bureau misinterpreted the statute as amended by 2023 Session Law, Chapter 53, Article 11, Section 18, for determining majority verification.

Interpretation of Subdivision 2a presents some difficulties, and this presents a close case. It should be noted that, even if the subdivision was determined to be ambiguous, then it would be appropriate to interpret the subdivision in favor of ordering a mail ballot election. Where statutory language is ambiguous because it is subject to more than one reasonable interpretation, courts "may look beyond the statutory language to determine legislative intent."

A.A.A. v. Minn. Dep't of Human Servs., 832 N.W.2d 816, 819 (Minn. 2013). Legislative intent may be ascertained by considering several factors, including “the object to be attained,” “the consequences of a particular interpretation,” and “administrative interpretations of the statute.” Minn. Stat. §645.16. In an instance where the statute outlining the proper procedure may be open to multiple interpretations, a mail ballot election is the best method to ascertain the employees’ wishes.

Following an investigation and for the reasons summarized above, the Order issued on July 21, 2023, is contrary to law and the request for reconsideration must be granted.

3. Is the Charge of Unfair Election Practice timely?

In accordance with Minnesota Rules 5510.2110, a party filing a charge of unfair election practice must do so within ten calendar days from the date the election results were certified. Here the AFSCME served the charge on the commissioner and other parties on July 31, 2023, being the tenth day from certification. The filing is timely.

4. Has an Unfair Election Practice been committed that substantially affected the results of the election?

An action or practice which affects the result of an election is the standard by which we will review an unfair election practice claim. Affecting actions that are unfair practices under Minn. Stat. §179A.13, campaigning on the day of an on-site election, congregating in or near a polling place while the polls are open, coercing or intimidating or otherwise unlawfully attempting to influence an eligible voter, or violating an election order.

The claim being made by the AFSCME is that “the Employer’s agent unlawfully assisted LELS’s efforts to challenge AFSCME’s representation in violation of Minn. Stat. §179A.13, subd. 2(1), (2), specifically by actively encouraging the representation challenge and allowing LELS to meet with, and collect signed authorization cards from, bargaining unit employees in at least two different two-hour meetings on paid Employer time and on Employer property.” Minn. Stat. §179A.13, Subd. 1 provides for the filing of unfair labor practice charges:

Actions. (a) The practices specified in this section are unfair labor practices. Any employee, employer, employee or employer organization, exclusive representative, or any other person or organization aggrieved by an unfair labor practice as defined in this section may file an unfair labor practice charge with the board.

The law further provides how the Board will process, investigate and determine whether an unfair labor practice has occurred. The Bureau is without authority to determine unfair labor practices under §179A.13, our authority is limited to unfair election practices as identified in §179A.12 and MN Rule 5510.2110. The AFSCME has not submitted a finding by the Board of an unfair labor practice which would affect the result of the election. Rather than dismiss the charge on a technicality, we will review the claim against the definition of unfair election practice

found in the rule, R. 5510.2100, Subp. 1, C., coercing or intimidating or otherwise unlawfully attempting to influence an eligible voter.

Supporting its claim of an unfair election practice, the AFSCME submits a partial copy of an email between a Ms. Kaci Cavallaro and Ms. Sheri Stevens, regarding securing a meeting room to discuss switching unions. It is the AFSCME's claim that allowing the employees to use the Employer's space, along with Ms. Stevens response, affected the results of the election. The responses from Ms. Stevens were:

Hi Kaci

Good for you all I hope you learn enough to make an informed decision. June 21 though will not work for the tour room as it us the 20th anniversary for RTMC and that room is going to be used to set up a celebration of sorts. Let me figure out options and get back to you.

(June 15, 2023 5:39am)

And then:

Hi Bobbie,

Would you please book the incident room on the 2nd floor for June 21st from 09:45-11:45 and then again 16:00-18:00.

(June 15, 2023 10:12am)

There is no indication any further communication occurred. There is also no indication the communication was more widespread than merely Ms. Stevens, Ms. Cavallaro and "Bobbie". As noted in the above email chain, it is an employee of the Department of Public Safety's Public Safety Answering Point's Roseville Office seeking to use a meeting room on the Employer's premises. There is no indication this request was an unlawful attempt by the Employer to influence the outcome of an election. The AFSCME has not provided any proof that employees are not allowed to utilize meeting rooms on site for either personal or union reasons.

Given the innocuous statement that "I hope you learn enough to make an informed decision" cannot be viewed as biased to one position or the other, it cannot be viewed as coercing, intimidating or an unlawful attempt to influence. Having no reason to believe the use of the Employer's meeting room was anything out of the ordinary, it cannot be viewed as influencing as well.

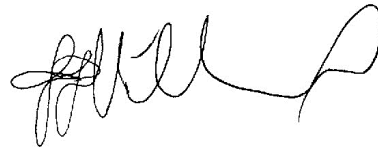
We find that no unfair election practice that affects the result of an election occurred.

FINDINGS AND ORDERS

1. The Union's Request for Reconsideration is timely.
2. The Union's claim of error of fact or law is valid.

3. The Request for Reconsideration is sustained.
4. The Union's claim of Unfair Election Practice is timely.
5. The Unfair Election Practice charge is denied.
6. Bureau's July 27, 2023, stay of its original order from July 21, 2023, is lifted and the Certification Order is rescinded.
7. Pursuant to §179A.12 Subd. 3, an election is ordered via mail ballot and the Maintenance of Status Quo issued on July 5, 2023, remains in effect.
8. The employer shall make copies of this order upon receipt and post it at the work location(s) of all involved employees for no less than 14 days.

STATE OF MINNESOTA
Bureau of Mediation Services

A handwritten signature in black ink, appearing to read 'Johnny Villarreal', with a stylized flourish at the end.

JOHNNY VILLARREAL
Commissioner

cc: Brendan Cummins
Jennifer Claseman
Jim Mortenson
Bart Andersen