

**IN THE MATTER OF A PETITION
FOR CLARIFICATION OR
AMENDMENT OF APPROPRIATE
UNIT**

September 9, 2025

Minnesota Management & Budget, St. Paul, Minnesota
- and -
AFSCME Minnesota Council 5, South St. Paul, Minnesota
- and -
Minnesota Association of Professional Employees, Shoreview, Minnesota

BMS Case No. 25PCL0540

UNIT CLARIFICATION ORDER

INTRODUCTION

On November 22, 2024, the State of Minnesota, Bureau of Mediation Services (Bureau), received a petition filed by the State of Minnesota – Minnesota Management & Budget (State or MMB) requesting to move the classifications of Dairy Inspector 1, Dairy Inspector 2, and Interstate Milk Rating Officer from the Unit No. 7 – Technical Unit which is certified to American Federation of State, County and Municipal Employees, Council 5 (AFSCME Council 5) to Unit No. 14 – General Professional Unit which is certified to Minnesota Association of Professional Employees (MAPE).

On March 14, 2025, a pre-hearing was held with the parties. A hearing was conducted by the Bureau on July 15, 2025. At the close of the hearing the parties agreed to submit post-hearing briefs by August 15, 2025, at 4:00 p.m. MAPE indicated at the conclusion of the hearing it would not be submitting a post-hearing brief. The post-hearing briefs from MMB and AFSCME Council 5 were received electronically by the Hearing Officer in a timely manner. Subsequently, the Hearing Officer cross-served the post-hearing briefs on each party.

PROCEDURAL HISTORY

The Minnesota Legislature determined the appropriate units for unclassified state employees in 1980. See Minn. Stat. § 179A.10, Subd. 2. The exclusive representative for Unit No. 7 – Technical Unit is AFSCME Council 5, and Unit No. 14 – General Professional Unit is represented by MAPE.

When the State creates a new job classification, it will complete a Temporary Unit Assignment (TUA) document which is submitted to the applicable exclusive representative(s) and the Bureau. The exclusive representatives have a twenty (20) day period in which to object to the State's proposed placement of the classification. If no objections are received the job classification will be added to the designated unit via a unit clarification order issued by the Bureau.

On July 7, 1996, the Commissioner of the Minnesota Department of Employees Relations (DOER), the predecessor to Minnesota Management and Budget (MMB), created three new job classifications: Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer. These were temporarily assigned to Unit No. 14 – General Professional Unit via TUA.¹ Objections were raised by AFSCME Council No. 6 (now AFSCME Council 5) to the temporary unit assignments filed by DOER, and a unit clarification hearing was conducted on October 30, 1996. A unit clarification order was issued by the Bureau on February 6, 1997, which placed the Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer into Unit No. 7 – Technical Unit. *See State of Minnesota – Department of Employee Relations and Minnesota State Employees Union – AFSCME, Council 6 and Minnesota Association of Professional Employees, BMS Case Nos. 97PCL0093, 0094, 0095 (February 6, 1997).*

APPEARANCES

At the hearing, Mr. Aaron Bouschor, Labor Relations Consultant and Ms. Jennifer Ziegler, Enterprise Director – Labor Relations appeared on behalf of the State of Minnesota - MMB and Ms. Crystal Kreklow, State Field Director and Mr. Eric Halvorson, Field Director appeared on behalf of AFSCME Council 5, Ms. Kristin Kirchoff-Franklin, Field Director appeared on behalf of MAPE.

Appearances were also made by the following witnesses:

- Christine Overfors, MMB Classification and Compensation Consultant
- Becky Hierlinger, Human Resources Consultant 1
- Meghan Melheim, Dairy Inspection Supervisor
- Grace Martin, Ag Consultant
- Ashley Hassler, Dairy Inspector 1
- Kayti Rose, Dairy Inspector 1
- Juma Lisok Dairy Inspector 2
- Sarah Current, Dairy Inspector 2
- Sarah Mellgren, Dairy Inspector 2
- Amanda Johnson, Dairy Enforcement Supervisor
- Brandon Wolf, Interstate Milk Rating Officer
- Nicole Neeser, Dairy and Meat Inspection Division Director
- Dori Leland, MMB Enterprise Director

¹ The classifications of Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer replaced the classifications of Dairy Regulatory Specialist I, Dairy Regulatory Specialist II and Milk Certification Specialist.

EXHIBITS

The State of Minnesota – MMB introduced a binder with exhibits identified by Tabs numbered 1 - 44. No objections were made to the exhibits, and they were admitted by the Hearing Officer.

STIPULATED ISSUE

Should the classifications of Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer be moved into Unit No. 14 – General Professional Unit or remain in Unit No. 7 – Technical Unit?

RELEVANT STATUTES

Minn. Stat. § 179A.03, Subd. 13 sets forth the definition of professional employee. It reads,

(1) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (iv) requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education, an apprenticeship, or training in the performance of routine mental, manual, or physical processes; or (2) any employee, who (i) has completed the course of advanced instruction and study described in clause (1), item (iv); and (ii) is performing related work under the supervision of a professional person to qualify as a professional employee as defined in clause (1); or (3) a teacher.

Minn. Stat. § 179A.10, Subd. 4. sets forth,

The commissioner shall assign state employee classifications, court employee classifications, University of Minnesota employee classifications, and supervisory positions to the appropriate units when the classifications or positions have not been assigned under subdivision 2 or section [179A.101](#) or [179A.11](#) or have been significantly modified in occupational content subsequent to assignment under these sections. The assignment of the classes shall be made on the basis of the community of interest of the majority of employees in these classes with the employees within the statutory units. All the employees in a class, excluding supervisory and confidential employees, shall be assigned to a single appropriate unit.

DISCUSSION

The following is a listing of the most relevant exhibits:

- Exhibit 1 – Department of Employee Relations Administrative Procedure 6, revised on 10-1-1998 which references for bargaining unit changes, DOER is to apply State law, Bureau of Mediation Services rules, policies and determinations on bargaining unit status.

- Exhibit 4 – Department of Agriculture additional information on the Dairy Inspector Series in response to items identified in the 1997 BMS Order.
- Exhibit 5 – Dairy Inspector 1, class specification from Nov. 2024.
- Exhibit 6 - Dairy Inspector 2, class specification from Nov. 2024.
- Exhibit 7 – Interstate Milk Rating Officer, class specification from Oct. 2024.
- Exhibit 11 - Dairy Inspector 1, position description from Jan. 1995.
- Exhibit 12 - Dairy Inspector 2, position description from Mar. 1996.
- Exhibit 13 – Interstate Milk Rating Officer, position description from Jan. 1995.
- Exhibit 15, Bates #166 – Milk Plant Inspection Report from 1997
- Exhibit 15, Bates #165 – Grade A Dairy Farm Inspection Report from 1997
- Exhibit 18 – Dairy Plant general inspection report from Jan. 2023
- Exhibit 19 – Dairy Farm Inspection Report from Aug. 2020
- Exhibit 20 – Plant inspection report from May 2023.

State of Minnesota's Arguments:

The State argues the job duties of the classifications of Dairy Inspector 1, Dairy Inspector 2 and the Interstate Milk Rating Officer have evolved over the last few decades demonstrating the work performed is now of a professional nature. Additionally, the State offered through evidence and testimony these positions need: "(1) knowledge of food safety and bacteria like *Listeria monocytogenes* to evaluate adequacy of dairy plant food-safety plans; (2) knowledge of fluid flow and engineering to accurately evaluate dairy equipment and whether it meets requirements for acceptable construction; (3) knowledge of chemical sanitizers and detergents, including their chemical makeup, to ensure such chemicals are safely used in the dairy industry; and (4) evaluation of water pipeline systems, including the ability to read designs and blueprints, to assess whether systems were properly installed to prevent farm water source contamination." which shows the work is intellectual in character. *State's Brief pgs. 5-6 & Exhibits 3 & 44.*

The State also pointed out the significant changes in technology over the past twenty-plus years in the dairy industry including automated milking systems, rotary parlors, milking robots, and automated teat dip sprayers which dairy inspectors need to have an understanding of and assess whether they comply with regulations.

Dairy inspectors now also have to apply the Food Safety Modernization Act (FSMA) which sets forth standards for food product manufacturers. Lastly, the State noted Dairy Inspector 1, Dairy Inspector 2 and the Interstate Milk Rating Officer all require advanced knowledge of dairy and food safety science as well as principles of mechanical engineering and design. *Exhibits 5, 6 & 7.*

AFSCME Council 5's Arguments:

AFSCME Council 5 argues the classifications of Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer do not meet the standards set forth in Minn. Stat. § 179A.03, Subd. 13 to be considered professional employees. AFSCME Council 5 argues these classifications remain technical in their application but "professional in mannerisms". *AFSCME Council 5 Brief pg. 1.* Specifically, AFSCME Council 5 states, the use of PMO, USDA, FDA, state laws and regulations show the work is standardized, manual and routine.

Additionally, AFSCME Council 5 argues employees in these classifications do not use their own discretion and judgment to determine what constitutes a violation. Instead they have a set of guidelines they are required to follow.

MAPE's Arguments:

MAPE presented no evidence or testimony at the hearing, nor did it submit a post-hearing brief.

Review of Occupational Content

As indicated in the Minnesota Court of Appeals case *In the Matter of a Petition for Determination of Appropriate Unit and Certification as Exclusive Representative Service Employees International Union, Local 284 v. University of Minnesota, Unit 8 and Bureau of Mediation Services*, the BMS does not have unlimited authority to assign employees to statutorily specified bargaining units. PELRA states in Minn. Stat. § 179A.10, Subd. 4 the conditions under which BMS may make such an assignment. The Court wrote, "The statute requires that for BMS to [re]assign a classification to a bargaining unit, the occupational content of that position must have been "significantly modified."..."Significant" has been described as "meaningful," "[h]aving or likely to have a major effect," or "[f]airly large in amount or quantity". See Minn. Ct. App. A16-1985 (September 5, 2017), pg. 15.

Due to the fact the Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer were previously assigned to Unit No. 7 – Technical Unit when these classifications were created in 1997, the first step of the Bureau's analysis is to determine if there has been a significant modification in the occupational content for these classifications as specified in Minn. Stat. § 179A.10, Subd. 4. If the Bureau finds there has been a significant modification in the occupational content for Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer, it is then necessary to determine if the classifications meet the definition of "professional employee" as defined in Minn. Stat. § 179A.03, Subd. 13.

"In considering matters where a party is seeking to move classifications from one appropriate unit to another, the Bureau has ruled the burden of proof falls upon the petitioner except in cases involving the supervisory status of employees where the burden falls on the party seeking to establish supervisory status." See *AFSCME Minnesota Council 5 and Special School District 1 – Minneapolis and Association of Minneapolis School District Professional Employees*, BMS Case No. 15PCL0210 (February 17, 2017).

Here the State is the petitioning party and therefore has the burden of proof in this case.

In order to determine if there has been a significant modification in the occupational content of the Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer classifications since their original placement in Unit No. 7 – Technical in 1997, it is necessary to compare the current class specification documents (*Exhibits 5, 6, 7*) against the position descriptions from 1995 (*Exhibits 11, 12, 13*). In 2021, the Minnesota Court of Appeals provided guidance to the Bureau regarding job classifications at the State. The court stated, "BMS's authority is limited to assigning the higher-level organizational component of classifications to bargaining units and to assigning specified supervisory positions to appropriate bargaining units. Minn. Stat. § 179A.10, subd. 4. These statutorily designated duties do not include the lower-level organization of assigning positions to classifications." See *In the Matter of a Petition for Clarification of an Appropriate Unit, MAPE vs. State of Minnesota and AFSCME Council 5*, A20-1088 (May 3, 2021). Exhibits 11, 12 and 13 (position descriptions) were originally submitted as part of the 1997 unit clarification hearing. Because we now have class specification documents available and the Bureau is restricted to reviewing classifications, the analysis will focus on the comparison between the class specification documentation and the old position descriptions.

The comparison of the class specification documents for the Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer against the 1995 position descriptions identify numerous differences in the occupation content of these classifications.

- The Dairy Inspector 1 position now has more general supervision.
- All three positions are now identified as requiring knowledge in microbiology, chemistry and biological principles as they relate to food safety production systems and protection of human health.
- All three positions must understand the principles of engineering, design and fluid flow.
- The Dairy Inspector 2 has a greater level of independence and discretion with inspection of farms, haulers, tankers and dairy plants.
- Interstate Milk Rating Inspectors must have knowledge of food contaminants, equipment and design standards, laboratory techniques for sampling and testing, the Food Safety Modernization Act, as well as the State well water and plumbing code.

A comparison was also made between the inspection report forms from 1997 against the current inspection report forms. (*Exhibit 15, Bates # 166 - Milk Plant Inspection Report from 1997, Exhibit 15, Bates # 165 – Grade A Dairy Farm Inspection Report from 1997, Exhibit 18 – General Inspection Report from Jan. 2023, Exhibit 19 – Dairy Farm Inspection Report from Aug. 2020, Exhibit 20 – Inspection Report from May 2023, Exhibit 21 – Manufacturing Grade Plant Inspection Report from Sept. 2020, Exhibit 22 – Milk Plant Inspection Report from May 2020*). The old inspection reports were limited to one-page checklists with only a small area for remarks. Now, the inspection reports have a checklist area but also include a longer narrative section where the inspector outlines the reasons for the inspection, what needs to be fixed and any other additional comments.

“In addition to its longstanding precedent that the petitioning party carries the burden of proof, the Bureau has previously state (sic) that it cannot rely on position descriptions as the determinative factor in unit assignment, and that the controlling factor is the nature of the work performed by the employees and that the Bureau has long held that more credence will be given to the testimony of the employees doing the job.” See *AFSCME Minnesota Council 5 and Special School District 1 – Minneapolis and Association of Minneapolis School District Professional Employees*, BMS Case No. 15PCL0210 (February 17, 2017) citing *State of Minnesota – Department of Employee Relations and Minnesota State Employees Union – AFSCME, Council 6 and Minnesota Association of Professional Employees*, BMS Case No. 97PCL0093, 0094, 0095 (February 6, 1997).

Christine Overfors testified farm inspections no longer require a passing score, and inspectors now have more discretion regarding inspections. She also testified the Interstate Milk Rating Officers position has changed since 1997 to now include lab evaluations, equipment reviews and training components. Meghan Melheim testified on cross-examination that UV pasteurization technology is something new to the field. Nicole Nesser, Dairy and Meat Inspection Division Director testified the biggest change in the industry occurred in 2015 or 2016 with the introduction of the Food Safety Modernization Act (FSMA).

Based upon review of the evidence presented the Bureau finds there has been a significant change in the occupational content of the classifications of Dairy Inspector 1, Dairy Inspector 2 and the Interstate Milk Rating Officer since the classifications were original assigned to Unit No. 7 – Technical in 1997. Therefore, it is now necessary to determine if these classifications meet the definition of “professional employee” as defined in Minn. Stat. § 179A.03, Subd. 13.

Review of “Professional Employee” definition

In determining if a person is a “professional employee” there are four factors outlined in Minnesota Statute §179A.03, Subd. 13. These are:

- (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work;
- (ii) involving the consistent exercise of discretion and judgment in its performance;
- (iii) of a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and
- (iv) requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education, an apprenticeship, or training in the performance of routine mental, manual, or physical processes;

Christine Overfors testified, now Dairy Inspector 2's are allowed to inspect other kinds of food (i.e. juice) if the plant primarily processes dairy. This is to save time from sending a separate food inspector out to inspect the juice process. Meghan Melheim testified on cross-examination there is no written scale of violations. Grace Martin testified inspectors can make determinations on the spot to remove a farm or plant permit. They can reduce a farm from Grade A to Grade B if the farm is no longer meeting Grade A standards. Ashley Hassler, a Dairy Inspector 1, testified, there are different requirements for the different types of inspections that are conducted. Inspectors make the decision on their own if a farm doesn't pass inspection. She decides if there is a violation or not. The inspector also writes the specific orders. Dairy Inspector 1, Kayti Rose testified there is some “canned language” generated by the computer system when she is doing a report, but it isn't descriptive enough, so she adds language. She explained she doesn't have to consult with a supervisor before issuing a violation. She acknowledged there are standards set forth for cleanliness, and she doesn't make those standards, but she does interpret them. On cross-examination Ms. Rose testified the most difficult part of the job is interpreting the rules and applying them to each individual farm. Sarah Current, a Dairy Inspector 2, testified, the inspection is adapted to the type of farm being inspected. For example, what is applicable to an Amish farm where the cows are milked by hand is different than what is inspected at a larger-scale farm with hundreds of cows. It is her judgment to issue a notice of permit suspension until a violation is corrected. Suspending a permit can affect the income of the farm. Dairy Inspector 2, Sarah Mellgren testified she exercises discretion and judgment via her interpretation of the Pasteurized Milk Ordinance (PMO). Inspectors complete a standard form, but the process of the inspection is not standard. Former Interstate Milk Rating Officer, Amanda Johnson testified there are more dairy products available on the market now which has affected inspections. She explained form 2359 is a template they use for inspections, but it is not standardized because the equipment will be unique to each facility being inspected. Division Director Nicole Nesser testified the dairy industry is now subject to general food safety regulations. She also explained in 2010 the State changed to a computer system for recording inspections and there is no longer an inspection score. Now, it is up to the inspectors to determine if there is a violation.

Based on the testimony of the witnesses the work of the Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer is predominantly intellectual and varied in character.

In the 1997 unit clarification order the hearing officer wrote,

Inspectors Greg Wegscheid, Elaine Santi, Neal Scott and Dan Erickson who presently are in the classifications in question testified that their positions were structured and provided for little discretion. Also, they testified that they consulted their supervisors when they needed to deviate from prescribed procedure or needed a procedure interpreted. In addition, they felt their work was more technical and record keeping in nature.

The current employees testified about using discretion and judgment during inspections and when determining whether or not to pull a permit. Although a template form is used to document the inspections each one includes a narrative section which is used to fully explain the outcome of the inspection. These are similar in nature to the inspection reports used by the Department of Agriculture. (*Exhibits 25 & 27*). The output on these forms is clearly not standardized.

The last consideration used to determine if an employee is professional is the requirement of advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education, an apprenticeship, or training in the performance of routine mental, manual, or physical processes.

The class specification documents all reference the need for knowledge in microbiology, chemistry and biological principles as they relate to food safety, production systems and the protection of human health. These documents also cite to needing knowledge of the principles of engineering, design and fluid flow. (*Exhibits 5, 6, 7*).

Dairy Inspector 2, Sarah Mellgren testified on cross-examination she completed online microbiology coursework, Food and Drug Administration coursework and an advanced processing course provided by the State and went through a certification process and test. Former Interstate Milk Rating Officer, Amanda Johnson testified the amount of engineering knowledge they need now is much higher than in the past. They need to know and understand how equipment is fabricated. They also must understand microbiology to know about pathogen risks. Interstate Milk Rating Officer Brandon Wolf testified that processes used 25 year ago are now obsolete. He has to understand water recovery systems and electrical connections. Division Director Nicole Nesser testified all three classifications need advanced knowledge in the area of dairy science. Dori Leland, MMB Enterprise Director, testified many of the positions in both MAPE and AFSCME Council 5 bargaining units do not have a general education requirement. There is no general education requirement for her management position. She also explained on the job training is not restricted to technical positions. For example, disability examiners who are part of MAPE are hired with no background or experience and receive months long on the job training to be qualified to do disability evaluations for the Social Security Administration.

While the statute requires professional employees have advanced knowledge in a field of science or learning, and often this advanced knowledge is obtained by studying at an institution of higher learning. The statute does not mandate that an institute of higher learning is the only way to obtain advanced knowledge. Here the testimony and exhibits all highlight a need for knowledge in the areas of microbiology, chemistry and engineering. These are not areas of study that are achieved through a general academic education. Whether these topics are taught through online courses or provided by the Employer, they meet the criteria of requiring advanced knowledge in a field of science or learning.

Based on the evidence presented the Bureau determines the classifications of Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer do meet the definition of “professional employee” as defined in Minnesota Statute §179A.03, Subd. 13.

FINDINGS

Overall, the evidence shows both a significant change in the occupational content of Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer since 1997, and that these classifications meet the definition of professional employee set forth in statute. The State has met its burden of proof that there has been a significant change in the occupational content for the Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer. The State has also met the burden of proof that the classifications of Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer meet the statutory definition of “professional employee.”

ORDERS

1. The classifications of Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer are removed from Unit No. 7 – Technical Unit.
2. The classifications of Dairy Inspector 1, Dairy Inspector 2 and Interstate Milk Rating Officer are placed into Unit No. 14 – General Professional Unit.
3. The Amended Notice of Maintenance of Status Quo issued on November 25, 2024 is lifted.
4. The Employer shall make copies of this Order upon receipt and post it at the work location(s) of all involved employees.

STATE OF MINNESOTA
Bureau of Mediation Services

JOHNNY J. VILLARREAL
Commissioner

/s/ *Tiffany L. Schmidt*
TIFFANY L. SCHMIDT
Certified Hearing Officer

cc: Aaron Bouschor
Jennifer Ziegler
Crystal Kreklow
Eric Halvorson
Kristin Kirchoff-Franklin