STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0059

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

vs.

City of Brooklyn Park, Brooklyn Park, Minnesota,
Relator,
Bureau of Mediation Services,
Respondent.

Filed August 19, 2013
Reversed
Stauber, Judge

Bureau of Mediation Services
File No. 12PCL1193

Patrick J. Kelly, Joseph A. Kelly, Kevin M. Beck, Kelly & Lemmons, P.A., St. Paul, Minnesota (for respondent Minnesota Teamsters)

Susan E. Torgerson, Charles E. Long, Kennedy & Graven, Chtd., Minneapolis, Minnesota (for relator)

Lori Swanson, Minnesota Attorney General, Kelly S. Kemp, Assistant Attorney General, St. Paul, Minnesota (for respondent Bureau of Mediation Services)

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

On a certiorari appeal from the decision of the Commissioner of the Bureau of Mediation Services (BMS) to include police cadets in a certified bargaining unit, relator argues that (1) the decision is arbitrary and capricious and unsupported by substantial evidence and (2) because BMS issued a final order excluding police cadets from the bargaining unit in 2005, the principle of res judicata precludes review of that final order. We reverse.

FACTS

Relator City of Brooklyn Park (the city) and respondent Minnesota Teamsters Public and Law Enforcement Employee's Union, Local No. 320 (the union), are parties to collective-bargaining agreements pursuant to the Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01-.25 (2012). On November 14, 2002, BMS certified the union as the exclusive representative for certain city employees. The bargaining unit included "[a]ll non-licensed employees employed by [the city], who are public employees . . ., excluding supervisory and licensed employees." This group generally included police cadets without specifically mentioning them.

The city employs police cadets as part of its police cadet program. This program's objective "is to facilitate the entry of qualified candidates for police officer positions into the Police Department and to provide the best possible police service to our very diverse community." "Police cadets are individuals the Police Department has conditionally committed to employ as peace officers as soon as they become qualified for such a

position and that [the] Department has an opening it is authorized to fill." The city also employs community service officers (CSOs), who are members of the bargaining unit and who may have some similar responsibilities to police cadets.

In 2004, the city and the union entered into a stipulation for an order that excluded the police cadets from the bargaining unit. The stipulation stated that the parties agreed that the police cadet classification

> is not a proper part of this bargaining unit because cadets do not share a community of interest with the rest of the bargaining unit, and for the following additional reasons:
>
> a. There are currently no cadets employed by the City;
>
> b. It is the intent and has been the practice of the city to enter into an individual agreement with each cadet as he or she enters the city's cadet program;
>
> c. The cadet program is subject to change on at least an annual basis depending on funding availability and other factors under the jurisdiction of the Police Chief;
>
> d. The cadet program contemplates a position of limited duration, and possible promotion to police officer if certain conditions are met; if the conditions are not met, then the cadet is expected to leave the City and seek other opportunities; and
>
> e. Other factors make the cadet program unique within the City and not an appropriate part of this bargaining unit.

BMS issued a unit-clarification order in 2005 excluding the position of police cadet from the bargaining unit. There was no hearing, and the order's sole finding was that the parties' agreement was appropriate.

More than seven years later, the union petitioned for clarification of the appropriate bargaining unit and sought to include police cadets in that unit. Essentially,

the petition sought to re-unionize cadets. The union argued that "[t]he stipulation in 200[4] was simply incorrect."

A hearing was held at which both the city and the union introduced exhibits, the union called two witnesses, and the city called three witnesses. The hearing officer subsequently issued a unit-clarification order that included police cadets in the CSO bargaining unit. The hearing officer relied upon Minn. Stat. § 179A.12, subd. 12, and Minn. R. 5510.0510, subp. 1 (2011), for his authority to review the issue. The hearing officer concluded that there was a significant change in the community of interest of the police cadets between 2005 and 2012, requiring the inclusion of police cadets into the CSO bargaining unit. The city appealed the order by writ of certiorari to this court.

D E C I S I O N

The city challenges the hearing officer's decision, arguing that the conclusion is arbitrary and capricious and not supported by substantial evidence. The city further contends that res judicata applies to the 2005 unit clarification order, barring relitigation of the matter.

An agency decision is presumed correct and is not reversed unless one of several statutory bases is met. *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 562 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001). In relevant part, we only reverse agency action when the "finding, inferences, conclusion, or decisions are . . . unsupported by substantial evidence in view of the entire record as submitted; or . . . arbitrary or capricious." Minn. Stat. § 14.69 (2012).

> Substantial evidence is . . . such relevant evidence as a reasonable mind might accept as adequate to support a

> conclusion. . . . If the evidence is conflicting or the undisputed facts permit more than one inference to be drawn, the findings of the [hearing officer] may not be upset and the [reviewing court] may not substitute its judgment for that of the [hearing officer].

Patzwald v. Public Emp't Relations Bd., 306 N.W.2d 118, 120 (Minn. 1981).

"In determining an appropriate bargaining unit, the [agency] looks to whether the employees share a community of interests." *Nightingale Oil Co. v. Nat'l Labor Relations Bd.*, 905 F.2d 528, 535 (1st Cir. 1990). Under Minn. Stat. § 179A.09,

> the commissioner shall consider the principles and the coverage of uniform comprehensive position classification and compensation plans of the employees, professions and skilled crafts, and other occupational classifications, relevant administrative and supervisory levels of authority, geographical location, history, extent of organization, the recommendation of the parties, and other relevant factors. The commissioner shall place particular importance upon the history and extent of organization, and the desires of the petitioning employee representatives.

The city contends that the hearing officer's conclusion that the police cadets shared a community of interest with the other members of the bargaining unit is not supported by substantial evidence. We agree. The fundamental difference between the position of police cadet and the other positions is the purpose behind the position of police cadet, i.e., the "philosophical difference" alluded to in the testimony presented at the hearing. The union contends that the city's CSOs, who are members of the bargaining unit and who have some similar responsibilities to police cadets, have essentially the same responsibilities as police cadets. The union contends, without support, that CSOs are hired as police officers as often as police cadets are hired.

However, "[t]he primary objectives of the [CSO] position are to relieve sworn officers from certain tasks." Conversely, the position of police cadet is temporary, and the cadets are intended to later become police officers. Further, police cadets must be "actively and successfully pursuing the required pre-service educational preparation and necessary testing to become eligible to be licensed as a Minnesota peace officer." CSOs are not required to do so. The community services coordinator testified at the hearing that there is a difference between police cadets and CSOs. For instance, "cadets are hired with a – they're given certain benefits that the [CSO is] not afforded such as tuition assistance, conditional job offer at the time of hire for a promotional position if they meet those conditions. They work with some community outreach things that the [CSOs] do not." Moreover, police cadets "enter into a contract with the City that the [CSOs] do not, and the process used for selection is a bit different than it was for the [CSOs]." And, the record reflects that the individual contracts that police cadets have with the city include provisions pertaining to the police cadets' term of employment, expectations with regard to education and licensure, and termination. Finally, there are also significant differences in program funding. The police cadet program is funded partially through a Justice Assistance Grant, federal funding, and county money. Based on this evidence, we conclude that the finding that the cadets and CSOs share a community of interest is unsupported by substantial evidence.

The hearing officer also concluded that there had been "a significant change in the community of interest of involved employees." But, the hearing officer failed to make any specific findings to support this general conclusion, and the evidence reflects no

significant change in the community of interest of the police cadets. The record shows only that the number of cadets had increased from zero in 2004 to six in 2012. The union is convinced that the city has been replacing bargaining-unit CSOs with non-union police cadets in violation of the 2004 stipulation. But the record fails to substantiate the union's belief.

The union further contends that the city improperly introduced evidence of the city's intention to hire more police cadets than were employed in 2005. However, the city's intention is clearly stated in the parties' 2004 stipulation: "The cadet program is subject to change on at least an annual basis depending on funding availability and other factors under the jurisdiction of the Police Chief." The union should not be surprised that there are now a few more police cadets in the employ of the city than in 2005. Therefore, the record lacks substantial evidence to show that there has been a significant change in the community of interest.

We also note that, because the parties' situation has not changed, the principles of res judicata apply to the 2005 unit-clarification order. Res judicata applies to an administrative agency's decision when the "agency acts in a judicial or quasi-judicial capacity." *Graham v. Special Sch. Dist. No. 1*, 472 N.W.2d 114, 115-16 (Minn. 1991). An agency acts in a quasi-judicial capacity when it "applies a prescribed standard to reach a conclusion that affects the legal interests of the persons before it." *Meath v. Harmful Substance Comp. Bd.*, 550 N.W.2d 275, 280 (Minn. 1996) (Anderson, J., concurring). It is undisputed that the hearing officer here acted in a quasi-judicial capacity in rendering its 2005 decision.

Res judicata is a doctrine mandating an end to litigation. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). The doctrine precludes a party from relitigating a cause of action in a second lawsuit if: (1) the earlier claim involved the same factual circumstances; (2) the earlier claim involved the same parties; (3) there was a final judgment on the merits; and (4) the estopped party had a full and fair opportunity to litigate the matter. *Id.* (citations omitted). A final judgment on the merits bars a second lawsuit on the same facts "not only as to every matter which was actually litigated, but also as to every matter which might have been litigated." *Hauser v. Mealey*, 263 N.W.2d 803, 807 (Minn. 1978). "The dispositive factor for determining whether two causes of action are the same is whether the same evidence will sustain both actions." *AFSCME Council No. 14, Local Union No. 517 v. Bd. of Comm'rs*, 527 N.W.2d 127, 130 (Minn. App. 1995) (citation omitted). The doctrine of res judicata is not rigidly applied. *Id.* (citation omitted).

Here, the record reflects that the 2005 unit-clarification order involved the same parties, that the parties had a full and fair opportunity to litigate the matter, and that the stipulation resulted in a final judgment. And because the record reflects that there has not been a significant change in the community of interest since the 2004 stipulation, the claim at issue here involves the same factual circumstances as before. Accordingly, res judicata bars the instant appeal.

Reversed.