

AFFIDAVIT OF SERVICE BY FEDERAL EXPRESS

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

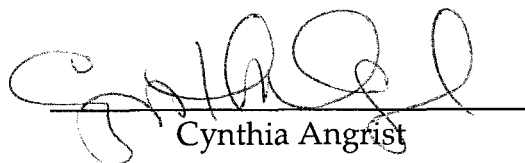
Cynthia Angrist, being first duly sworn, on oath deposes and states that on May 11, 2006, 2006 she served the attached:

1. University's Petition for Writ of Certiorari (with BMS Ruling on Motion to Dismiss Petition for Decertification of Exclusive Representative and the original and one copy of the University's Statement of the Case); and
2. Writ of Certiorari

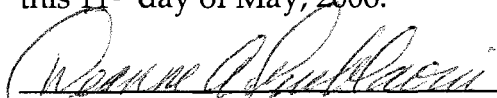
upon counsel listed below by FedEx Envelope, addressed as follows:

Certain Employees of the University of Minnesota, Unit 9
Sharon E. Neet
University of Minnesota Crookston
317 Selvig Hall
900 University Avenue
Crookston, MN 56716

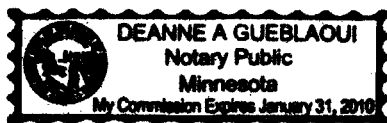
the last known address of addressee.


Cynthia Angrist

Subscribed and sworn to before me
this 11th day of May, 2006.



Notary Public



UNIVERSITY OF MINNESOTA

Office of the General Counsel

*360 McNamara Alumni Center
200 Oak Street S.E.
Minneapolis, MN 55455*

*Office: 612-624-4100
Fax: 612-626-9624*

May 11, 2006

Frederick K. Grittner
CLERK OF APPELLATE COURTS
COURT OF APPEALS
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-6102

Re: *Regents of the University of Minnesota v. University Education Association,
Education Minnesota, and Certain Employees of the University of Minnesota,
Unit 9, Crookston, MN, and Bureau of Mediation Services*
Court File No. _____ (pending)

Dear Mr. Grittner:

Enclosed for filing in the above-captioned matter please find:

1. University's Petition for Writ of Certiorari (with BMS Ruling on Motion to Dismiss Petition for Decertification of Exclusive Representative and the original and one copy of the University's Statement of the Case);
2. Writ of Certiorari; and
3. Affidavit of Service.

I understand that consistent with Minn. R. Civ. App. P. 103.01 and 107.02, the University is exempt from the filing fee and bond requirements.

Very truly yours,



Shelley Carthen Watson
Associate General Counsel

Enclosure
SCW/caa

cc: Harley Ogata (via personal service)
Sharon Neet (via Federal Express)
Commissioner James A. Cunningham (via personal service)

STATE OF MINNESOTA
IN COURT OF APPEALS

Regents of the University of Minnesota, PETITION FOR WRIT OF CERTIORARI

Petitioner,

COURT OF APPEALS NUMBER: _____

vs.

BMS Case No. 06-PDE-0791

University Education Association,
Education Minnesota,

DATE OF DECISION: April 12, 2006

and

DATE AND DESCRIPTION OF EVENT
TRIGGERING APPEAL TIME: April 12,
2006 Ruling on Motion to Dismiss Petition for
Decertification of Exclusive Representative

Certain Employees of the University
of Minnesota, Unit 9, Crookston, MN,

and

Bureau of Mediation Services (BMS),

Respondents.

TO: The Court of Appeals of the State of Minnesota:

The above-named Petitioner hereby petitions the Court of Appeals for a Writ of Certiorari to review a decision of the State of Minnesota Bureau of Mediation Services, a state agency, issued on the date noted above, upon the following grounds:

1. This petition arises from an effort by Certain Employees of the University of Minnesota, Unit 9, Crookston, MN ("UMC Faculty"), to decertify the University Education Association, Education Minnesota ("UEA") as the exclusive representative of faculty members of the University of Minnesota ("University") Crookston campus. The

decertification campaign falls under the statutory jurisdiction of the State of Minnesota Bureau of Mediation Services (“BMS”).

2. On February 8, 2006, the BMS received a Petition for Decertification of Exclusive Representative from the UMC Faculty, requesting decertification of UEA as the exclusive representative of the UMC Faculty on the University’s Crookston campus. On April 12, 2006, the BMS issued a Ruling on Motion to Dismiss Petition for Decertification of Exclusive Representative. Among other things, the BMS found that for purposes of decertification, the Outstate Instructional Unit, Unit 9 of the University is one bargaining unit that includes both the Crookston and Duluth campuses; any decertification petition must be supported by a showing of interest from thirty percent (30%) or more of all the employees within the Outstate Instructional Unit, Unit 9, including both the Crookston and Duluth campuses; and the UMC Faculty had not submitted the required showing of interest to warrant conduct of a decertification election.

3. The Petitioner seeks review of the BMS order finding that the Outstate Instructional Unit, Unit 9 is one unit that includes both the Crookston and Duluth campuses for purposes of decertification, and its dismissal of the Petition for Decertification of Exclusive Representative.

4. Minn. Stat. §179A.09, subd. 1 states that in determining the appropriate unit, the BMS commissioner shall consider, among other things, the history, extent of organization, the recommendation of the parties, and other relevant factors, placing particular importance upon the history and extent of organization, and the desires of the

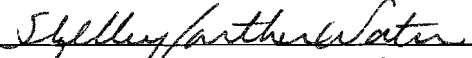
petitioning employee representatives. The record establishes that in making its decision as to the appropriate unit for purposes of decertification, the BMS relied upon a factually incorrect history of Unit 9, refused to consider either the desires of the UMC Faculty or the unclean hands of UEA in being elected as the exclusive representative; and refused to take into account the inability of the UMC Faculty to exercise a meaningful choice to decertify.

5. The BMS finding that the Outstate Instructional Unit, Unit 9 is one unit that includes both the Crookston and Duluth campuses for purposes of decertification, and the BMS' dismissal of the Petition for Decertification of Exclusive Representative should be reversed because they are contrary to law, arbitrary and capricious, unsupported by the evidence in the record, and contrary to controlling legal authority.

6. Copies of the BMS Ruling on Motion to Dismiss Petition for Decertification of Exclusive Representative, and an original and one copy of the University's Statement of the Case, accompany this Petition.

DATED: May 11, 2006

MARK B. ROTENBERG
General Counsel
University of Minnesota

By: 
Shelley Carthen Watson (# 216902)
Associate General Counsel
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006
(612) 624-4100

Attorneys for the University of Minnesota

STATE OF MINNESOTA
IN COURT OF APPEALS

Regents of the University of Minnesota, STATEMENT OF THE CASE OF PETITIONER

Petitioner,

COURT OF APPEALS NUMBER: _____

vs.

BMS Case No. 06-PDE-0791

University Education Association,
Education Minnesota,

DATE OF DECISION: April 12, 2006

and

Certain Employees of the University
of Minnesota, Unit 9, Crookston, MN,

and

Bureau of Mediation Services (BMS),

Respondents.

Petitioner, the Regents of the University of Minnesota (the "University") submits this Statement of the Case pursuant to Rules 115.03 and 133.03 of the Minnesota Rules of Civil Appellate Procedure.

1. Court or agency of case origination and name of presiding judge or hearing officer.

The University seeks certiorari review of an April 12, 2006, Ruling on Motion to Dismiss Petition for Decertification of Exclusive Representative issued by Commissioner James A. Cunningham, Jr., Bureau of Mediation Services ("BMS"), State of Minnesota.

2. Jurisdictional statement.

The University invokes the Court's certiorari jurisdiction pursuant to Minn. Stat. § 179A.051 and Rule 115 of the Minnesota Rules of Civil Appellate Procedure. The University has filed its Petition within the time specified in Minn. Stat. § 179A.051. The decision that is the subject of the Petition is a final order, and resolves all issues regarding appropriateness of the bargaining unit for purposes of decertification.

3. State type of litigation and designate any statutes at issue.

The University's Petition arises from an effort by Certain Employees of the University of Minnesota, Unit 9, Crookston, MN ("UMC Faculty"), to decertify the University Education Association, Education Minnesota ("UEA") as the exclusive representative of faculty members of the University of Minnesota ("University") Crookston campus. The decertification campaign is governed by Minn. Stat. § 179A.01, *et seq.* The University brings its Petition pursuant to Minn. Stat. § 179A.051.

4. Brief description of claims, defenses, issues litigated and result below.

On February 8, 2006, the BMS received a Petition for Decertification of Exclusive Representative from the UMC Faculty, requesting decertification of UEA as the exclusive representative of the UMC Faculty on the University's Crookston campus. On April 12, 2006, the BMS issued a Ruling on Motion to Dismiss Petition for Decertification of Exclusive Representative. The BMS dismissed the decertification petition, finding that for purposes of decertification, the Outstate Instructional Unit, Unit 9 of the University is one bargaining unit that includes both the Crookston and Duluth campuses; any decertification petition must be supported by a showing of interest from

thirty percent (30%) or more of all the employees within the Outstate Instructional Unit, Unit 9, including both the Crookston and Duluth campuses; and the UMC Faculty had not submitted the required showing of interest to warrant conduct of a decertification election.

Minn. Stat. § 179.11, subd. 1 outlines the procedure by which an exclusive representative is determined for the statutorily defined appropriate unit, known as Unit 9. Once the employees located on the University's Duluth campus who fall within the unit described by Minn. Stat § 179A.11, subd. 1(9) elect an exclusive representative, the University employees who fall within that unit description who are located at the Waseca, Crookston, or Morris campuses may elect to join Unit 9 by filing a petition. The three campuses outside Duluth are permitted to independently determine through a BMS conducted election whether the campus employees wish to join Unit 9. The University's Waseca campus elected to join Unit 9, but the unit was disbanded when the Waseca campus closed in 1992. The Morris campus did not elect to join Unit 9. The Crookston campus elected to join Unit 9 late in 2004.

Minn. Stat. § 179A.11, subd. 1(9) is clear regarding the procedures to certify the exclusive representative for Unit 9. The statute is silent, however, on the subject of decertification. The University seeks review of the BMS order finding that the Outstate Instructional Unit, Unit 9 is one unit that includes both the Crookston and Duluth campuses for purposes of decertification, and its dismissal of the Petition for Decertification of Exclusive Representative. UEA argued that the union-represented faculty members at both campuses constitute one bargaining unit for representation

Instructional Unit, Unit 9 is considered two separate units for purposes of a collective bargaining agreement, it must also be considered as two separate units or purposes of decertification.

- d. Having induced UMC Faculty to join Unit 9 by unequivocally representing during the representation proceedings that the process to remove UEA would be a vote of only the Crookston faculty, UEA should be estopped from disavowing its representations and profiting from its own false dissemination.

Minn. Stat. § 179A.09, subd. 1 states that in determining the appropriate unit, the BMS commissioner shall consider, among other things, the history, extent of organization, the recommendation of the parties, and other relevant factors, placing particular importance upon the history and extent of organization, and the desires of the petitioning employee representatives. In making its decision, the BMS relied upon a factually incorrect history of Unit 9, refused to consider either the desires of the UMC Faculty or the unclean hands of UEA in being elected as the exclusive representative; and refused to take into account the inability of the UMC Faculty to exercise a meaningful choice to decertify.

5. List specific issues proposed to be raised on appeal.

A. Whether the BMS finding that Outstate Instructional Unit, Unit 9 of the University is one bargaining unit that includes both the Crookston and Duluth campuses for purposes of decertification, and therefore any decertification petition must be supported by a showing of interest from thirty percent (30%) or more of all the

purposes; that a decertification petition must cover the faculty members at both campuses; and that therefore, the showing of interest must be sufficient relative to the number of bargaining unit members at both campuses. Both the University and the UMC Faculty asserted that Unit 9 constitutes separate units for purposes of decertification as evidenced by the following:

- a. Minn. Stat. § 179A.11, subd. 1(9) specifically provides that the UMC Faculty, and only the UMC Faculty, decide whether or not they are to become members of Unit 9. In the absence of express statutory language to the contrary, UMC Faculty, and only UMC Faculty, are eligible to vote on decertification from the same bargaining unit.
- b. Given that the UMC Faculty has approximately 48 members and the Duluth members of Unit 9 have approximately 350 members, if Outstate Instructional Unit, Unit 9 is considered one unit for purposes of decertification, the UMC Faculty will never get to exercise a meaningful choice to decertify.
- c. The Hennepin County District Court recently found, as a matter of law, that the University was not obligated to apply the terms of the existing Unit 9 collective bargaining agreement between the University and the Duluth faculty to the UMC Faculty. University Education Association v. Board of Regents of the University of Minnesota, Minneapolis, Minnesota, Court File No. 27 CV-05-16600 (Order Denying Plaintiff's Motion for Summary Judgment and Memorandum, February 7, 2006). Since Outstate

employees within the Outstate Instructional Unit, Unit 9, and corresponding dismissal of the Petition for Decertification should be reversed because the BMS decision is contrary to law, arbitrary and capricious, runs contrary to the evidence in the record, and decision is inconsistent with controlling legal authority.

6. Related appeals.

None.

7. Contents of record.

There is no transcript in this matter. The record on appeal will consist of the papers and exhibits filed with the BMS. There is no need for a statement of the proceedings under Rule 110.03, or a statement of the record under Rule 110.04.

8. Is oral argument requested?

Yes.

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2?

No.

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02.

10. Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.

Attorneys for the Regents of the University of Minnesota:

Mark B. Rotenberg
General Counsel
Shelley Carthen Watson (# 216902)
Associate General Counsel
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006
(612) 624-4100

The Respondents' addresses are:

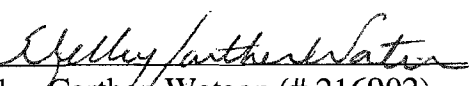
Bureau of Mediation Services
State of Minnesota
1380 Energy Lane, Suite # 2
St. Paul, MN 55108-5253
(651) 649-5421

University Education Association
Education, Minnesota
Harley Ogata
Rebecca Hamblin
41 Sherburne Avenue
St. Paul, MN 55103

Certain Employees of the University of Minnesota, Unit 9
Sharon Neet
317 Selvig
University of Minnesota Crookston
900 University Avenue
Crookston, Minnesota 55716

DATED: May 11, 2006

MARK B. ROTENBERG
General Counsel
University of Minnesota

By: 
Shelley Carthen Watson (# 216902)
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360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006
(612) 624-4100

Attorneys for the University of Minnesota

STATE OF MINNESOTA
IN COURT OF APPEALS

Regents of the University of Minnesota, WRIT OF CERTIORARI

Relator,

COURT OF APPEALS NUMBER: _____

vs.

BMS Case No. 06-PDE-0791

University Education Association,
Education Minnesota,

DATE OF DECISION: April 12, 2006

and

Certain Employees of the University
of Minnesota, Unit 9, Crookston, MN,

and

Bureau of Mediation Services (BMS),

Respondents.

TO: Bureau of Mediation Services
State of Minnesota
1380 Energy Lane, Suite # 2
St. Paul, MN 55108-5253

You are hereby ordered to return to the Court of Appeals within 10 days after the date Relator's brief is due the record, exhibits and proceedings in the above-entitled matter so that this court may review the decisions of the Bureau of Mediation Services issued on the date noted above.

Copies of this writ and accompanying petition shall be served forthwith either personally or by certified mail upon Respondents Bureau of Mediation Services,

University Education Association, Education Minnesota, and Certain Employees of the University of Minnesota, Unit 9, Crookston, MN or their attorneys at:

University Education Association,
Education, Minnesota
Harley Ogata
Rebecca Hamblin
41 Sherburne Avenue
St. Paul, MN 55103

Certain Employees of the University
of Minnesota, Unit 9
Sharon Neet
317 Selvig
University of Minnesota Crookston
900 University Avenue
Crookston, Minnesota 55716

Proof of service shall be filed with the clerk of the appellate courts.

DATED: _____

Clerk of Appellate Courts

(Clerk's File Stamp)

By: _____
Assistant Clerk