

BMS

BUREAU OF MEDIATION SERVICES
State of Minnesota

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

September 26, 2013

American Federation of State, County and Municipal Employces, Council No. 5,
South St. Paul, Minnesota

- and -

Metropolitan Council, Minneapolis, Minnesota

BMS Case No. 12PCL1146

UNIT CLARIFICATION ORDER

INTRODUCTION

On May 9 and May 15, 2013, the State of Minnesota, Bureau of Mediation Services (Bureau), conducted a hearing pursuant to a petition (Petition) filed the American Federation of State, County and Municipal Employees, Council No. 5, South St. Paul, Minnesota (AFSCME 5). The Petition requested clarification of an appropriate unit of employees of the Metropolitan Council, Minneapolis, Minnesota (Council), exclusively represented by AFSCME 5. Written briefs were filed by both parties and the record was closed on July 3, 2013.

APPEARANCES

At the hearing Frank Madden, Attorney, appeared on behalf of the Met Council; and Cindy Nelson, Staff Representative, appeared on behalf of AFSCME 5.

ISSUE

Shall the description of the appropriate unit represented by AFSCME 5 be amended to include Transit Division employees?

POSITION OF THE PARTIES

The Union seeks accretion of all currently non-represented, technical and professional employees of the Transit Division. The assertion is they share a common community of interest with other employees in the appropriate unit AFSCME 5 currently represents.

The Council opposed the accretion proposed by AFSCME 5, arguing that absent compelling reasons; the Bureau has normally declined a single party request to modify a longstanding bargaining unit structure.

BACKGROUND

The Council is the public agency established by law to carry out certain public infrastructure and planning responsibilities affecting the metropolitan region consisting of Anoka, Carver, Dakota, Hennepin, Scott and Washington Counties in Minnesota. Its principal operational functions include public transit, wastewater collection and treatment, and affordable housing. It is also charged with establishing regional growth policies, and long range plans for transportation, aviation, water resources and regional parks. (<http://www.metrocouncil.org/About-Us>) . AFSCME 5 is the certified, exclusive representative for the following appropriate unit of employees of the Council:

All clerical, technical, professional and interceptor system employees of Metropolitan Council, St. Paul, Minnesota who are public employees within the meaning of Minn. Stat. § 179A.03, subd. 14, excluding supervisory, confidential, and transit operations employees.
(BMS Case Nos. 96PCL172 et.al February 9, 1996 Metropolitan Council, AFSCME Council 14 and ATU Local 1005)

That same Order reconfirmed the historical representation of the Amalgamated Transit Workers Local 1005 (ATU 1005), at the Transit Operations Division of the Council and established its bargaining unit description as follows:

All drivers, mechanics and clerical employees of the Metropolitan Council, Transit Operations Divisions, St. Paul, Minnesota, who are public employees within the meaning of Minn. Stat §179A.03, Subd. 14, excluding supervisory, confidential and all other employees

The current bargaining unit structure of the Council is the result of a contested unit determination proceeding at the time the Council was created in its current form in 1995 (ibid.) In that case the Council sought to create a new bargaining unit structure based primarily on occupational groupings, while AFSCME 5 and ATU 1005 sought to maintain the historical bargaining unit structure based primarily upon the organizational structure of the employer.

APPLICABLE STANDARDS

The standards BMS most use in resolving questions of appropriate unit determination and subsequent placement of positions in existing appropriate bargaining units are set forth at Minn. Stat. 179A.00, Subd. 1, which provides:

Criteria. In determining the appropriate unit, 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.

In the current case, the appropriate unit structure has existed essentially unchanged for decades. AFSCME 5 seeks a modification of the current bargaining unit structure by accreting non-represented employees of Council's Transit Division, who are specifically excluded from the definition, into the appropriate unit it represents.

The first words of the Public Employment Labor Relations Act Minn. Stat. § 179A (2013) are:

179A.01 Public Policy.

(a) It is the public policy of this state and the purpose of sections 179A.01 to 179A.25 to promote orderly and constructive relationships between all public employers and their employees."

A principal aspect of orderly and constructive relationships is stability and predictability. It is for this reason that BMS has long adhered to the following standard concerning single party requests to modify an existing appropriate unit definition:

The Bureau, as a matter of policy is reluctant to disturb established appropriate units, especially when there is a history of bargaining and the request for amendment or modification is from a single party. Accordingly, the Bureau has established a greater burden of proof when a change in existing bargaining unit structure is sought..., particularly when a single-party request is made to alter a bargain unit structure that has existed for a considerable period of time. (Citation in original omitted)

Additionally, the Bureau has stated that it will grant request to modify a traditional bargaining structure only when:

1. All parties affected by the change agree to the modification; or
2. There is a history of substantial bargaining turmoil attributable to the issue in question; or
3. There is a significant change in the community of interest of involved employees (County of Itasca and AFSCME 65 and MNA and Itasca Assistant County Attorney Employees Association. BMS Case No. 86PR0179, March 6, 1986.)

Therefore, we will treat the Petition as a request to redefine the appropriate unit to include Transit Division employees now explicitly excluded. As such, AFSCME 5 bears the burden to meet the standards described.

DISCUSSION

In support of its argument that there is sufficient cause to modify the existing bargaining unit structure, AFSCME 5 makes three arguments.

First, AFSCME 5 asserts that it only seeks to correct a mistake made by the Bureau; these positions should have been included within its appropriate unit in 1996. This assertion is not supported by the facts. A reading of BMS Order 96PCL172, et.al, reveals that AFSCME 5 made no such request during the proceeding. This fact was confirmed by the testimony of Art McGrane, AFSCME 5, Local 668, President, who was directly involved in that case.

Second, AFSCME 5 contends that Met Council employees, except bus drivers, train drivers and mechanics, are basically on the same salary and benefit structure. The parties stipulated that the employees in question share a common compensation plan (stipulation of the parties executed on May 9, 2013). The record does not establish that non-represented employees in the Transit Division that AFSCME 5 seeks to represent share all of the same non-salary benefits.

Finally, AFSCME 5 argues there has been a significant change in the organizational structure of the employer. When the current appropriate unit was determined in 1996, no Council 5 members worked at the transit division sites. AFSCME 5 claims further, that the Met Council's recent reorganization has changed this fact and today AFSCME 5 members work at the same location as the employees at issue here.

At the hearing, the parties stipulated that the Council employs approximately 3700 employees of which AFSCME 5 represents approximately 497. The parties further stipulated that AFSCME 5 currently represents 37 employees with geographical locations within the Transit division of the Council as follows:

- a) Human Resources (9)
- b) Information Services (13)
- c) Risk Management (6)
- d) Equal Opportunity (9).

(Stipulation of the parties executed by the parties at the hearing on May 9, 2013)

Sandi Blaeser, Labor Relations Director, testified that about 2700 of the Council's work in transit operations. Ms. Blaeser also testified that the 37 employees who are geographically located at the transit division and included within the AFSCME 5 bargaining unit provide support services including human resources, information services, risk management and equal opportunity. She further stated that these are support services and not "core" transit operations functions. Finally, Mrs. Blaeser also testified:

Metro Transit or MCTO at the time of the award has operated as an individual division, separate and distinct from the Metropolitan Council; so there has been very little interplay. It's a unique entity within the Metropolitan Council.

Brian Lamb, Director of Service Development, testified there have been many changes in the Transit Operation since 1996. He testified that in 1996, they operated buses; while today they operate light rail, commuter rail, and buses and are developing new transit modes. He testified that while they have added new positions and job titles they are entirely related to transit operations.

The Met Council and AFSCME 5 agree some changes have transpired at the transit sites. However, there is insufficient evidence in the record to persuade the Bureau that a "significant change in the organizational structure" has occurred that would support a change in the bargaining unit description.

CONCLUSION

As noted above, because AFSCME 5 has submitted a single party petition seeking modification of a long standing bargaining unit structure, it bears the burden of proof to show either a longstanding history of bargaining turmoil or a significant change in the organizational structure of the employer. On the record in this matter, AFSCME 5 has not met this burden.

When the Metropolitan Council was established in its current form, the Union had an opportunity to propose its preferred bargaining unit structure. It proposed the current structure which excluded employees of Transit Division; this structure has functioned in a stable and constructive manner for the past eighteen years. The non-represented employees of the transit division are

public employees under the PELRA and have the same right as every public employee, to seek collective bargaining through the representative of their choice.

Findings and Orders

1. No compelling reason has been presented to redefine the appropriate unit to include employees of the transit division.
2. The description of the appropriate unit represented by AFSCME 5 shall not be amended to include transit division employees
3. The Council shall post this Order at the workplaces of the affected employees.

STATE OF MINNESOTA
Bureau of Mediation Services

JOSH TILSEN
Commissioner



EARNEST BELTON
Hearing Officer

cc: Sandi Blaeser (2)(Includes Posting Copy)
Frank Madden
Cynthia Nelson
Eric Letho