



Date: March 7, 2018

To: Personal Care Assistance (PCA) Choice Agencies and Fiscal Support Entities

From: Disability Services Division

RE: Bureau of Mediation Services order dated December 12, 2017

Service Employees International Union (SEIU) Healthcare Minnesota is the exclusive representative of workers who provide services through the Consumer Directed Community Supports (CDCS), Consumer Support Grant (CSG) and Personal Care Assistance (PCA) Choice programs. The terms and conditions of their employment are governed by a contract in effect from July 1, 2017, through June 30, 2019.

On October 25, 2017, Disability Services Division sent you a copy of an order the Bureau of Mediation Services (BMS) issued on October 3, 2017. The order required the State of Minnesota to preserve the existing employment conditions and to promote a free and fair environment while BMS considered a petition from a group of workers about SEIU's exclusive representation. On December 12, 2017, BMS issued the attached order dismissing the petition.

What do you need to do?

PCA Choice agencies and fiscal support entities must:

- Continue to comply with the terms and conditions of the current contract between the State of Minnesota and SEIU.
- Remain neutral regarding the petition, union representation, and worker's union membership.
- Post the attached order at all PCA Choice agency and fiscal support entity office locations.
- Send a copy of the attached order to all workers providing CDCS, CSG, or PCA Choice services. Please forward this memo with the order to help communicate that no action is required by workers or people receiving services.

For more information about the requirements for PCA Choice agencies and fiscal support entities in the current contract, visit the Home and community-based services providers page of the Department of Human Services' website: <https://mn.gov/dhs/partners-and-providers/policies-procedures/minnesota-health-care-programs/provider/types/hcbs/>

IN THE MATTER OF A PETITION FOR
DECERTIFICATION OF AN EXCLUSIVE
REPRESENTATIVE

December 12, 2017

Certain Employees of the State of Minnesota, Minnesota Management and Budget, St. Paul, Minnesota

- and -

SEIU Healthcare Minnesota, St. Paul, Minnesota

- and -

State of Minnesota, Minnesota Management and Budget, St. Paul, Minnesota

BMS Case No. 18PDE0254

NOTICE OF DISMISSAL ORDER

INTRODUCTION

On October 2, 2017, the Minnesota Bureau of Mediation Services (Bureau), received a petition for Decertification of an Exclusive Representation Petition (Petition) filed by Certain Employees of Minnesota Management & Budget, St. Paul, Minnesota (Petitioners). Attached to the Petition was correspondence signed by Douglas P. Seaton, Attorney for Petitioners. The employees covered by this Petition are included within a bargaining unit certified to SEIU Healthcare Minnesota, St. Paul, Minnesota (SEIU). Minnesota Management and Budget (MMB) was listed as the employer on the Petition.

On October 3, 2017, the Bureau issued a Maintenance of Status Quo Order pursuant to Minn. R. 5510.1910, subp. 4.

On October 6, 2017, the Bureau sent to Petitioners, MMB and SEIU a Request for Written Submissions requesting responses to the following questions:

1. Should the Bureau treat the October 2, 2017 Petition as a new Petition or as a supplement to the December 2, 2016 Petition and, if the October 2, 2017 Petition is treated as a supplement to the December 2, 2016 Petition, what effect, if any, does the Bureau's prior dismissal of the December 2, 2016 Petition and Petitioners' pending appeal have on this supplemental submission?

2. Is there a labor contract in effect with respect to this bargaining unit and, if so, is the October 2, 2017 Petition barred by Minn. Stat. 179A.12, subd. 4?
3. Are any of the cards referenced by Petitioners invalid under Minn. R. 5510.0810, subp. 3(D), and, if so, should they count towards the necessary showing of interest for a decertification election?

Timely responses and rebuttals were submitted by the parties in response to the Request for Written Submissions.

DISCUSSION AND FINDINGS

1. Should the Bureau treat the October 2, 2017 Petition as a new Petition or as a supplement to the December 2, 2016 Petition and, if the October 2, 2017 Petition is treated as a supplement to the December 2, 2016 Petition, what effect, if any, does the Bureau's prior dismissal of the December 2, 2016 Petition and Petitioners' pending appeal have on this supplemental submission?

Petitioners argue that the October 2, 2017 Petition should be considered both as a new petition and also as a supplement to their December 2, 2016 petition (BMS Case No. 17PDE0404). Petitioners assert that the October 2, 2017 Petition "should be treated as new when it is to Petitioners' benefit and as supplemental when it is to Petitioners' benefit."

SEIU and MMB argue that the October 2, 2017 Petition cannot supplement the December 2, 2016 Petition because the Bureau's dismissal of the December 2, 2016 Petition was a final decision that cannot be reopened.

The Bureau dismissed the December 2, 2016 Petition on February 10, 2017, and denied reconsideration on April 21, 2017. The Bureau's decision was final and it concluded the agency proceedings regarding that Petition. Indeed, Petitioners' certiorari appeal of the Bureau's decision is currently pending at the Minnesota Court of Appeals, which accepted jurisdiction because the "April 21, 2017 order denying reconsideration was the final agency order." *In re Pet. for Decertification*, No. A17-0798 (Minn. Ct. App. June 27, 2017); *see also Overseas Commodities Corp. v. Dockman*, 389 N.W.2d 254, 256 (Minn. App. 1986) (holding that certiorari ordinarily is available only when the order from which the appeal is taken is a final determination of a party's rights, rather than an interlocutory or intermediate order). The Court of Appeals' jurisdiction over that matter is exclusive. *See Twp. of Honner v. Redwood County*, 518 N.W.2d 639, 641 (Minn. App. 1994) (when no statute or rule expressly vests judicial review in the district court, the Court of Appeals has exclusive certiorari jurisdiction), *review denied* (Minn. Sept. 16, 1994).

Because the Bureau already made a final decision with respect to the December 2, 2016 Petition, the Bureau will treat the October 2, 2017 Petition as a new petition rather than a supplement to the December 2, 2016 Petition.

2. Is there a labor contract in effect with respect to this bargaining unit and, if so, is the October 2, 2017 Petition barred by Minn. Stat. 179A.12, subd. 4?

Minnesota law provides that the Bureau “shall not consider a petition for a decertification election during the term of a contract covering employees of the executive or judicial branches of the state of Minnesota except for a period from not more than 270 to not less than 210 days before its date of termination.” Minn. Stat. § 179A.12, subd. 4.

A collective bargaining agreement for this unit was in effect from July 1, 2015 through June 30, 2017.¹ Therefore, the window for filing a decertification petition was from October 3, 2016, through December 2, 2016. Because Petitioners filed their last petition on December 2, 2016, the Bureau found it to be within the window for that particular collective bargaining agreement.

With the collective bargaining agreement set to expire on June 30, 2017, MMB and SEIU negotiated a new collective bargaining agreement for July 1, 2017, through June 30, 2019. The agreement was submitted to the Legislature’s Subcommittee on Employee Relations (“SER”) in accordance with Minn. Stat. § 179A.54, subd. 5.² SER planned to consider the Agreement on May 15, 2017, but the meeting was cancelled. <https://www.ser.leg.mn/meetings.html>.

On May 25, 2017, the Legislature passed a number of provisions related to this bargaining unit. The Legislature appropriated money “to implement a collective bargaining agreement between the state and the Service Employees International Union Healthcare Minnesota (SEIU).” 2017 Minn. Laws ch. 6, art. 18, § 2, subsd. 7(f), 15(b)(1). The Legislature authorized MMB “to negotiate and enter into a collective bargaining agreement with SEIU under Minnesota Statutes, section 179A.54.” *Id.*, subd. 15(b)(2). It also stated that “[t]he economic terms of the collective bargaining agreement may include wage floor increases for direct support workers, paid time off, holiday pay, wage increases for workers serving people with complex needs, training stipends, and training for direct support workers and for implementation of the registry as outlined in the collective bargaining agreement.” *Id.* The Legislature further provided that:

Notwithstanding any other law or rule to the contrary, effective July 1, 2017, and within available appropriations, the commissioner of human services shall have the authority to implement rate adjustments to comply with wages and benefits negotiated in the labor agreement between the state of Minnesota and the Service Employees International Union (SEIU) Healthcare Minnesota for the period between July 1, 2017, and June 30, 2019.

¹ A copy of this agreement is available at <https://www.ser.leg.mn/Meetings/2015/2015-2017SEIUBargainingAgreement.pdf> (last visited Dec. 7, 2017).

² “Any agreement reached between the state and the exclusive representative of individual providers under chapter 179A shall be submitted to the legislature to be accepted or rejected in accordance with sections 3.855 and 179A.22.” Minn. Stat. 179A.54, subd. 5. Section 179A.22 also requires agreements to be submitted to the Legislature in accordance with section 3.855. Section 3.855 creates the SER to review, among other things, negotiated collective bargaining agreements prior to consideration by the full Legislature.

2017 Minn. Laws ch. 6, art. 1, § 53. The Legislature also made clear that it approved of a collective bargaining agreement within the above parameters when it stated that:

Notwithstanding Minnesota Statutes, sections 3.855, 179A.22, subdivision 4, and 179A.54, subdivision 5, upon approval of a negotiated collective bargaining agreement by the SEIU and the commissioner of management and budget, the commissioner of human services is authorized to implement the negotiated collective bargaining agreement.

Minn. Laws ch. 6, art. 18, § 2, subd. 15(b)(3).

Governor Dayton signed the bill on May 30, 2017. MMB and SEIU then proceeded to renegotiate the prior agreement within the parameters set by the Legislature.

It is undisputed that MMB and SEIU reached an agreement for July 1, 2017 through June 30, 2019. Based on the plain language of the legislation discussed above, the Bureau concludes that the Legislature has ratified this agreement.

The parties disagree about whether the Legislature has the authority to ratify an agreement in this manner. Petitioners argue that the “pre-ratification language” was “surreptitiously added to Special Session Chapter 6, without the authority of the authors and without the appropriate legislative process.” Petitioners also argue that the bill violates the Single Subject Clause of the Minnesota Constitution. *See* Minn. Const. art. IV, § 17 (“No law shall embrace more than one subject, which shall be expressed in its title.”).

The Bureau does not have the authority to address Petitioners’ arguments. It is an executive branch agency with a constitutional obligation to faithfully execute the laws passed by the Legislature. Minn. Const. art. V, § 3. It is not a court, and it cannot invalidate an act of the Legislature or consider the constitutionality of duly-enacted legislation. *See, e.g., Quam v. State*, 391 N.W.2d 803, 809 n.6 (Minn. 1986) (“We have on more than one occasion precluded agency tribunals from assuming the uniquely judicial power to review the constitutionality of laws.”).³ Petitioners are not

³ The Bureau also notes that Petitioners’ reliance on a legislator’s affidavit to support their claim is misplaced. First, absent ambiguity, legislative history is not considered in interpreting a statute. *See, e.g., Nelson v. State*, 896 N.W.2d 879, 885 (Minn. Ct. App. 2017). Petitioners do not argue that the legislative language is ambiguous. Second, post-enactment statements from individual legislators are not valid evidence. Indeed, only contemporaneous legislative history may be considered, and “[c]learly statements made by legislators following passage of an act are not contemporaneous.” *Laue v. Prod. Credit Ass’n of Blooming Prairie*, 390 N.W.2d 823, 828 (Minn. Ct. App. 1986); *see also, e.g., Sevcik v. Comm’r of Taxation*, 257 Minn. 92, 103, 100 N.W.2d 678, 687 (1959) (no deference to statements of legislative intent made subsequent to the passage of an act, even when the declarant was a legislator when the bill was in the process of passage); *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1552 (8th Cir. 1996) (“[A]n isolated statement by an individual legislator is not a sufficient basis from which to infer the intent of that entire legislative body.”).

without recourse, as they can present such arguments to the Minnesota Court of Appeals should they choose to appeal this decision. *Neeland v. Clearwater Mem'l Hosp.*, 257 N.W.2d 366, 368 (Minn. 1977).

The record reflects that a contract is in effect for July 1, 2017 through June 30, 2019. Therefore, the Bureau cannot “consider a petition for a decertification election . . . except for a period from not more than 270 to not less than 210 days before its date of termination.” Minn. Stat. § 179A.12, subd. 4. Petitioners’ October 2, 2017 Petition is not within the statutorily prescribed window. By law, the Bureau cannot consider the Petition and must dismiss it.⁴

3. Are any of the cards referenced by Petitioners invalid under Minn. R. 5510.0810, subp. 3(D), and, if so, should they count towards the necessary showing of interest for a decertification election?

Because section 179A.12, subdivision 4 precludes consideration of the current Petition, the Bureau declines to address the third question.

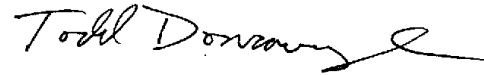
Petitioners also ask the Bureau to investigate alleged fraud during the 2014 certification election. On August 26, 2014, the Bureau sent out the Certification of Exclusive Representative (BMS Case No. 15PCE0010) with the results of the election certifying SEIU Healthcare Minnesota as the exclusive representative for the unit in question. Minnesota Rule 5510.2110, subpart 2 states that unfair election practice charges must be filed with the Bureau within ten (10) calendar days from the date of the certification of election results. No such charges were filed in 2014 regarding allegations of potential fraud. The Petitioners allegations of potential unfair election practices during the 2014 election are therefore untimely.

ORDER

1. The Petition for Decertification of an Exclusive Representative filed on October 2, 2017 and assigned BMS Case No. 18PDE025454 is dismissed.

⁴ Petitioners argue that notwithstanding section 179A.12, subdivision 4, the Bureau should consider their decertification petition in the interests of good labor relations policy, citing Minn. R. 5510.0510, subp. 1(c). As discussed above, the plain language of section 179A.12, subdivision 4 mandates that the Bureau “shall not consider a petition for a decertification election” under the circumstances presented here. Applying the Bureau’s rule in the manner requested by Petitioners is not permissible as it would conflict with a clear statutory directive from the Legislature. *See, e.g., Special Sch. Dist. No. 1 v. Dunham*, 498 N.W.2d 441, 445 (Minn. 1993) (stating that “[i]t is elemental that when an administrative rule conflicts with the plain meaning of a statute, the statute controls”).

STATE OF MINNESOTA
Bureau of Mediation Services



TODD DONCAVAGE
Commissioner

cc: Douglas P. Seaton, Attorney for the Petitioners
Valerie Darling/Kristyn Anderson, Minnesota Management and Budget
Brendan Cummins, Attorney for SEIU Healthcare Minnesota

POSTING

THE EMPLOYER SHALL MAKE COPIES OF THIS ORDER UPON RECEIPT AND POST AT THE WORK LOCATION(S) OF ALL INVOLVED EMPLOYEES.