



Bureau of Mediation Services
STATE OF MINNESOTA

**IN THE MATTER OF A PETITION FOR
DETERMINATION OF AN APPROPRIATE UNIT
AND CERTIFICATION AS EXCLUSIVE
REPRESENTATIVE**

September 20, 2016

Service Employees International Union, Local 284, South St. Paul, Minnesota
- and -
University of Minnesota, Unit 8, Minneapolis, Minnesota

BMS Case No. 16PCE0644

UNIT DETERMINATION ORDER – COMMUNITY OF INTEREST

INTRODUCTION

Over the course of thirteen days beginning on April 19, 2016 and ending on May 13, 2016 the State of Minnesota, Bureau of Mediation Services (Bureau) conducted a hearing pursuant to a petition filed by Service Employees International Union, Local 284, South St. Paul, Minnesota (SEIU or Union) on January 20, 2016. The petition requested determination of an appropriate unit and certification as exclusive representative for certain employees of the University of Minnesota, Unit 8, Minneapolis, Minnesota (University or Employer). The hearing focused on the community of interest of ten classifications, the University contends are within Unit 11, with those classifications both parties agree are presently within Unit 8 (undisputed Unit 8 classifications). The hearing record was closed upon timely receipt of post-hearing arguments on Friday, July 1, 2016.

APPEARANCES

Karen G. Schanfield, Attorney, Krista Hatcher, Attorney and Shelley Carthen-Watson, Assistant General Counsel, appeared on behalf of the University and Brendan D. Cummins, Attorney, and Trisha Pande, Attorney appeared on behalf of SEIU.

ISSUE

Should the classifications of Assistant Extension Educator, Assistant Extension Professor, Associate Extension Educator, Associate Extension Professor,

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Extension Educator, Extension Professor, Lecturer, Teaching Specialist, Senior Lecturer and Senior Teaching Specialist (herein referred to collectively as “Classifications in Question”) be included in the appropriate bargaining unit defined at Minnesota Statute §179A.11, Subd. 1(8)

POSITIONS OF THE PARTIES

The Union adopts the position that the undisputed Unit 8 classifications share a community of interest with the Classifications in Question. They argue that in establishing University of Minnesota bargaining unit structure, the Legislature was guided by community of interest. They also assert that the key community of interest factors law makers used in determining the University bargaining units is “*work function classifications.*” And, “*In the case of Unit 8, the Twin Cities Instructional Unit, the “work function classification” at issue is “instruction” or teaching.*” The Union further states that positions in the Lecturer and Teaching Specialist job series enjoy the privilege of academic freedom and participate in faculty governance as do current Unit 8 positions, and engage in the three parts of the University’s mission of teaching, research or scholarly or creative work, and service. They further contend that the primary duty of positions in the Extension Professor and Extension Educator job series is teaching along with responsibilities for scholarship and program leadership. The Union also asserts that the Classifications in Question share key terms and conditions of employment. They also observe that as with the Classifications in Question, some undisputed Unit 8 positions are short term appointments and are not eligible for tenure. On the other hand, the Union argues that taken together, all of the classifications the University claims are currently placed in Unit 11 are a smorgasbord of diverse classifications. Whereas Unit 8 is an instructional unit. The ten Classifications in Question are defined by their instructional role and therefore belong in the instructional unit.

The University begins by stating that the Bureau lacks jurisdiction to assign the Classifications in Question to Unit 8. They argue that even if the Bureau had jurisdiction, the Classifications in Question should not be assigned to Unit 8. They also note that the University is a premier institution of higher learning, a home for discovery and research and a hub for outreach and community service. Therefore they argue that the community of interest of University Faculty members in Unit 8 on the Twin Cities campus, along with Faculty in the rest of the University system is unique. This is so because they are responsible for all three aspects of the University’s mission. Instead, Unit 11, is the proper assignment for the Classifications in Question because it includes University classifications on all campuses statewide and its members are responsible for some aspects of the mission. The Classifications in Question are primarily responsible for contributing to the University’s role as an institution of higher learning. To place the Classifications in Question into Unit 8 would blur and diminish the role of Unit 8 faculty and inappropriately shift the fundamental balance of the University. Simply stated the University contends that the Classifications in Question, while playing an important role at the University, do not share a community of interest with undisputed Unit 8 classifications.

APPLICABLE STANDARDS

Minn. Stat. § 179A.09, Subd. 1 (2015). Unit Determination Criteria provides:

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.

Minn. Stat. § 179A .11, Subd. 2 (2015) University of Minnesota employee severance provides:

“(1) The Law Enforcement Unit consists of the positions of all employees with the power of arrest.

(2) The Craft and Trades Unit consists of the positions of all employees whose work requires specialized manual skills and knowledge acquired through formal training or apprenticeship or equivalent on-the-job training or experience.

(3) The Service, Maintenance, and Labor Unit consists of the positions of all employees whose work is typically that of maintenance, service, or labor and which does not require extensive previous training or experience, except as provided in unit 4.

(4) The Health Care Nonprofessional and Service Unit consists of the positions of all nonprofessional employees of the University of Minnesota hospitals, dental school, and health service whose work is unique to those settings, excluding labor and maintenance employees as defined in unit 3.

(5) The Nursing Professional Unit consists of all positions which are required to be filled by registered nurses.

(6) The Clerical and Office Unit consists of the positions of all employees whose work is typically clerical or secretarial, including nontechnical data recording and retrieval and general office work, except as provided in unit 4.

(7) The Technical Unit consists of the positions of all employees whose work is not typically manual and which requires specialized knowledge or skills acquired through two-year academic programs or equivalent experience or on-the-job training, except as provided in unit 4.

(8) The Twin Cities Instructional Unit consists of the positions of all instructional employees with the rank of professor, associate professor, assistant professor, including research associate or instructor, including research fellow, located on the Twin Cities campuses.

(9) The Outstate Instructional Unit consists of the positions of all instructional employees with the rank of professor, associate professor, assistant professor, including research associate or instructor, including research fellow, located at the Duluth campus, provided that the positions of instructional employees of the same ranks at the Morris, Crookston, or Waseca campuses shall be included within this unit if a majority of the eligible employees voting at a campus so vote during an election conducted by the commissioner, provided that the election shall not be held until the Duluth campus has voted in favor of representation. The election shall be held when an employee organization or group of employees petitions the commissioner stating that a majority of the eligible employees at one of these campuses wishes to join the unit and this petition is supported by a showing of at least 30 percent support from eligible employees at that campus and is filed between September 1 and November 1.

Should both units 8 and 9 elect exclusive bargaining representatives, those representatives may by mutual agreement jointly negotiate a contract with the regents, or may negotiate separate contracts with the regents. If the exclusive bargaining representatives jointly negotiate a contract with the regents, the contract shall be ratified by each unit.

(10) The Graduate Assistant Unit consists of the positions of all graduate assistants who are enrolled in the graduate school and who hold the rank of research assistant, teaching assistant, teaching associate I or II, project assistant, or administrative fellow I or II.

(11) The Academic Professional and Administrative Staff Unit consists of all academic professional and administrative staff positions that are not defined as included in an instructional unit, the supervisory unit, the clerical unit, or the technical unit.

(12) The Noninstructional Professional Unit consists of the positions of all employees meeting the requirements of section 179A.03, subdivision 13, clause (1) or (2), which are not defined as included within an instructional unit, the Academic Professional and Administrative Staff Unit, or the supervisory unit.

(13) The Supervisory Employees Unit consists of the positions of all supervisory employees”

Minn. Stat. § 179A .10, Subd. 4 (2015) State Units Other Assignments provides:

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.

The Minnesota Court of Appeals held, in re Decertification of an Exclusive Representative Certain Employees of the Univ. of Minnesota, Unit 9, 730 N.W.2d 300, 307 (Minn. Ct. App. 2007) (hereinafter, *Certain Employees*)

“Finally, the university argues that the BMS erred by failing to consider the factors in Minn. Stat. § 179A.09 in determining that the UMC faculty was not an appropriate unit for decertification purposes. But section 179A.09 sets forth the factors the commissioner must consider when determining bargaining units that are not predetermined by statute. Because the university units are predetermined by Minn. Stat. § 179A.11, Subd. 1 (2015), they are not subject to the section 179A.09 factors.”

The holding in *Certain Employees (Supra)*, has an important bearing on how the case at hand must be analyzed. Minn. Stat. § 179A.04, Subd 4 (2015), directs that the commissioner shall assign University of Minnesota classifications “*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.*” It also provides “*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.*” This is an evident contradiction between the plain language of Minn. Stat. § 179A.04, Subd. 4, (2015), and the Court holding in *Certain Employees of the Univ. of Minnesota, Unit 9*. Minn. Stat. § 179A.09, Subd. 1, unit determination criteria, are a listing of the community of interest standards well accepted in law. When the Public Employment Labor Relations Act (PELRA) was originally adopted in 1971 (Laws of Minnesota 1971 Chapter 33), the language at Minn. Stat. § 179A.09, was included. This provision remained unchanged when PELRA was substantially rewritten and recodified by Laws of Minnesota 1984, Chapter 462. A review of standard labor law text reveals that the Legislature adopted this language from the “community of interest” standards long in use by the National Labor Relations Board (NLRB) as the standards for unit determination and unit assignment decisions under the National Labor Relations Act (NLRA.) (*NLRA Basic Guide to the National Labor Relations Act* pp 13, 1997; *The Developing Labor Law Sixth Edition*, Committee on the Development of the Law Under the National Labor Relations Act, ABA, 2012 pp 690-693). The Bureau must resolve the evident difference between the Court holding in *Certain Employees*, and the plain language of Minn. Stat. § 179A.04, Subd 4, (2015) The Bureau may not use the Minn. Stat. § 179A.09, Subd. 1. (2015) standards to create new bargaining units. Nor may this agency reassign classifications previously assigned by Minn. Stat. § 179A.11 (2015) to different existing appropriate bargaining units unless they have been significantly modified in occupational content.

In a separate ruling in the matter at hand, the Bureau held that the positions in question have not been assigned by operation of Minn. Stat. § 179A.11. (BMS Case 16PCE0644, March 15, 2016) In the case at hand, the statute compels the Bureau to determine the unit assignment of the

Classifications in Question. In doing so, this agency must insure that the community of interest analysis reflects the bargaining unit structure created by the Legislature. In this effort greatest weight will be assigned to those specific community of interest factors relied upon by the Legislature in enacting Minn. Stat. § 179A.11 (2015).

PRE-HEARING RULINGS

On March 15, 2016, the Bureau issued a pre-hearing ruling on the issue of:

“Whether the classifications in question have been previously assigned under the meaning of Minnesota Statute §179A.10, Subd. 4 (2015)”

In that ruling, the Bureau found that:

“The University is free to assign previously unassigned job classifications to unrepresented bargaining units for administrative purposes. However, in a contested case, such classification assignments are subject to review by the commissioner pursuant to Minnesota Statute §179A.10, Subd. 4 (2015).”

The University filed a Motion for Reconsideration on March 18, 2016. The Bureau issued an order denying the University’s Request for Reconsideration on March 25, 2016. The Bureau ordered that a hearing be held to determine the appropriate unit assignment of the classifications in question.

On April 27, 2016 the Bureau issued a second Pre-Hearing Ruling addressing the question of whether any classifications at the Academic Health Sciences or Law School maybe included in Unit 8 as part of the proceedings at hand. We ruled that they may not. (Pre-Hearing Ruling, BMS Case NO. 16PCE0644, April 27, 2016). The University requested reconsideration of the Bureau’s April 27, 2016 Ruling on May 6, 2016. The request for reconsideration was denied by the Bureau in an order dated May 18, 2016.

DISCUSSION

Undisputed Unit 8 Classifications

The undisputed Unit 8 classifications are generally categorized into two types under the University’s Tenure Code (University exhibit 1; Union exhibit 64):

Faculty with regular appointments include those who have been granted indefinite tenure or those on a probationary status leading to a decision concerning tenure. Employees currently holding indefinite tenure are

- 781 Professors,
- 18 Regents Professors,
- 450 Associate Professors

- 1 Assistant Professor
(1250 total)

The following are Regular tenure track appointments still on probation.

- 5 Associate Professors
- 293 Assistant Professors on probationary status

(298 total)

A total of 1,548 incumbents (Hearing Officer Exhibit 7)^A.

Faculty with Term appointments are those whose appointment terminates at the end of a specific period of time. This includes:

- 20 Professors
- 8 Adjunct Professors
- 1 Adjunct Research Professor
- 7 Research Professors
- 4 Teaching Professors
- 3 Visiting Professors
- 18 Associate Professors
- 10 Adjunct Associate Professors
- 5 Research Associate Professors
- 2 Teaching Associate Professors
- 4 Visiting Associate Professors
- 56 Assistant Professors
- 62 Adjunct Assistant Professors
- 19 Research Assistant Professors
- 13 Teaching Assistant Professors
- 1 Visiting Assistant Professor
- 6 Instructors
- 38 Adjunct Instructors

For a total of 277 incumbents with Term appointments. (Hearing Officer Exhibit 7)^C.

Tenure and tenure-track positions have individual offices, teach in campus classrooms and have research and/or laboratory facilities either on campus or in the field.

Undisputed Unit 8 Regular appointment candidates are recruited in accordance with vacant tenure track and tenure procedures. The process involves national and/or international searches for candidates, a review committee that includes tenured faculty from the academic unit in which the vacancy exists, two or three day campus visits by finalists that may include presentations of research projects, evidence of teaching skills and visits with staff within the academic unit. Candidates for such positions must hold a terminal degree for the field in which there is a vacancy. The terminal degree in most cases might include PhD, EdD or Masters of Fine Arts. The decision to recommend a job offer is done through a vote of faculty with indefinite tenure within the academic unit. These recommendations are forwarded through the collegiate and university levels with final decisions needing approval of the Board of Regents or its authorized delegate. (University exhibits 36, 42, 47, 73 and 73A; Union exhibits 36A, 36D, 45A, 46A, 47, 49A and 51)

^A A number of documents were provided to the Hearing Officer by the University as ordered in the March 22, 2016 Order for Hearing Schedule and entered into the record as Hearing Officer Exhibits at the request of the parties. Copies were provided to the Union by the University at the same time as they were provided to the Hearing Officer. Hearing Officer Exhibits 7 and 8 are updated lists sent via email by the University to the Hearing Officer and Union on June 28, 2016.

^C Supra note A, at 6.

Undisputed Unit 8 classifications are part of the University's Academic job family, on the A2 Salary Administration Plan, at Grade Level 5 for all positions except Instructor and Adjunct Instructor which are at Grade Level 4. (University exhibits 2 through 18; Union exhibits 14 to 30)

Initial salaries are negotiated by the appointing authority within the guidelines of a document referenced in the Job Classification Specifications (University exhibits 2 to 18; Union exhibits 13A, 14 to 30) as the "Current Year Academic Floor, Fixed Ranges and Fixed Rates document". Testimony of a number of witnesses indicate that the initial salary may be supplemented with lump sum payments for moving expenses, research set-up funds and travel expenses.

Salary adjustments after the initial salary is negotiated, including annual salary adjustments and promotion, are governed by an Administrative Policy titled Faculty Compensation: Twin Cities, Morris, Rochester (University exhibit 124; Union exhibit 37C). Criteria are also referenced in the Tenure Code (University exhibit 1; Union exhibit 64) and the Department 7.12 Statements (University exhibits 37A to 37J, 43A, 55B to 55D, 61A to 61G, 68A to 68D, 74A to 74H, 80B to 80H and 80K to 80T).

The process for granting indefinite tenure and for promotion for current Unit 8 positions are outlined in the University Tenure Code and further refined to take into account differences in disciplines in the Department 7.12 statements.

Annual review of faculty performance is referenced in Section 7a.1 of the Tenure Code (University exhibit 1, Union exhibit 64 - page UMN004164) and in the Departments 7.12 statements.

Unless assigned an administrative role within their department, college or the university, undisputed Unit 8 incumbents do not routinely exercise supervisory authority as evidenced by no mention of such responsibility in the job classification specifications, job descriptions and/or position descriptions. (University exhibits 2 through 18, 40G to 40J, 40M, 40N, 45A, 45B, 52, 77B, 77D, 77F, 83B, 83F to 83J and 116A to 116E; Union exhibits 14 to 30)

Undisputed Unit 8 incumbents may teach courses for credit at all levels – 1000 and 3000 level undergraduate courses, 5000 level courses which may include both graduate and undergraduate students and 8000 level graduate courses.

Undisputed Unit 8 incumbents serve as advisors for students at all levels (undergraduate, masters and doctoral) and in particular serve as graduate thesis advisors and on graduate level committees. (University exhibits 2 through 18, 37A to 37J, 40G to 40J, 40M, 40N, 43A, 45A, 45B, 52, 55B to 55D, 61A to 61G, 68A to 68D, 74A to 74H, 77B, 77D, 77F, 80B to 80H, 80K to 80T, 83B, 83F to 83J and 116A to 116E; Union exhibits 14 to 30)

Under the tenants of “Academic Freedom” as outlined in the University’s Tenure Code (University exhibit 1, Union exhibit 64 – pages UMN004151 - UMN004152) undisputed Unit 8 incumbents have little, if any, direct supervision in their day-to-day performance in the areas of scholarly research, other creative work, teaching and service. Nominally they would report to the head of their department, their academic unit and ultimately to the Board of Regents.

Decisions regarding undisputed Unit 8 incumbent employees’ promotion from probationary status and through the ranks are ultimately made by the Board of Regents after review by faculty holding indefinite tenure within their academic unit with review at the collegiate and university levels prior to submission to the Board of Regents. Decisions related to annual performance of probationary and non-probationary employees is made by a committee of peers whose recommendations are forwarded to the academic unit administrative head. Specifics of these processes are outlined in each academic unit’s 7.12 Statement (University exhibits 37A to 37J, 43A, 55B to 55D, 61A to 61G, 68A to 68 D, 74A to 74H, 80B to 80H and 80K to 80T).

Faculty complaints related to alleged violations of the Tenure Code under sections 1, 4, 6, 7, 7a, 8, 9, 10, 11, 12 or 14 are heard by the Judicial Committee of the Faculty Senate (University exhibit 167 - page 1 and Union exhibit 31c – page 51).

Benefit eligibility for undisputed Unit 8 employees is described in the 2016 Benefit Summary documents (Union exhibits 55A to 55C). These benefits are generally the same as offered to all University employees. Various other types of benefits including leaves are described in University exhibits 124 to 126 and Union exhibits 35B to 35G. Those benefits identified as unique to undisputed Unit 8 employees include Faculty Development Leave which includes Single Semester Leaves, Sabbatical Leaves and Entrepreneurial Leaves (University exhibit 125; Union exhibit 35B). In addition the Tenure Code (University exhibit 1; Union exhibit 64 – pages UNM004171 to UMN004172) provides continued employment for faculty on probation or with indefinite tenure in the event that a programmatic change leads to discontinuation of a program in which a member of the faculty is employed.

TERM (Non-Tenure Track) Faculty who also hold undisputed Unit 8 classifications make up 18.4% of the bargaining unit according to the most recent list submitted by the University (Hearing Officer exhibit 7)^D. Use of term faculty is limited under sections 3.3 and 3.4 of the Tenure Code (University exhibit 1; Union exhibit 64 – pages UMN004153 to UMN004154

Term faculty are further divided into five (5) categories (University exhibit 128; Union exhibit 32A – pages UMN004607 to UMN004615). Those categories and differences between the Regular faculty described above and the Term faculty are described below:

Contract Faculty: This category includes Professor, Associate Professor, Assistant Professor and Instructor and may include the prefixes of Teaching, Research, Clinical

^D Supra note A, at 6.

or Service/Outreach. These positions are not eligible for tenure and the majority are hired under an annual renewable or multiple year contract. Incumbents are required to hold the terminal degree required by the discipline with the exception of Instructors. Instructors are required to have a Master's degree and typically have completed the coursework for the terminal degree but may not have completed their thesis. National or limited regional searches are required. Incumbents participate in the University's teaching, scholarship and service missions. They do not participate in decisions about appointment, promotion or tenure of regular faculty.

Temporary Faculty: Positions in this category include Professor, Associate Professor, Assistant Professor and Instructor and may include the prefixes of Teaching, Research, Clinical or Service/Outreach. These positions are not eligible for tenure and typically are appointed for one year or less. National, limited regional or limited local searches are required. Incumbents in these positions are eligible for benefits but not eligible for Faculty Sabbatical and Single Semester Leaves. They do not have a vote in faculty governance matters or participate in decisions about appointments, promotion or tenure of regular faculty.

Visiting Faculty: Positions in this category include Visiting Professor, Visiting Associate Professor, Visiting Assistant Professor and Visiting Instructor and may include the prefixes of Teaching, Research, Clinical or Service/Outreach. Incumbents hold a regular faculty appointment at another university or similar status in a research institution or government service. These appointments are typically one year or less and may or may not be on University payroll. No formal search is conducted. If on University payroll, the incumbent would be eligible for regular benefits except Faculty Sabbatical and Single Semester Leaves. They do not have a vote in faculty governance matters or participate in decisions about appointments, promotion or tenure of regular faculty.

Adjunct Faculty from Within the University: These are individuals that hold a regular tenured or tenure-track faculty appointment or a contract or temporary term faculty appointment within the University. Titles in this category include Adjunct Professor, Adjunct Associate Professor, Adjunct Assistant Professor and Adjunct Instructor. No formal search is required. These appointments are typically one year but may be renewed by mutual agreement. Benefits are not associated with this appointment although time spent in this appointment will be added to the other appointment for the purposes of determining benefit eligibility. Incumbents do not participate in faculty governance matters or participate in decisions about appointments, promotion or tenure of regular faculty within the academic unit in which the adjunct appointment is held.

Adjunct and Clinical Faculty from Outside the University: Titles in this category include Adjunct Professor, Adjunct Associate Professor, Adjunct Assistant Professor and Adjunct Instructor and may include the prefixes of Teaching, Research, Clinical or Service/Outreach. Incumbents generally have a principal occupation in professional activities or the community or are retired from such and teach on a

limited, part-time basis. A terminal or professional degree may be required but professional experience may be substituted. The appointment is typically for no more than 20% time. A limited local search is required. The incumbents are not eligible for University benefits nor do they participate in Faculty governance matters or decisions about appointments, promotion or tenure of regular faculty.

Classifications In Question

The Classifications in Question are, Extension Professors (33), Assistant Extension Professors (51), Associate Extension Professors (55), 1 Extension Educators (1), Assistant Extension Educators (24), Associate Extension Educators, (7), Senior Lecturers (126), Lecturers (393), Senior Teaching Specialists (54), and Teaching Specialists (507) for a total of 1,251 incumbents. (Hearing Officer exhibit 8)^E

Appointment types for the Classifications in Question are defined in an Appendix to a University Administrative Policy titled Appointments of Academic Professional and Administrative Employees (University exhibit 127; Union exhibit 34). The Appendix is titled Academic Professional Class Series, Job Codes, Titles, Appointment Types and Promotions.

Instructional Academic and Professional classifications such as Teaching Specialist and Assistant Extension Professor may incorporate professorial rank, these classifications are not eligible for academic tenure.

The most commonly used type of appointments are the K-Annual Renewable Contract and Z-Non-Credit Teaching/Other Professional Work. Positions classified in the Extension Education and Extension Professor titles are most likely to be Z-type appointments and positions in the Lecturer and Teaching Specialist positions are either K-type appointments or Z-type appointments. (University exhibits 64A to 64M, 64O to 64Q, 64S to 64X, 64Z through 64BB, 64DD and 64II)

There are 393 job classifications the University identifies as Academic Professional and Administrative staff eligible for inclusion in Unit 11 (Union Exhibit 59.). Among these are the ten Classifications in Question. Also included in this grouping are a wide variety of other job classifications ranging from positions that are almost certainly excluded as managerial, supervisory, or confidential such as President, Chancellor and General Counsel, and Human Resources Manager. A broad spectrum of other classifications the Employer identified as within to the Academic Professional and Administrative unit include titles such as Accountant, Curator, Cartographer, System Developer, Coach, and Athletic Trainer. Academic Professionals with Teaching Responsibilities are identified as a separate grouping within the ranks of those the University considers Academic Professional and Administrative (ibid.) This grouping includes the series of job classifications titled

^E Supra note A, at 6.

Teaching Specialist, Senior Teaching Specialist, Lecturer, and Senior Lecturer. It does not include the Assistant Extension Educators, Assistant Extension Professors, Associate Extension Educators, and Associate Extension Professors.

Incumbents in the Extension Professor series are “*generally field-based in regional centers throughout the state, with a few positions based on a campus*”. (University exhibits 19 to 21; Union exhibits 65A, 65B, 66A, 66B, 67A, and 67B). Incumbents in the Extension Educator job series are “*generally field-based in county or other partner offices throughout the state*”. (University exhibits 22 to 24; Union exhibits 68A, 68B, 69 and 70). Incumbents have offices at their respective work sites but their instruction typically takes place outside a formal classroom setting and they are not assigned research or laboratory facilities.

While incumbents in the Lecturer and Teaching Specialist classifications are assigned system-wide, this petition deals only with those assigned to the Twin Cities campuses. Incumbents generally have individual and/or shared offices in the academic unit to which they are assigned and their instruction duties take place in formal classroom settings. They are not assigned research or laboratory facilities.

With some variation between academic units, vacant positions are filled through a process guided by the parameters established in a University Administrative Policy titled Recruitment and Selection of Faculty and Academic Professional and Administrative Employees. (Union exhibit 36A). Vacancies in the Lecturer and Teaching Specialist job series are generally filled via a required limited-local search. In some cases a decision may be made to conduct a national or limited-regional search. (University 128; Union 32A) Extension Educator vacancies are typically filled on a local search basis while Extension Professor vacancies are typically filled on a regional and sometimes national search basis. (Testimony of Dean Beverly Durgan, Transcript Volume 5, page 847, line 20 to page 848, line 18).

The degree required of the Extension Professor, Extension Associate Professor and Extension Assistant Professor positions is a MA/MS degree. The degree required of the Extension Educator, Extension Associate Educator and Extension Assistant Educator positions is a BA/BS degree. The degree required of a Lecturer or Senior Lecturer position is the degree expected of faculty in the department or substantial professional recognition in the field, such as a PhD or MFA, along with professional and/or teaching experience. The degree required of the Teaching Specialist or Senior Teaching Specialist position is BA/BS although a MA/MS degree is normally required along with demonstrated competence to teach the course material. (University exhibits 19 to 28; Union exhibits 9A, 10A, 11A, 12A, 65A, 66A, 67A, 68A, 69, 70).

The Extension Professor, Extension Associate Professor and Extension Assistant Professor positions are part of the University’s Extension Education job family, on the A1 Salary Administration Plan, at Grade Level 84, 85, and 87 respectively. (University exhibits 19 to 21; Union exhibits 65A, 66A, 67A).

The Extension Educator, Extension Associate Educator and Extension Assistant Educator positions are part of the University's Extension Education job family, on the A1 Salary Administration Plan, at Grade Level 84, 85, and 87 respectively. (University exhibits 22 to 24; Union exhibits 68A, 69, 70).

The Lecturer and Senior Lecturer positions are part of the University's Education Job Family, on the A1 Salary Administration Plan at Grade Level 04. (University exhibits 25, 26; Union exhibits 9A, 10A).

The Teaching Specialist and Senior Teaching Specialist positions are part of the University's Education Job Family, on the A1 Salary Administration Plan at Grade Level 02. (University exhibits 27, 28; Union exhibits 11A, 12A)

Initial annual base salary is negotiated at the time of hire. Setting of such compensation is guided by University Administrative Policies included as University 134 and Union exhibits 37A and 37B. In addition to the initial annual base salary some individuals may receive lump sum payments for moving expenses. (University exhibits 32A & 32B)

Salary adjustments after the initial salary is negotiated, including annual salary adjustments and promotion are governed by University Administrative Policies (University exhibit 134; Union exhibit 37B), Collegiate-level Guides to compensation (University exhibit 34B; Union exhibits 81, 82), and Collegiate-level Guides to promotion (University exhibits 33A, 33B, 64N, 64R, 64Y, 64CC, 63EE, 64FF to 64HH, 64JJ, 80I, 80J, 112D; Union exhibits 3, 4, 54)

The process for promotion in the Extension College for [Campus and Regionally-Based] Academic Professionals with Extension Academic Rank is outlined in University exhibit 33A and Union exhibit 3. This document applies to the Assistant Extension Professor, Associate Extension Professor and Extension Professor positions.

The process for promotion from Lecturer to Senior Lecturer and from Teaching Specialist to Senior Teaching Specialist are outlined in various departmental/collegiate guides to promotion examples of which were introduced as University exhibits 64N, 64R, 64Y, 64CC, 64EE through 64 HH, 64JJ and Union exhibit 54. Each guide has their own way of listing requirements for promotion but in general include focus of undergraduate teaching, course/curriculum coordination and development, mentoring of teaching assistants and other instructors, service within the department, college or university and outreach beyond the department.

General guidance regarding annual performance reviews for Academic Professional and Administrative Employees is found in an Appendix to a University Policy titled Types of Performance Reviews for Academic Professional and Administrative Employees submitted as University exhibit 131. It requires annual performance reviews of all Academic Professional and Administrative Employees in each academic unit through a process developed within the academic unit.

Unless assigned an administrative role within their department, college or the university, Academic Professional and Administrative Staff, do not routinely exercise supervisory authority as evidenced by the use of the word “may” when describing the responsibility in the job classification specifications, job descriptions and/or position descriptions. (University exhibits 19 to 28; Union exhibits 9A, 10A, 11A, 12A, 65A, 66A, 67A, 68A, 69, 70)

Incumbents in the Extension positions do not teach courses for credit. Lecturers and Senior Lecturers, Teaching Specialists and Senior Teaching Specialists regularly teach 1000 and 3000 level undergraduate courses. Incumbents may teach 5000 and 8000 level courses only with a vote of approval of the graduate faculty in the academic unit. (University exhibits 19 to 28; Union exhibits 9A, 10A, 11A, 12A, 65A, 66A, 67A, 68A, 69, 70) 5000 level courses may include a mix of undergraduate and graduate students while 8000 level courses include only graduate students. It is unusual for a Lecturer, Senior Lecturer, Teaching Specialist or Senior Teaching Specialist to be assigned to an 8000 level course.

Incumbents in the Extension positions do not advise students enrolled in courses for credit at the University. Incumbents in the positions of Lecturer, Senior Lecturer, Teaching Specialist and Senior Teaching Specialist “*advise students with regard to academic concerns and school-related organizations*”. (University exhibits 19 to 28, 31A to 31H, 38A, 38B, 44A, 44B, 50, 51, 62A to 62J, 69, 75a to 75K, 81A to 81E, 113A; Union exhibits 5A, 9A, 9B, 10A, 10C, 11A, 11B, 12A, 12B, 13B, 65A, 65C, 65D, 66A, 66B, 67A, 68A, 69, 70) Incumbents in these positions are normally involved in the advising of graduate students or serve as graduate thesis advisors or on graduate committees.

Incumbents in the Extension positions report to an Area Program Leader and Capacity Area Leader (University exhibits 19 to 24; 32A to 32G; Union exhibits 65A to 65D, 66A to 66C, 67A to 67B, 68A to 68B, 69, 70). Incumbents in the Lecturer, Senior Lecturer, Teaching Specialist and Senior Teaching Specialist generally report to department heads and/or professors as outlined in various appointment letters (University 39A to 39E, 51, 56, 76A to 76D; Union exhibits 7B, 72).

Benefit eligibility for Academic Professional and Administrative Staff is described in the 2016 Benefit Summary documents (Union exhibits 55A to 55C). Various other types of benefits including leaves are described in University exhibits 124 to 126 and Union exhibits 35B to 35G. Those benefits identified as unique to the undisputed Unit 8 employees include Professional Development Leave which may be granted for activities “*that must be demonstrably related to the betterment of the P&A employee’s unit or professional competence*”. (Union exhibit 35A).

JURISDICTION OF BUREAU

The University continues its argument that the Bureau lacks jurisdiction over these proceedings (University closing brief; pages 1-2):

“The Bureau’s authority to assign University classifications is, by law, limited to two circumstances: (1) when the classifications have not been assigned or (2) the classifications have been significantly modified in occupational content subsequent to assignment. Minnesota Statute § 179A.10, subd. 4. Finding that the job classifications at issue have not been previously assigned, the Bureau ordered four weeks of hearing on whether a community of interest exists between employees in ten job classifications in PELRA Unit 11 and the Twin Cities Faculty in PELRA Unit 8. The Bureau’s decision to conduct this hearing not only disregards the plain language of PELRA, but is inconsistent with well documented legislative history and the Bureau’s own precedent. By participating in this community of interest hearing, the University has not, and does not, concede that the Bureau has jurisdiction to conduct this hearing or make a determination on the issues set forth in its Order of March 22, 2016.”

This argument by the University was addressed in the Bureau’s March 15, 2016 Pre-Hearing Ruling (Pre-Hearing Ruling).

By agreement of the Parties, the Bureau issued the Pre-Hearing Ruling March 15, 2016, Pre-Hearing jurisdictional ruling based on submission of written legal argument and limited documentary submissions (March 15, 2016). As cited above, Minn. Stat. § 179A.10, Subd. 4, provides two circumstances when the commissioner shall assign University of Minnesota employee classifications to the appropriate units; 1) when the classifications have not been assigned under § 179A.10, or 2) when the classifications have been significantly modified in occupational content subsequent to their initial assignment. The Pre-Hearing Ruling found that the positions in question have not been previously assigned as intended by the statute. It is notable that at the hearing evidence came into the record that the positions in question have been significantly modified in occupational content since the enactment of Minn. Stat. § 179A.11. In December of 1980, the University Board of Regents adopted a Resolution establishing a new category called “academic professional” employees. The Resolution stated in relevant portion:

“Academic Staff professional personnel generally parallel disciplinary faculty in having the requisite preparation and specialized knowledge in an academic discipline or field on which practice is based and in exercising independent judgment. These individuals are not engaged in full-time teaching and scholarly work, as are faculty, but rather are assigned to duties enhancing the research, teaching, and service functions of the University”. (Union. Ex. 63, p. 260)

On December 9, 2005, the Board adopted a change in the definition of Academic Professional and Administrative Staff, the resolution states in relevant portion:

*“Subd. 2. Academic and Professional and Administrative
(a) Definition. The academic professional and administrative [P&A] employee group includes the following sub-groups of employees:*

(1) Academic Professionals. Academic professionals parallel faculty in having requisite preparation and specialized knowledge in an academic discipline or field and in exercising independent professional judgement. These individuals may be engaged in teaching, research, service, and a wide variety of other professional functions within the University". (Union Ex. 53A p. 3)

This evidence shows that in 2005, long after enactment of Minn. Stat. § 179A.11, and after the creation of Unit 11 by Laws of Minnesota 1991, Chapter 77, the University significantly modified the occupational role and job content of the Classifications in Question to parallel Faculty, including specifically the duties of teaching, research, and service. This unrebutted evidence demonstrates a significant modification in the occupational content of some classifications the University grouped as Academic Professionals. It reinforces the Bureau's conclusion that PELRA requires the commissioner to determine the appropriate unit assignment of the Classifications in Question.

The Bureau ordered that a hearing be held to determine the appropriate unit assignment of the Classifications in Question. The University filed a Motion for Reconsideration on March 18, 2016. The Bureau issued an order denying the University's Request for Reconsideration on March 25, 2016.

SEVERED BARGAINING UNIT STATUS

The University again raises the issue of employees in the Classifications in Question who work in the Academic Health Center and the Law School (University closing brief; page 58):

"In addition, the status of P&A employees in the contested classifications who work in the Academic Health Center and the Law School—schools whose faculty exercised the statutory right to sever from Unit 8 under subdivision 2 of Minnesota Statute § 179A.11 years ago—has not been addressed in this hearing. As such, the Bureau has treated these P&A employees as if their status was determined by the severance votes that occurred in 1980, in which they did not participate."

As discussed above, the Bureau ruled on this issue in its pre-hearing order dated April 27, 2016. The University requested reconsideration of the Bureau's April 27, 2016 Ruling on May 6, 2016. The request for reconsideration was denied by the Bureau in an order dated May 18, 2016.

The Court in *Certain Employees* (see *infra* pp 4), observed, "But *"the legislature has determined that the overall [statutory] policy is best accomplished by . . . granting public employees certain rights to organize and choose freely their representatives," not unlimited rights. Minn. Stat. § 179A.01 (1) (2004)* (emphasis added)." Such is the case in the matter at hand; Academic Health Center and Law School employees long

ago elected to sever from Unit 8. Thus today, severance of all Unit 8 employees in these schools is the status quo, this must include any of the ten Classifications in Question found included in Unit 8.

ASSIGNMENT OF CLASSIFICATIONS

The University raises the question of the Bureau's authority to assign the classifications in question to Unit 8 alone and/or to divide the classifications across more than one bargaining unit (University closing brief; page 58):

*“By seeking to move employees in the Contested P&A Job Classifications from Unit 11 to Unit 8, the Union cherry-picked the members of a bargaining unit it wants without regard to the impact its request, if granted, would have on the statutory scheme so carefully delineated in PELRA. It further overlooks the reality that Unit 11 is not limited to the Twin Cities campus and asks the Bureau to act in contravention of PELRA. Moving the Teaching Specialists who work on the Crookston, Morris, and Rochester campuses from Unit 11 to Unit 8 directly contravenes the definition of Unit 8, which is limited to employees **located on the Twin Cities campus**. Minnesota Statute § 179A.11, subd. 1(8) (emphasis added). On the other hand, moving the Teaching Specialists who work at one of the outstate campuses from Unit 11 to Unit 9, the Outstate Instructional Unit, is not appropriate because Unit 9 is represented by the University Education Association (“UEA”), and thus the affected employees would be deprived of the right to vote on the question of union representation. Finally, it is inappropriate for these outstate employees to remain in Unit 11 if their Twin Cities counterparts do not.”*

The University expresses concern that the Bureau would place employees not located on the Twin Cities campus in Unit 8. The plain language of Minn. Stat. § 179A.11 states that Unit 8 is a bargaining comprised of instructional staff located on the Twin Cities campus. Thus, University instructional employees who are not located on the Twin Cities campus may not be assigned to Unit 8. Unit 8 and Unit 9 are statutorily established bargaining units of instructional employees in which the same classifications are assigned to Unit 8, or Unit 9, depending upon the campus where they are located. The Bureau is not authorized to make structural changes in the statutorily established bargaining units. The agency is required to make assignments of previously unassigned or significantly modified classifications based upon community of interest. Minn. State. § 179A.10, Subd. 4(2015). If any of the classifications in question are assigned to Unit 8 based upon a shared community of interest, the status of instructional staff occupying positions in the classifications in question who work at campuses where employees have elected to join Unit 9, would be determined separately.

With respect to the right of employees to participate in a representation election, the reasoning above, concerning Academic Health Center and Law School staff applies. Under PELRA public employees whose classifications are added to an existing bargaining unit,

whether it is certified as in the case of some outstate campuses in Unit 9, or the Academic Health Center and Law School Staff which have elected to sever from Unit 8, do not have the unfettered right to an election to decide the question of exclusive representation. The express words of Minn. Stat. § 179A.10, Subd. 4 (2015), state that, “The commissioner shall assign...University of Minnesota employee classifications...” it does not provide for a self-determination an election in such cases.

SHOWING OF INTEREST

The University contends that the Union cannot make a showing:

“...that the majority of employees in the [each of the contested] classification[s] satisfies in law and in fact the factors enumerated in Minnesota Statute § 179A.09 and the other relevant factors identified by the Bureau in its prior decisions in part because the Bureau has not determined the number of University employees in each of the Contested Classifications.⁶ Without this basic information, the Union cannot even identify the number of employees that constitute a majority of any of the Contested Classifications and the Bureau cannot make a reasoned decision.” (University closing brief; page 3).

Footnote 6 from the University’s closing brief; page 3 states: *“The University complied with the Bureau’s April 22, 2016 Order that it submit the names and other information for all possible members of the ten Contested P & A Classifications and reserved the right to submit additional information so that a determination of the number of incumbents can be made.”*

Minn. Stat. § 179A.12 Subd 3, provides in relevant portion:

Any employee organization may obtain a certification election upon petition to the commissioner stating that at least 30 percent of the employees of a proposed appropriate unit wish to be represented by the petitioner.

Minn. Rule 5510.0710 lists the required contents for a petition seeking certification as exclusive representative. This rule establishes the initial threshold for the Bureau to accept and begin the administrative process of addressing the petition. In relevant portion Minn. Rule 5510.0710 provides:

Subpart 1. Filing of petition. A petition for certification, representation, or decertification must include:
D. the approximate number of employees included in the proposed or previously determined appropriate unit;
E. the proposed or previously determined appropriate unit description;
F. a statement indicating that at least 30 percent of the employees in the proposed or previously determined unit support the intent of the petition;

The Bureau administers these provisions by requiring that a labor organization state on the face of a petition seeking certification the approximate number of employees in the bargaining unit, and submitting valid signed authorization cards showing support from at least 30 percent of that number. Frequently, as in the matter at hand, the parties contest which employees will be included in the bargaining unit and eligible to vote in an election to determine the question of representation. After a final determination on the list of employees eligible to vote, the Bureau then counts the number of valid authorization cards signed by eligible voters, submitted by the petitioning employee organization. At that point a final ruling is made on whether or not there is a 30 percent showing of interest to warrant the conduct of an election.

The classifications and approximate number of contested employees has been determined through employee lists provided by the Employer. Other decisions concerning which employees are to be excluded because they are supervisory, confidential, or for other reasons remain to be addressed. Consistent with statute, rule, and long standing practice, the Bureau will establish a list of eligible voters when these issues are resolved and make a final determination on showing of interest.

APPLICATION OF SPECIFIC COMMUNITY OF INTEREST FACTORS

The Union cites Minnesota State Employees Union, AFSCME, Council No. 6 and University of Minnesota, BMS Case No. 02-PCL-1141 (May 28, 2003) in arguing that “work function classifications” should be the primary factor used in determining community of interest:

“The Bureau has recognized that the Legislature was guided by the community of interest in adopting statutorily defined units at the University of Minnesota, and that the community of interest for purposes of the University primarily turns on “work function classifications.” AFSCME Council 6 and University of Minnesota, BMS Case No. 02-PCL-1141, p. 9 (May 28, 2003). In the case of Unit 8, the Twin Cities Instructional Unit, the “work function classification” at issue is “instruction” or teaching. The Classifications In Question all belong in Unit 8 because their primary job function is instructional. Under the University’s own policies and governing documents, each of the Classifications In Question holds primary responsibility for teaching. “Instruction” is their principal job duty. Accordingly, they are instructional employees who belong in the Twin Cities Instructional Unit.”
(Union post-hearing brief; page 1)

In AFSCME Council 6 and University of Minnesota, (supra) we wrote:

“We hold that the basic intent of the legislative enumeration contained within §179A.11 is to include within the precise unit the same or similar work function classifications, the long-standing concept of “community of interest.” Thus, §179A.11 (2002) reflects the overall structure, post-individually examined exclusions from classifications or units, down to the position level.”

As with State Executive Branch bargaining units (Minn. Stat. § 179A.10), State Court System bargaining units (Minn. Stat. § 179A.101), and State Board of Public Defense bargaining units (Minn. Stat. § 179A.101), the University of Minnesota bargaining units have been determined by specific provisions of law. Other bargaining units under PELRA are determined by the Bureau pursuant to the unit determination criteria at Minn. Stat. § 179A.09, Subd. 1. The University bargaining units at Minn. Stat. § 179A.11, Subd. 1 (2015), are crafted based principally upon occupational categories.

In our earlier discussion of applicable standards, the Bureau stated the following and it bears repeating:

“In doing so, this agency must insure that the community of interest analysis reflects the bargaining unit structure created by the Legislature. In this effort greatest weight will be assigned to those specific community of interest factors relied upon by the Legislature in enacting Minn. Stat. § 179A.11 (2015).” (see pp 6 above.)

COMMUNITY OF INTEREST ANALYSIS

The Bureau will analyze each of the Classifications in Question in terms of the PELRA community of interest standards at Minn. Stat. § 179A.09, Subd. 1(2015), taking particular care to emphasize the scheme adopted by the Legislature in establishing the University bargaining units. Each of the Classifications in Question has been individually analyzed. However, to avoid undue repetition the following discussion examines all of the Classifications in Question together for each individual community of interest factor. Where there are differences in application of a particular factor between classification or series, such is noted in the discussion.

For the purposes of the discussion the following classification series may be used:

1. Extension Professor which includes Extension Professor, Associate Extension Professor and Assistant Extension Professor classifications.
2. Extension Educator which includes Extension Educator, Associate Extension Educator and Assistant Extension Educator classifications.
3. Lecturer which includes Lecturer and Senior Lecturer classifications.
4. Teaching Specialist which includes Teaching Specialist and Senior Teaching Specialist classifications.

a) Principles and coverage of uniform comprehensive position classification and compensation plans of the employees.

The University has a comprehensive position classification system. Within this system, each undisputed Unit 8 classification has a numbered Job Classification Specification in the 9400s. Similarly, each of the Classifications in Question has a designated Job Classification Specification within the University classification system

in the 9600s for Extension Professor and Educator series classifications and in the 9700s for Lecturer and Teaching Specialist series classifications.

The current Unit 8 positions are assigned to the University's Academic Job Family Code (281). They are assigned to the A2 Salary Administration Plan at Grade 5 for all but the Instructor and Adjunct Instructor positions which are assigned at Grade 4. (University exhibits 2 through 18; Union exhibits 14 to 30) Extension Professor Series classifications are assigned to the University's Extension Education Job Family Code (2). They are assigned to the A1 Salary Administration Plan at Grade Level 85 for Extension Professor and Associate Extension Professor and Grade 87 for Assistant Extension Professor. (University exhibits 19 to 21; Union exhibits 65A, 66A, and 67A) The Extension Educator, Associate Extension Educator and Assistant Extension Educator positions are assigned to the University's Extension Education Job Family Code (2). They are assigned to the A1 Salary Administration Plan at Grade Level 84 for Extension Educator and Grade Level 85 for Associate Extension Educator and Grade 87 for Assistant Extension Educator. (University exhibits 22 to 24; Union exhibits 68A, 69, and 70) The Lecturer and Senior Lecturer positions are assigned to the University's Education Job Family Code (V). Both positions are assigned to the A1 Salary Administration Plan at Grade Level 4. (University exhibits 25, 26; Union exhibits 9A, 10A) The Teaching Specialist and Senior Teaching Specialist positions are assigned to the University's Education Job Family Code (V). Both positions are assigned to the A1 Salary Administration Plan at Grade Level 2. (University exhibits 27, 28; Union exhibits 11A, 12A) Regular salary adjustments for undisputed Unit 8 and the Classifications in Question are determined based upon the annual compensation plan memo, jointly issued from the Senior Vice President for Academic Affairs and Provost and Vice President for Human Resources. (Union exhibit 37B; University exhibit 134 p1)

Benefits are generally the same for all University employees with some differences in types of Leave available for scholarship, research and professional development.

The Tenure Code (University exhibit. 1; Union exhibit 64) is not a uniform comprehensive classification system. Nor does it establish pay or other critical aspects of a compensation plan. It does list faculty ranks and titles. It defines the difference between Regular and Term appointments in terms of job security protections and the general use of each type of appointment. It contains no information concerning compensation levels and many other items which are important terms and conditions of employment. The principal purpose for the Tenure Code is found in its preamble which states in relevant portion:

“PREAMBLE

The Board of Regents adopts these regulations with the conviction that a well-defined statement of rules is essential to the protection of academic freedom and to the promotion of excellence at the University of Minnesota. A well-designed promotion and tenure system ensures

that considerations of academic quality will be the basis for academic personnel decisions, and thus provides the foundation for academic excellence.” (supra)

The remainder of the document confirms this purpose; it protects academic freedom by establishing rules concerning tenure (job security), promotion and other specific provisions with the same objective.

The University policy, Academic Appointments with Teaching Functions (Employer exhibit 32) contains all of the elements of a comprehensive classification plan for instructional employees. It lists all classifications that teach, and provides explanations of lines of reporting authority. Importantly it includes a link to the University’s comprehensive listing of all Academic Job Codes and Titles. Employer exhibit 32 and Union exhibit 59 covers all of the undisputed Unit 8 classifications and the Classifications in Question. This same document requires each college to adopt a supplemental personnel plan.

This establishes that undisputed Unit 8 classifications, and all of the Classifications in Question together are part of one comprehensive classification system. Comparing the job classification specifications for uncontested Unit 8 classifications and the Classifications in Question discloses both similarities and distinctions among these jobs. The demonstrated differences in classification, and compensation level are of significant magnitude. Bureau experience demonstrates that employees with significantly different pay levels frequently share sufficient community of interest to establish long term stable collective bargaining relationships with employers.

Accordingly, principles and coverage of uniform comprehensive position classification and compensation plans of the employees, support the Classifications in Question including Extension Professor Series, Extension Educator Series, Lecturer Series and Teaching Specialist Series classifications within Unit 8.

b) Professions and skilled crafts, and other occupational classifications.

Undisputed Unit 8 classifications with a Regular appointment require a terminal degree recognized by the discipline to which they are assigned. This is usually a PhD, EdD or Master of Fine Arts degree. Many undisputed Unit 8 classifications with Term appointments also require a terminal degree although exceptions may be made for those with extensive non-academic experience. All of the positions are assigned to the Faculty Occupational Classification. (University exhibits 2 through 18; Union exhibits 14 to 30) The Extension Professor Series classifications require a Master’s Degree in a content area related to the area of expertise. The positions are assigned to the Academic Professional Occupational Classification. (University exhibits 19 to 21; Union exhibits 65A, 66A, and 67A) The Extension Educator, Series classifications require a Bachelor’s Degree with a preference for a Master’s Degree in a content area related to the focus area under the overall capacity area. (University exhibits 22 to 24; Union exhibits 68A, 69, and 70) The Lecturer Series positions

require the same degree expected of faculty in the department, such as a PhD, or substantial professional recognition in the field. In addition professional and/or teaching experience may be required of the Lecturer position and is required of the Senior Lecturer position. The positions are assigned to the Academic Professional Occupational Classification. (University exhibits 25, 26; Union exhibits 9A, 10A) The Teaching Specialist and Senior Teaching Specialist positions normally require a Master's degree although in some cases a Bachelor's degree may be accepted. In addition professional and/or teaching experience is required of the Teaching Specialist position and may be required of the Senior Teaching Specialist position. The positions are assigned to the Academic Professional Occupational Classification. (University exhibits 27, 28; Union exhibits 11A, 12A)

Undisputed Unit 8 classifications require the highest level of academic achievement, skill, training and experience. The Classifications in Question require significant academic achievement, skill, training, but with differing levels of experience. A review of the Job Classification Specifications for the undisputed Unit 8 classifications and the Classifications in Question reveal that all require high levels of scholarship. (University exhibits 31A, 31B, 31C, 31D; Union exhibits 66 to 70) Employees in both the undisputed Unit 8 classifications and the Classifications in Question may engage in teaching, research, and service. (Union Ex. 53A, 68B)

The occupational skills and training for all of the groups are at different levels but very similar in type, thus this factor, supports inclusion of all of the Classifications in Question including the Extension Professor Series, Extension Educator Series, Lecturer Series and Teaching Specialist Series classifications in Unit 8.

c) Relevant administrative and supervisory levels of authority.

Undisputed Unit 8 classifications are subject to the Tenure Code including the provisions related to Academic Freedom which gives incumbents in the position autonomy related to course instruction and areas of research. While decisions related to tenure and promotion go through a process including review by tenured faculty in the academic unit, by the dean of the academic unit and the provost, final decisions are made by the Board of Regents. (Employer exhibit 1; Union exhibit 64) The Tenure code is a policy of the University Governing among other things appointment, probation, retention, promotion, and academic freedom. Extension Professor Series classifications typically report to an Area Program Leader responsible for the area of expertise and the relevant Capacity Area Leader. (University exhibits 19 to 21; Union exhibits 65A, 66A, and 67A) Decisions regarding promotion are made through a process internal to the Extension College. The positions are not eligible for tenure and therefore are not governed by the Tenure Code. (University exhibit 33A, Union exhibit 3) The Extension Educator Series Classifications typically report to an Area Program Leader responsible for the area of expertise and the relevant Capacity Area Leader. (University exhibits 22 to 24; Union exhibits 68A, 69, 70) Decisions regarding promotion are made through a process internal to the Extension College. The positions are not eligible for tenure and therefore are not governed by the Tenure

Code. (University exhibit 33A, Union exhibit 3) The Lecturer and Senior Lecturer incumbents typically report to department heads or professors. (University exhibits 39A, 39C, 39D, 56, 63B to 63G, 64B, 76B, 82A, 82B, 82E to 82G, 114A; Union 1B, 7A, 7B, 72) Decisions regarding promotion are made through a process internal to the academic unit. The positions are not eligible for tenure and therefore are not governed by the Tenure Code. (University exhibits 64N, 64R, 64Y, 64CC, 64EE through 64HH, 66JJ; Union exhibit 54) The Teaching Specialist Series classifications incumbents typically report to department heads or professors. (University exhibits 39B, 39E, 51, 56, 63A, 70, 76A, 76C, 76D, 82C to 82D, 82H, 82I, 114B, 115) Decisions regarding promotion are made through a process internal to the academic unit. The positions are not eligible for tenure and therefore are not governed by the Tenure Code. (University exhibits 64N, 64R, 64Y, 64CC, 64EE through 64HH, 66JJ; Union exhibit 54)

This factor does not support inclusion of Classifications in Question, including the Extension Professor Series classifications, the Extension Educator Series classifications, the Lecturer Series classifications or the Teaching Specialist Series classifications in Unit 8.

d) Geographical location.

Location on the Twin Cities Campus of the University is a requirement for inclusion in Unit 8. All of the Extension Professor Series and Extension Educator Classifications are assigned to the "Twin Cities Campus" by the University (University Exhibit 163). None-the-less, the record discloses that most employees holding appointments in the Extension Professor, and Extension Educator Series classifications are field-based, and normally work in county, or other partner offices, (University exhibits 19 to 24; Union exhibits 65A, 65B, 66A, 66B, 67A, 67B, 68A, 68B, 69, and 70)

An important aspect of Unit 8 and Unit 9 established pursuant to Minn. Stat § 179A.11 is that they include the same classifications differentiated by the campus where they are located. A Professor assigned to the Twin Cities Campus is included in Unit 8, while a Professor assigned to the Duluth, Crookston or Morris Campus is included in Unit 9. This deals with instructional employees whose work is primarily performed on University campuses. Such employees are assigned to Unit 8 or Unit 9 depending up the campus where they work. In analyzing community of interest, the statute does not indicate how to deal with employees holding classifications that otherwise share community of interest with Unit 8 or Unit 9 but are located on no campus.

Evidently, the University has designated extension staff as assigned to the Twin Cities Campus because that is the location of the Extension division leader, Dean Beverly Durgan and the administrative offices of the Extension division. (University exhibit 145) Still, most of the Extension Professor, and Extension Educator Series

incumbents are not located, that is do not normally work, on any campus of the University.

For the above reasons, geographical location does not support inclusion of the Extension Professor Series and the Extension Educator Series Classifications within Unit 8.

Incumbents in undisputed Unit 8 classifications all have main office locations within their academic units and/or colleges. Lecturers Series and Teaching Specialist classifications may be assigned campus offices shared with other Lecturers, Senior Lecturers, Teaching Specialists and Senior Teaching Specialists. Undisputed Unit 8 classifications provide instruction mainly in classrooms on the Twin Cities campus, do research work at various facilities on campus and/or in the field and provide service through work on campus, in the community and through professional organizations. Lecturer Series and Teaching Specialist Series classifications provide instruction in the same Twin Cities campus settings and may provide service through work on campus or in the community and professional organizations.

As discussed above, an important aspect of Unit 8 and Unit 9 established pursuant to Minn. Stat § 179A.11(2015) is that they include the same classifications differentiated by the campus where they are located. Such employees are assigned to Unit 8 or Unit 9 depending up the campus where they work. Thus, job classifications determined to share community of interest with the instructional units, must be assigned to Unit 8 or Unit 9, depending upon their campus location.

Geographical location supports inclusion of the Lecturer Series and Teaching Specialist Series classification incumbents assigned to the Twin Cities Campus in Unit 8.

Minn. Stat. § 179A.09, Subd. 1 (2015) calls for particular emphasis on certain factors:

...The commissioner shall place particular importance upon the history and extent of organization, and the desires of the petitioning employee representatives.

e) **History.**

The bargaining unit structure of the University employees was first statutorily defined by the Minnesota Legislature in 1980 in amendments to Minn. Stat. § 179A.

A review of Bureau cases related to Unit 8 provide insight into the history and extent of organization of classifications currently in Unit 8. These cases include:

BMS Case No. 80-PR-1398-A dated September 11, 1980 relating to a petition filed by the Law Faculty Association, Saint Paul, Minnesota. The petition resulted in an election to sever *The employee group "Instructional employees of the law school with*

the rank of professor, associate professor, assistant professor, including research associate or instructor, including research fellow” from Unit 8.

BMS Case No. 80-PR-1374-A dated September 12, 1980 relating to a petition filed by the Committee of the Faculty of the Health Sciences, Minneapolis, Minnesota. The petition resulted in an election to sever *the employee group “Health sciences instructional employees at all campuses with the rank of professor, associate professor, assistant professor, including research associate or instructor, including research fellow”* from Unit 8 and Unit 9.

BMS Case Nos. 80-PR-835-A and 80-PR-969-A dated December 30, 1981 related to petitions filed by the University of Minnesota Education Association, Minneapolis, Minnesota and the Twin City Chapter, American Association of University Professors, Minneapolis, Minnesota, respectively. The petition resulted in the conduct of an election employees determined to be eligible for inclusion in Unit 8 at that time. No exclusive representative was certified.

BMS Case No. 81-PR-239-A dated October 28, 1980 relating to a petition filed by the Twin Cities Chapter of AAUP, Minneapolis, Minnesota. *The petition identified seven positions allocated to Unit No. 11 (then, Minn. Stat. § 179.741 (1980) non-instructional professional unit) that would be more appropriately included in Unit No. 8.* The petition was withdrawn without prejudice by the petitioner and without objection by the University and the case was dismissed.

BMS Case No. 97-PCE-339 dated February 13, 1997 relating to a petition filed by the University Faculty Alliance, Minneapolis, Minnesota. The petition resulted in an election being held among:

All instructional employees of the University of Minnesota with the rank of professor, associate professor, assistant professor, including research associate or instructor, including research fellow, located on the Twin Cities campuses.

The result of the election was a finding that the University Faculty Alliance was not the exclusive representative of the group.

BMS Case No. 97-PCE-570 dated November 6, 1996 relating to a petition filed by Certain Employees of the University of Minnesota, Law School, Minneapolis, Minnesota. *The petition requested that the Bureau conduct an election to determine whether the faculty of the University of Minnesota Law School, Minneapolis, Minnesota, wish to rejoin Twin Cities bargaining unit 8.* The petition was dismissed based on failure to show support for the petition by lack of the required showing of interest by at least 30% of the employees.

There is no Bureau case history related to whether any of the Classifications in Question including the Extension Professor Series, Extension Educator Series, Lecturer Series or Teaching Specialist Series should be assigned to Unit 8. None of the Classifications in Question were not among those included in the bargaining unit when the Bureau conducted the most recent Unit 8 representation election. (BMS Case No. 97-PCE-339, February 13, 1997) However there is no evidence that the issue of the inclusion of any of the Classifications in Question was raised at that time. In addition as noted above, the University policy concerning the role of the Classifications in Question was changed by University policy in 2005 to include teaching, research, and service (compare Union exhibit 63, p. 260, with Union exhibit 53A, p. 3.)

Because the Classifications in Question have not been previously assigned nor were they previously evaluated for community of interest as part of prior representation cases involving Unit 8, this factor is neutral in determining community of interest among undisputed Unit 8 classifications and the Classifications in Question including the Extension Professor Series, Extension Educator Series, Lecturer Series and Teaching Specialist Series classifications.

f) Extent of organization.

This factor refers to the extent of support among the employees upon whom the SEIU has focused its organizing efforts and who have shown support for representation. SEIU has shown support among the employees within the proposed bargaining unit through submission of showing of interest cards.

The factor supports including the Classifications in Question including the Extension Professor Series, Extension Educator Series, Lecturer Series and Teaching Specialist Series in Unit 8.

g) Desires of the petitioning employee organization.

This factor supports including the Extension Professor Series, Extension Educator Series, Lecturer Series and Teaching Specialist Series classifications in Unit 8.

h) The recommendation of the parties.

The parties have contradictory recommendations thus, this factor, is neutral in determining the community of interest among undisputed Unit 8 classifications and the Extension Professor Series, Extension Educator Series, Lecturer Series and Teaching Specialist Series classifications.

i) Other relevant factors.

There are two key “other relevant factors” in this matter.

Occupational training, knowledge, and required abilities of both undisputed unit 8 classifications and the Classifications in Question are an important “other relevant factor.” Nearly all of the statutory bargaining units set forth at Minn. Stat. §

179A.11(2015) are defined by occupation type, clearly identifiable from the title of the Unit. Each of these statutory bargaining units is a group of employees with a specific, and in all cases except Unit 11 and Unit 12, easily identifiable occupational skill sets. Thus the Bureau gives great weight to required functional skills and occupational qualifications of the Extension Professor Series, Extension Educator Series, Lecturer Series and Teaching Specialist Series classifications compared with the undisputed Unit 8 classifications. This is a very strong factor supporting the inclusion of all of the Classifications in Question in Unit 8.

The second “other relevant factor” in this case is geographical location. The statute requires that for instructional classifications to be included in Unit 8, they must be “...located on the Twin Cities campuses...” The hearing record establishes that the great majority of employees in the Extension Professor and Extension Educator Series classifications are not located, that is perform most of their work, on the Twin Cities campus. This is an over-riding statutory factor which mandates that the Extension Professor Series and Extension Educator Series classifications may not be included in Unit 8.) (University exhibits 19 to 24; Union exhibits 65A, 65B, 66A, 66B, 67A, 67B, 68A, 68B, 69, 70). On the other hand, this factor supports the inclusion in Unit 8 of the Lecturer Series and Teaching Specialist Series classifications.

CONCLUSION

A global, “other relevant factor” in this case is the question of the role of undisputed Unit 8 classifications compared to the Classifications in Question in the University’s governance structure. The University states that Faculty (undisputed Unit 8 Classifications) are at the heart of the University. It argues that it relies on the undisputed Unit 8 classifications to “...accomplish the tripartite mission of research, teaching and service.” (University closing argument pp 18) In its argument asserting that such is a relevant community of interest factor the University cites *N.L.R.B. v. Yeshiva Univ.*, 444 U.S. 672, 677 (1980); and *Boston Univ. Chapter, Am. Ass’n Univ. Professors v. N.L.R.B.*, 835 F.2d 399, 402 (1st Cir. 1987). These cases stand for the proposition that tenured faculty have a unique and powerful role in governance and achieving the overall mission of the University particularly through their role in the University’s governance. The role of both undisputed Unit 8 classifications and the Classifications in Question in University governance is set forth in detail in the Constitution of the University Senate. (University exhibits. 119, 120; and SEIU exhibit 31A.)

In response the Union argues:

“University-wide governance by instructional employees is exercised primarily through the Faculty Senate pursuant to the Senate Constitution and Bylaws. Un. Exs. 31A, 31B, 31C; Er. Exs. 118- 121. The Faculty Senate has policy-making authority over faculty welfare and academic matters such as “educational and research policies, providing advice to the president concerning the University’s budget, accreditation” and other governance matters. Un. Ex. 31A; Er. Ex. 120. The voting

membership of the Faculty Senate includes the President of the University, Vice Chair of the Faculty Senate, 10 elected members of the Faculty Consultative Committee, and 155 elected faculty or “qualified academic staff persons.” Id. Such “qualified academic staff” are defined as those who “(1) hold full-time appointments as academic professionals, (2) have faculty-like responsibilities with a primary focus on teaching or research, and (3) have probationary/continuous appointments or have completed five years of service at the University.” Id., p. 5, Art. IV, Sec. 2(d) (emphasis added). The “faculty-like” persons include employees in the Classifications In Question who have regularly served as full voting members of the Faculty Senate. Tr. 36-37, 96, 266-67. There is no cap on the number of “faculty-like” instructional employees who can serve in the Faculty Senate. Tr. 1302. Faculty Senate members participate in standing committees charged with overseeing specific policy areas. Tr. 96, 156; Er. Ex. 167; Un. Ex. 31C.”

As with other aspects of the workplace relationship among undisputed Unit 8 classifications, and the Classifications in Question, both groups play an important role in the University governance structure. Undisputed Unit 8 classification incumbents have a larger and more influential role. The Bureau is not persuaded that the greater role of undisputed Unit 8 classifications in University governance establishes an important distinction in community of interest for the purposes of collective bargaining.

An important overall fact affecting our view on community of interest includes the relationship of the Classifications in Question to Unit 11; note that the question before us here is whether the Classifications in Question share a community of interest with a majority of the classifications in Unit 8. The applicable statute states:

*“The commissioner shall...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**.”* (Minn. Stat. § 179A.10, Subd. 4) (emphasis added)

The word units is emphasized in this provision to call attention to the fact that it is plural. This means that the commissioner is to compare community of interest of the Classifications in Question with the possible appropriate units were they could be assigned.

The University has argued from the beginning that these positions are Academic Professionals that fall within the scope of Unit 11. However, the record contains no evidence demonstrating whether the Classifications in Question share a community of interest with the classifications in Unit 11. A decision on unit assignment based upon community interest is not to be made in a vacuum. There is no evidence showing a community of interest with Unit 11, and strong evidence demonstrating significant community of interest with other undisputed Unit 8 classifications. For this reason, those incumbents in the Classifications in Question, located on the Twin Cities Campus of the University, Unit 8 is the appropriate unit assignment.

FINDINGS

1. The Bureau has previously ruled on the question of jurisdiction in its March 15, 2016 Order and evidence in the record further supports this ruling.
2. The Bureau has previously ruled on the status of incumbents in the Academic Health Sciences area and Law School in its April 27, 2016 Order finding that those incumbents would not be included in Unit 8 should any of the classifications in question be found to share a community of interest with Unit 8.
3. The classifications of Extension Professor, Associate Extension Professor and Assistant Extension Professor are excluded from Unit 8 based upon the fact that a majority of employees in the classifications are not located on the Twin Cities Campus.
4. The classifications of Extension Educator, Associate Extension Educator and Assistant Extension Educator are excluded from Unit 8 because most employees in the classifications are not located on the Twin Cities Campus as required by Minn. Stat. § 179A.11, Subd. 1(8) (2015).
5. The classifications of Lecturer and Senior Lecturer share a community of interest with undisputed Unit 8 classifications. Incumbents in those classifications located on the Twin Cities Campus are included in Unit 8.
6. The classifications of Teaching Specialist and Senior Teaching Specialist share a community of interest with undisputed Unit 8 classifications. Incumbents in those classifications located on the Twin Cities Campus are included in Unit 8.

ORDERS

1. The classifications of Assistant Extension Educator, Assistant Extension Professor, Associate Extension Educator, Associate Extension Professor, Extension Educator, and Extension Professor, ***are not included*** in Unit 8 as described at Minn. Stat. § 179A.11, Subd. 1, subpart (8), Twin Cities Instructional.
2. The classifications of Lecturer, Teaching Specialist, Senior Lecturer and Senior Teaching Specialist ***are included*** within the bargaining unit described at Minn. Stat. § 179A.11, Subd. 1, subpart (8), Twin Cities Instructional:

(8) The Twin Cities Instructional Unit consists of the positions of all instructional employees with the rank of professor, associate professor, assistant professor, including research associate or instructor, including research fellow, located on the Twin Cities campuses.

3. The Bureau shall establish a hearing schedule, upon consultation with the parties, to address questions related to which positions meet the definition of a public employee pursuant to Minn. Stat. § 179A.03, Subd. 14, including which positions are part-time, supervisory, managerial or confidential.

BUREAU OF MEDIATION SERVICES
STATE OF MINNESOTA



JOSH TILSEN
Commissioner

cc: Brenden Cummins
Patti Dion
Liz Engels
Karen Schanfield
Kathy Brown
Kari Seime
Shelley Carthen-Watson

POSTING

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