STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1860

In the Matter of a Petition for Determination of an Appropriate Unit
and Certification as Exclusive Representative.

Filed July 27, 2020
Affirmed
Johnson, Judge

Bureau of Mediation Services
File No. 20PCE0318

Kevin M. Beck, Rachel Swenson, Kelly & Lemmons, P.A., St. Paul, Minnesota (for relator International Brotherhood of Teamsters, Local 320)

City of Menahga, Menahga, Minnesota (respondent)

Bureau of Mediation Services, St. Paul, Minnesota (respondent)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Bryan, Judge.

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

JOHNSON, Judge

The International Brotherhood of Teamsters, Local 320, petitioned the Bureau of Mediation Services for certification as the exclusive representative of the supervisory employees of the City of Menahga. The bureau denied the petition on the ground that an affiliated local union is the exclusive representative of Menahga's non-supervisory

employees. We conclude that the bureau properly applied the relevant statute and, therefore, affirm.

FACTS

In August 2019, Local 320 filed a petition with the Bureau of Mediation Services (BMS) for certification as the exclusive representative of a proposed bargaining unit described as follows: "All essential supervisory personnel employed by the City of Menahga, Minnesota." In September 2019, the deputy commissioner of BMS responded with an e-mail message in which he stated that BMS previously had received a petition from another local union for certification as the exclusive representative of the non-supervisory employees of the City of Menahga. The deputy commissioner stated that BMS would put Local 320's petition "on hold" until it had considered the earlier-filed petition. The deputy commissioner noted that a state statute prohibits the certification of affiliated organizations as exclusive representatives of both supervisory and non-supervisory bargaining units.

In October 2019, the commissioner of BMS issued a four-page order in which she dismissed Local 320's petition. The order states that, two days before receiving Local 320's petition, BMS had received a petition from the International Brotherhood of Teamsters, Local 346, which sought certification of a bargaining unit consisting of all non-supervisory employees of the City of Menahga. The order states that BMS subsequently certified Local 346 as the exclusive representative of all non-supervisory employees of the City. The order further states that, in light of the certification of an affiliated local union,

Local 320 is prohibited by statute from representing the supervisory employees of the City. Accordingly, the order concludes, "The unit proposed by the Union is not appropriate."

Local 320 appeals by way of a petition for a writ of certiorari. Neither BMS nor the City of Menahga has submitted a responsive brief or otherwise appeared in this court. Nonetheless, the matter was submitted to the court for a decision on the merits. *See* Minn. R. Civ. App. P. 142.03.

D E C I S I O N

Local 320 argues that BMS erred by denying its certification petition. The applicable law is found in the Public Employee Labor Relations Act, also known as PELRA, which governs public-sector labor-management relations in Minnesota. *See* Minn. Stat. §§ 179A.01-.60 (2018). PELRA generally recognizes the right of public-sector employees to form and join unions and to collectively bargain with their employers. Minn. Stat. § 179A.06, subds. 2, 5. PELRA differentiates between supervisory employees and non-supervisory employees and requires each of them to form their own bargaining units for purposes of collective bargaining. *See* Minn. Stat. § 179A.03, subds. 14, 17, .06, subd. 2.

The most pertinent part of the statute, for purposes of this appeal, states:

> Public employees have the right to form and join labor or employee organizations, and have the right not to form and join such organizations. Public employees in an appropriate unit have the right by secret ballot to designate an exclusive representative to negotiate grievance procedures and the terms and conditions of employment with their employer. . . .
>
> Supervisory or confidential employee organizations shall not participate in any capacity in any negotiations which

> involve units of employees other than supervisory or confidential employees. . . . *[A] supervisory or confidential employee organization which is affiliated with another employee organization which is the exclusive representative of nonsupervisory or nonconfidential employees of the same public employer shall not be certified, or act as, an exclusive representative for the supervisory or confidential employees*. For the purpose of this subdivision, affiliation means either direct or indirect and includes affiliation through a federation or joint body of employee organizations.

Minn. Stat. § 179A.06, subd. 2 (emphasis added). The term "employee organization" is defined within PELRA to mean "any union or organization of public employees whose purpose is, in whole or in part, to deal with public employers concerning grievances and terms and conditions of employment." Minn. Stat. § 179A.03, subd. 6.

This court's task is to review BMS's decision to determine whether "it reflects an error of law," whether "the determinations are arbitrary and capricious," or whether "the findings are unsupported by the evidence." *In re Clarification of an Appropriate Unit*, 880 N.W.2d 383, 386 (Minn. App. 2016) (quotations omitted). In conducting that review, we generally defer to the agency's expertise in interpreting and applying PELRA. *Id.* at 386. But to the extent that BMS's decision is based on an interpretation of a statute, it "is clearly a question of law" that is "fully reviewable" by an appellate court. *Hibbing Educ. Ass'n v. Public Emp't Relations Bd.*, 369 N.W.2d 527, 529 (Minn. 1985); *see also In re Denial of Eller Media Co.'s Applications for Outdoor Advert. Device Permits*, 664 N.W.2d 1, 7 (Minn. 2003).

Local 320 argues that BMS erred for three reasons. We note that none of the three arguments goes directly to the question whether BMS properly applied the relevant

provision of PELRA. BMS's order, on its face, appears to be a straightforward application of the following statutory language: "a supervisory or confidential employee organization which is affiliated with another employee organization which is the exclusive representative of nonsupervisory or nonconfidential employees of the same public employer shall not be certified, or act as, an exclusive representative for the supervisory or confidential employees." Minn. Stat. § 179A.06, subd. 2. "When the words of a law in their application to an existing situation are clear and free from all ambiguity, our role is to enforce the language of the statute and not explore the spirit or purpose of the law." *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019) (quotations omitted). Nonetheless, we will consider each of the arguments raised by Local 320.

First, Local 320 argues that BMS's decision undermines PELRA's general policy of "granting public employees certain rights to organize and choose freely their representatives." *See* Minn. Stat. § 179A.01(c)(1). Local 320 argues further that BMS's decision effectively encourages "a race amongst public employees to file representation petitions" because "whoever files the petition first gets to choose freely their representative and the remaining employees are then required to choose from a list of representatives that BMS has determined are not 'affiliated' with the other union."

We do not question the premises of this argument. In some circumstances, the statute on which BMS relied limits or qualifies the rights of public-sector employees to organize by precluding them from being represented by certain local unions. But that limitation is a deliberate policy choice by the legislature, which clearly articulated an exception to the general rule. It also appears that Local 320 was negatively affected by

BMS's practice of processing certification petitions in the order in which they are received. But Local 320 does not argue that such a practice is contrary to law or otherwise contrary to BMS's authority.

Second, Local 320 argues that BMS's decision "chills employees and their chosen representatives from being involved in regional labor federation and potentially even labor-management committees in contravention to PELRA's public policy that public employees have the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." Local 320 asserts that "the BMS decision precludes unions/employee associations that are members of regional labor federations from representing supervisors and non-supervisors of the same public employer . . . even if officers and staff of each union are entirely distinct and separate and not even affiliated under a broader international union." Local 320's second argument is similar to its first argument in that it challenges a policy choice of the legislature. Courts must apply the statute as it was written by the legislature and signed by the governor. We are not at liberty to substitute a different policy for the policy that is clearly expressed by the statute.

As part of its second argument, Local 320 contends that BMS's decision is contrary to the supreme court's opinion in *Washington Cty. v. AFSCME, Council No. 91*, 262 N.W.2d 163 (Minn. 1978), and this court's opinion in *AFSCME, Council No. 65 v. City of Buhl*, 541 N.W.2d 12 (Minn. App. 1995), *review denied* (Minn. Jan. 25, 1996). In *Council No. 91*, the supreme court held that separate local unions affiliated with the American Federation of State, County and Municipal Employees (AFSCME) could represent both supervisory and non-supervisory employees of the Washington County

Welfare Department. *Council No. 91*, 262 N.W.2d at 164-65, 168-69. But, as Local 320 concedes, *Council No. 91* was decided at a time when PELRA expressly permitted the "[a]ffiliation of a supervisory or confidential employee with another employee organization which has as its members non-supervisory employees or non-confidential employees." *Council No. 91*, 262 N.W.2d at 168. Shortly after the opinion in *Council No. 91* was issued, PELRA was amended to expressly prohibit the representation of supervisory and non-supervisory employees by affiliated organizations *See* 1980 Minn. Laws ch. 617, § 27, at 1593-94. Thus, the holding in *Council No. 91* has been superseded by a subsequent amendment to PELRA.

Local 320 also contends that this court's decision in *Council No. 65* allows representation by separate but affiliated unions. Local 320 relies on our statement that, "Under PELRA it is generally improper to certify a union as the exclusive representative for both supervisory and nonsupervisory employees of the same public employer." *Council No. 65*, 541 N.W.2d at 13. Local 320 suggests that this court's reference to "a union" means only that a single union may not represent both supervisory and non-supervisory employees, but that we left open the possibility that different but affiliated local unions might be able to do so. It would be inappropriate to draw such a conclusion from *Council No. 65* because that case did not involve two different but affiliated local unions. Rather, the case involved a single local union that represented both supervisory and non-supervisory employees of a city's police department, and the question on appeal was whether the dual representation was authorized by a statutory exception for firefighters. 541 N.W.2d at 13 (citing Minn. Stat. § 179A.06, subd. 2 (1994)). Nothing in our *Council*

No. 65 opinion undercuts the plain language of PELRA that prohibits dual representation of supervisory and non-supervisory employees by affiliated local unions.

Third and finally, Local 320 argues, "Even if Local 320 and Local 346 are considered affiliate organizations, it is clearly the intent of the statute to avoid a conflict of interest with respect to collective bargaining" and that such a conflict would not occur in the present case because "Local 320 and Local 346 [are] separate local unions with separate officers and employees located in different geographic regions of the State (Local 320 in Minneapolis and Local 346 in Duluth)." Again, Local 320's arguments are misdirected. If Local 320 and Local 346 are affiliated, that is the end of the analysis. This court may not engraft an exception onto a statute that does not contain a legislatively enacted exception.

In sum, the plain language of section 179A.06, subdivision 2, prohibits the certification of a local union as the exclusive representative of supervisory employees if an affiliated local union already is the exclusive representative of non-supervisory of the same public-sector employer. Thus, BMS did not err by denying Local 320's petition for certification.

Affirmed.