This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).

STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1349

Minnesota Teamsters Public and Law Enforcement Employees,
Local No. 320, Minneapolis, Minnesota,
Respondent,

vs.

City of Coon Rapids, Minnesota,
Relator,

Bureau of Mediation Services,
Respondent.

Filed April 15, 2013
Affirmed
Crippen, Judge[*]

Bureau of Mediation Services
File No. 12PCL0486

Patrick J. Kelly, Kevin M. Beck, Kelly & Lemmons, P.A., St. Paul, Minnesota (for respondent Minnesota Teamsters Public and Law Enforcement Employees)

Scott M. Lepak, Karen K. Kurth, Barna, Guzy & Steffen, Ltd., Coon Rapids, Minnesota (for relator)

Lori Swanson, Attorney General, St. Paul, Minnesota (for respondent Bureau of Mediation Services)

---

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Considered and decided by Worke, Presiding Judge; Schellhas, Judge; and Crippen, Judge.

UNPUBLISHED OPINION

CRIPPEN, Judge

Relator City of Coon Rapids challenges the decision of respondent Minnesota Bureau of Mediation Services (BMS) classifying certain seasonal city employees as members of the unit represented by respondent Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320. Because relator's arguments are not sustained by the governing statutes, we affirm.

FACTS

Under the terms of a labor agreement, relator recognizes the union as the exclusive representative for a number of relator's employees. The agreement provides that, if relator and the union are unable to agree as to the inclusion or exclusion of a new or modified job position, the issue shall be submitted to BMS for determination. Article 25 of the labor agreement sets forth special terms for seasonal and temporary employees; among these terms is the agreement that such an employee shall not work in excess of 120 days per year.

In November 2011, the union filed a petition requesting that BMS clarify the unit status of seasonal employees. BMS requested and received information from relator regarding the number of days and hours worked by seasonal employees in 2011; relator submitted the days-worked records in January 2012 and the hours-worked records in

February. Relator's payroll records indicated that the following positions were seasonal: warming-house attendant, parks summer seasonal worker, streets summer seasonal worker, and utilities summer seasonal worker. The payroll records also listed the employees by name, their start and end dates, and the days and hours the employees had worked. BMS did not conduct a hearing, and relator did not provide any additional information. In April 2012, BMS issued a unit-clarification order finding 13 seasonal employees to be "public employees" within the meaning of Minn. Stat. § 179A.03, subd. 14 (2010), and therefore included within the appropriate unit exclusively represented by the union.

Relator filed a request for reconsideration. BMS affirmed the unit-clarification order, concluding that (1) BMS is not required to hold a hearing; (2) BMS is not required to classify position titles rather than individual employees; and (3) relator's remaining argument was untimely.

D E C I S I O N

We affirm an administrative agency's decisions unless they are "'unsupported by substantial evidence, based upon errors of law, or are arbitrary and capricious.'" *Cnty. of McLeod v. Law Enforcement Labor Servs., Inc.*, 499 N.W.2d 518, 520 (Minn. App. 1993) (quoting *Hennepin Cnty. Court Emp. Grp. v. Pub. Emp't Relations Bd.*, 274 N.W.2d 492, 494 (Minn. 1979)).

1. Hearing

Under the Public Employment Labor Relations Act, the commissioner of BMS decides petitions relating to labor units. Minn. Stat. § 179A.04, subd. 2 (2010). Minnesota Rules provide that "[u]pon receipt of a petition, the commissioner shall hold hearings or conduct an investigation as required." Minn. R. 5510.1910, subp. 4 (2011). Much of Rule 5510.1910 outlines hearing procedures; however, investigation standards are not provided. The commissioner also is responsible for maintaining the record in each case. *Id.*, subp. 10 (2011). All determinations must be based upon the record. *Id.*, subp. 14 (2011).

On appeal, relator argues that BMS's failure to hold a hearing or conduct a meaningful investigation resulted in an inadequate record and a decision unsupported by substantial evidence. Relator also argues that the decision is arbitrary and capricious because BMS failed to consider the employees' job positions, contentions of relator, and other considerations.

Respondent correctly asserts that a hearing is not required on a petition for unit clarification. The rules expressly authorize BMS to conduct a hearing or an investigation. *See id.*, subp. 4 ("Upon receipt of a petition, the commissioner shall hold hearings or conduct an investigation as required."). Moreover, relator does not contend on appeal that a hearing was required.

We decline to consider relator's argument that BMS erred by failing to conduct an adequate investigation. We generally will not consider matters not argued to and

considered by the agency below. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court generally will not consider matters not argued to and considered by the district court). In its request for reconsideration, relator argued only that BMS erred by failing to hold a required hearing. On appeal, relator recognizes that a hearing was not required, and therefore argues that BMS erred by failing to conduct an adequate investigation. But because relator did not argue this below, we will not consider it on appeal.

2. Job classifications

"When a decision turns on the meaning of words in a statute or regulation, a legal question is presented. In considering such questions of law, reviewing courts are not bound by the decision of the agency and need not defer to agency expertise." *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989) (citations omitted). But when an agency's construction of its regulation is at issue, "considerable deference is given to the agency interpretation, especially when the relevant language is unclear or susceptible to different interpretations. If a regulation is ambiguous, agency interpretation will generally be upheld if it is reasonable." *Id.* at 40 (citations omitted). Because this issue requires us only to interpret the unambiguous definition of "public employee," as used in Minn. Stat. § 179A.03, subd. 14, we review de novo.

BMS reasoned below that "[n]othing limits Bureau orders to classification titles and not employee names, especially, such as here, where employees in the same classification may be included or excluded from a bargaining unit based on the number of

days worked." Under Minn. Stat. § 179A.03, subd. 14(f), "public employees" includes "employees whose positions are basically temporary or seasonal" only if they work more than 67 working days in a calendar year—or more than 100 working days if students as defined in the statute.[1] Relator argues that the plain language of the statute requires BMS to look at an employee's minimum time in a particular job classification, and that BMS erred by naming individuals rather than the work they did in certain job classifications. Although the statute addresses seasonal positions, it does not require the measuring of time spent in a particular job classification of the union employees. And the naming of individuals by BMS coincides with the statutory language addressing personal characteristics, such as student status. BMS did not err in failing to address the time each worker spent in a particular job assignment.

3. Organization history

In its request for reconsideration, relator argued to BMS that the unit-clarification order incorrectly placed named individuals into a bargaining unit without considering the factors required in Minn. Stat. § 179A.09, subd. 1 (2010). Under this section, which applies when "determining the appropriate unit," BMS is to consider benefits of unit organization, with "particular importance" given to "the history and extent of

---

[1] In relator's argument about BMS's investigation, which we have declined to review (Issue number 1), it asserts that BMS should have determined whether some of the workers were students who were not employed for more than 100 working days. Although the record shows that some of the seasonal workers were employed for fewer than 100 working days, relator stated neither to BMS nor to this court that there was evidence these workers qualified as students under the statute. Any investigative error in this regard was not shown to be prejudicial.

organization, and the desires of petitioning employee representatives." Statutory interpretation is a question of law, which we review de novo. *St. Otto's Home*, 437 N.W.2d at 39-40.

Relator emphasized that the history and extent of the organization factors strongly weigh against including the 13 seasonal workers in BMS's order. BMS declined to consider relator's argument, concluding that relator waived the issue by not raising it during BMS's investigation. BMS also concluded that the labor agreement includes temporary/seasonal employees.

BMS concluded that relator's argument was time barred because it was not raised during the initial investigation. Relator does not argue on appeal why BMS's conclusion was error; rather, relator argues the issue on its merits. We generally will not consider matters not considered by the agency below. *See Thiele*, 425 N.W.2d at 582 (stating that an appellate court generally will not consider matters not argued to and considered by the district court). Because BMS did not consider relator's argument on its merits below, we decline to consider it on appeal.

Even if we were to consider relator's arguments on the merits, we would conclude that BMS did not err. Assuming that the statute applies to a unit clarification, despite its evident application to initial-unit determinations, the organizational history was adequately addressed when BMS observed that the labor agreement of the parties includes temporary/seasonal employees, the classification used in the statutory definition of public employees.

Relator contends that BMS disregarded the labor agreement provision that the "maximum" seasonal employment "shall not exceed 120 work days per calendar year" and the fact that none of the seasonal workers identified by BMS worked more than 120 days in the 2011 calendar year. This argument also is flawed. The argument misstates the language of the agreement, which states only a maximum time of service. The issue here regards a classification that turns on the minimum hours works, not on compliance with the labor agreement's maximum-hours provision.

Affirmed.