

Other Significant Federal and State Court Cases 2017- 2018 The Public Sector Update

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A. Public Employment Labor Relations Act

1. *SEIU, Local 284 v. University of Minnesota et al.*, 902 N.W.2d 54 (Minn. Ct. App. 2017)

a. Facts

The SEIU and the University of Minnesota disputed whether lecturers and teaching specialists should be in bargaining Unit 8—the instructional unit—or Unit 11—the administrative staff unit. The BMS first determined that it had authority to assign these workers to a specific unit because they had not been previously assigned by the legislature. BMS then found that these workers should be assigned to Unit 8, finding that these workers shared a “community of interest” with the workers in Unit 8 and that their responsibilities had been “significantly modified,” which reinforced the BMS’s finding that it had authority to assign these workers to a particular unit.

b. Issues

Did BMS have the authority to determine in what bargaining unit lecturers and teaching specialists should be, or were the lecturers and teaching specialists previously assigned to a particular unit by the legislature?

If the lecturers and teaching specialists were assigned to particular unit, had their responsibilities been “significantly modified” such that the BMS was justified in reassigning these workers?

c. Holding

The Court of Appeals relied on the plain language of the statute and found that the lecturers and teaching specialists had been previously assigned to be in Unit 11, which prevented the BMS from assigning these workers to Unit 8. Specifically, the Court of Appeals found that Unit 8 listed “ranked” positions, and lecturers and teaching specialists were not “ranked” positions pursuant to the staff handbook.

Having found that lecturers and teaching specialists were previously assigned, the Court of Appeals determined that this employee

classification’s “occupational content” had not been “substantially modified” since the initial assignment, which prohibited BMS from reassigning this classification under Minn. Stat. § 179A.10.

Although the University of Minnesota was hiring significantly more lecturers and teaching specialists, the Court of Appeals found that different job descriptions in the interim for these positions did not “specify different duties required or different skill sets for performing those duties,” such that the position had been “substantially modified.”

d. Implications

The Court of Appeals may be unlikely to find that certain occupations have been “substantially modified” such that the BMS has authority to reassign executive branch employees to different bargaining units pursuant to Minn. Stat. § 179A.10, subd. 4. When restructuring an organization subject to BMS authority to reassign units, it may be possible to hire more of certain types of employees to do additional work, so long as the required duties and skillsets do not significantly change.

2. *Itasca County v. Teamsters Local 320*, A16-1773, 2017 WL 2729604 (Minn. Ct. App. June 26, 2017)

a. Facts

Itasca County filed a declaratory judgment action with the district court asking that the district court determine “the scope of its obligation to negotiate certain grievance procedures and terms and conditions of employment under a proposed labor contract.” Prior to filing the declaratory judgment action, the parties did not seek interest arbitration, and both parties wanted the district court to decide the issues—a third party believed that the district court did not have jurisdiction. The district court determined it did not have jurisdiction.

b. Issues

Did the district court have jurisdiction of a declaratory judgment action in which the parties sought to clarify what terms of a CBA needed to be negotiated?

c. Holding

The Court of Appeals affirmed the dismissal of the declaratory judgment action, citing Minn. Stat. § 179A.07, subd. 2(a), which states that “[a] public employer has an obligation to meet and negotiate in good faith with the exclusive representative of public employees in an appropriate unit regarding grievance procedures and the terms and conditions of employment.” The Court of Appeals found that “[b]y seeking declaratory judgment, the county is improperly attempting to circumvent the statutory requirement to execute a written agreement through negotiation or arbitration.” The Court of Appeals rejected the parties’ argument that they were only asking the district court to determine the topics for which they were obligated to negotiate, and not the actual terms and conditions.

d. Implications

Minnesota courts will be reluctant to clarify obligations to negotiate certain terms and conditions under PELRA. If there is a dispute about what is required to be negotiated, employers and unions must first go through arbitration.

3. *In re the Petition for Decertification of an Exclusive Representative for Certain Employees of the State of Minnesota, A17-0798, 2018 WL 414363 (Minn. Ct. App. Jan. 16, 2018)*

a. Facts

Since 2014, personal-care assistants (“PCAs”) who provide home-based health-care services to Medicaid recipients have been represented by a union. In 2016, seven PCAs petitioned the BMS to decertify the union. The PCAs requested complete lists of PCAs in the bargaining unit from the Department of Human Services (“DHS”), but DHS provided multiple inaccurate and incomplete lists, before providing one that DHS believed was complete. The parties, however, still disputed whether the list was accurate. If the PCAs estimate were accurate, they would have had 30% of the signatures of individuals in the bargaining unit to warrant a decertification vote. But if DHS’s list was accurate, the PCAs would have fallen well short. BMS ultimately determined that the PCAs had not garnered the requisite 30% of bargaining unit signatures to warrant a decertification vote.

b. Issues

Did BMS act arbitrarily and capriciously by failing to investigate and hold a hearing on the actual amount of PCAs in the bargaining unit?

c. Holding

The Court of Appeals stated that no investigation and hearing was “required” under the law, because BMS had already given both parties opportunities to justify their positions, supplement the record, and because BMS should be given deference in determining which list was appropriate with respect to the decertification vote.

d. Implications

The BMS and the courts will likely side with employer/regulators when determining numbers in bargaining units with respect to decertification votes, so long as the union has an opportunity to provide input and provide additional information if the employer/regulators are inaccurate or late in providing information to the union. Also, in general, the courts will likely defer to BMS’s decisions.

B. Municipal Liability

4. *Bicking v. City of Minneapolis*, 891 N.W.2d 304 (Minn. 2017)

a. Facts

A citizen submitted a petition to the Minneapolis City Council for consideration of a question regarding a proposed amendment to the Minneapolis City Charter to be placed on the ballot for the November 2016 general election. The proposed amendment would require City police officers to obtain and maintain professional liability insurance coverage and would impose other conditions for coverage and indemnification. After the City Attorney concluded that the amendment was preempted by state law and violated public policy, the Minneapolis City Council ordered the City Clerk not to include the proposed amendment on the ballot. The district court agreed with the Minneapolis City Council and dismissed the petition, finding a strong argument for field preemption.

b. Issues

Does Minnesota law preempt municipalities from putting a proposed amendments to city charters that police officer be required to have professional liability insurance on ballots?

c. Holding

The proposed amendment conflicted with state law as set forth in Minn. Stat. §§ 466.01, subd. 1, 466.02, 466.06, 466.07, subd. 1, 466.11, and 471.44, subd. 1, which make municipalities liable for employees' torts within the scope of their duties, require municipalities to defend and indemnify employees, and permit municipalities to procure additional insurance coverage even for acts for which it would have no liability.

d. Implications

Municipalities should be less hesitant in rejecting amendments to city codes and charters if there is an argument that state law speaks to the issue and there is no explicit authority in statute to enact the type of amendment at issue. Also, this case confirms the strong public policy in favor of municipalities indemnifying their employees, suggesting that municipalities should not attempt to curtail in any way the indemnification of their employees.

5. *Hohlt v. University of Minnesota*, 897 N.W.2d 777 (Minn. 2017)

a. Facts

A University of Minnesota ("U of M") employee parked at a U of M-owned parking ramp, walked four blocks to her job, worked a shift, and then headed back to the parking ramp. On her way back to the parking ramp to go home, she slipped and fell on a public sidewalk.

b. Issues

Was the employee entitled to workers' compensation benefits after falling on a public sidewalk after work, when she was walking to her car in an employer-owned parking ramp?

c. Holding

The Minnesota Supreme Court found that the employee was entitled to workers' compensation benefits because the injury "arose out of" and was "in the course" of the employee's employment, pursuant to Minn. Stat. § 176.021. . The Minnesota Supreme Court found that, although the sidewalk was a public sidewalk, it constituted the employer's "premises" because she was walking from one part of her employer's premises—the parking lot—to another part of the employer's premises—a U of M building.

The Minnesota Supreme Court found the injury met the "arising out of" requirement because the employee was exposed to a "special hazard"—the icy patch—not because she was a member of the public but because of her employment. The Minnesota Supreme Court also found that the injury met the "in the course of" requirement because it occurred within "a reasonable period beyond actual working hours." *Id.* at 784. The Minnesota Supreme Court distinguished this case from *Satack v. State, Dep't of Pub. Safety*, 275 N.W.2d 556, 557 (Minn. 1978) because in *Satack*, the employee was dropped off by her husband and fell on a sidewalk. In other words, the "key difference" was that in this case, the injured party was moving between her employer's premises when she was injured while in *Satack*, the injured party was not moving between her employer's premises.

d. Implications

Employers should take particular care in maintaining any area between employer-owned parking lots and an employee's place of work, including, if necessary, agreeing to do maintenance for entities in between. Employers should also be careful in choosing employer parking lots to ensure that the surrounding conditions are generally safe. Employers should also understand that workers' compensation laws are not only applicable during the workday and at the workplace, but can extend to before and after work and in other locations, as well.

6. ***Bliss v. Itasca County*, A17-0530, 2017 WL 5077440
(Minn. Ct. App. Nov. 6, 2017)**

a. **Facts**

An investigative supervisor in a sheriff's office filed a written complaint that he was unlawfully monitored by two colleagues. A year later, he was terminated for alleged misconduct and grieved his termination pursuant to a CBA. Eventually, he was reinstated, but he alleges he suffered further retaliation upon reinstatement. He then filed a civil action in district court alleging that his termination and post-termination retaliation violated the Minnesota Whistleblower Act, Minn. Stat. § 181.932. The County filed a motion to dismiss, arguing that the district court did not have jurisdiction over the civil action because the employee failed to exhaust his administrative remedies under the CBA

b. **Issues**

Is an employee has an actionable grievance under a CBA for disciplinary action and also has a statutory claim, does the district court have jurisdiction of the statutory claim if it involves the same set of facts as the CBA-related claim?

c. **Holding**

The Court of Appeals found that the employee was not required to exhaust his administrative remedies before filing a civil action because his Whistleblower claim “did not derive from, or require interpretation of, the CBA.”

The Minnesota Court of Appeals found that the employee is challenging the “motive underlying the county’s decision” to discharge him and that “[s]uch a factual analysis does not require interpreting any terms of the CBA.” This is the case even if the Whistleblower analysis and whether there was just cause to terminate the employee “involves attention to the same factual considerations.” The Court did suggest, however, that if the CBA had set out that the arbitration of Whistleblower claims be decided by an arbitrator, that the district court may lack jurisdiction over such a claim.

d. Implications

Just because an employee is part of a union does not mean that they cannot maintain a concurrent statutory claim along with a grievance under the CBA. As a general matter, only if the CBA specifically states that certain claims must be decided through arbitration or if the resolution of a claim depends on the interpretation of the CBA will the employee have to exhaust their administrative remedies before filing a claim in district court.

C. Minnesota Government Data Practices Act

7. *Scheffler v. City of Anoka*, 890 N.W.2d 437 (Minn. Ct. App. 2017)

a. Facts

Appellant was arrested and charged with disorderly conduct and obstruction of legal process. The Appellant later attended the arresting officer's unrelated family-court hearing. Eventually, the police captain interviewed the arresting officer and drafted an incident report and two-page supplement regarding the family-court hearing.

The Appellant requested the report in person, and the records manager at the police department provided the Appellant with the incident report, which included the phrase "SEE SUPP." The records manager refused to provide the supplemental report because the case was "under investigation."

Later, Appellant's attorney asked the city's attorney, in writing, for the supplement, saying, "I make this request on behalf of Mr. Scheffler in accordance with Minn. Stat. § 13.04, subd. 3." On October 8, 2014, Appellant's attorney again wrote the city attorney seeking the supplement and referring to the Minnesota Government Data Practices Act ("MGDPA"), adding, "You, your office, the Responsible Authority for the City . . . , and the Data Practices Act Designee for the [city police department] have refused to answer [Appellant's] three preceding requests for access to the supplement." The request also asked that the city attorney cite legal authority if he refused to provide the supplement.

b. Issues

Did the city attorney or the city police department violate the MGDPA by not providing the supplement to the Appellant or his attorney?

c. Holding

Under Minnesota Statutes sections 13.03, subdivision 3, and 13.04, subdivision 3, a person seeking data from a government entity must make his request to the government entity's specified responsible authority or designee before claiming an MGDPA failure to provide data or failure to provide a reason for denial. A government entity is not liable under the act for an alleged violation of these sections if the requestor did not satisfy this prerequisite. The MGDPA does not recognize responsible authorities or designees by operation of common-law apparent-authority principles.

The MGDPA does not expose government attorneys to liability for their alleged failure to provide data under the MGDPA. The contracting city attorneys and prosecutors, were "acting in a professional capacity" representing the city as legal counsel, and the requested police report pertained to a police investigation concerning which they were obligated to make prosecutorial decisions. They were not, by contrast, under contract to serve as the city's responsible authority. Their obligations to overturn data only emanated out of court discovery procedures.

d. Implications

Public employers can ignore or deny requests for data if they are not made to the responsible authority, without fear of liability. It also does not appear there is any obligation to refer a requestor to a responsible authority.

8. *Kandt v. Minnesota Department of Corrections*, A16-0879, LEXIS 101* (Minn. Ct. App. Jan. 30, 2017)

a. Facts

Female employee retired in 2012 and was rehired 30 days later in a nonsupervisory position as an insurance-fraud specialist, with a 12-month probationary period. The employee struggled to adhere to

DOC policy and satisfy expectations six different times before her mid-probationary review, and she was not certified for permanent employment. The position was filled by a woman in her 30s.

The employee sued the DOC alleging age and sex discrimination under the MHRA. The employee's attorney requested access to documents that contained the ages of other DOC employees, but the DOC denied the request claiming confidentiality under the MGDPA and asserting that the employee would need a protective order from the district court. The employee's attorney did not obtain an order and took no further action. At the summary judgment hearing, the employee's attorney raised the MGDPA issue, and the court sanctioned the attorney counsel \$500 for "failure to follow through" and did not allow the attorney to respond because the attorney was out of time.

b. Issues

Did the DOC discriminate based on age?

Was the sanction of \$500 justified, when the attorney did not have notice that a sanction may be imposed and was not given the opportunity to respond?

c. Holding

The Court of Appeals found that although the employee was replaced by a younger employee, the employer's proffered reasons for the employee's termination were supported by evidence that the employee failed to complete her work in a timely and sufficient manner, failed to properly fill out her timesheet and give proper advance notice of her absences, and failed to follow employer's policies. In addition, Court of Appeals found that, "Little if any likelihood exists that the persons hiring an employee with knowledge of her age would change course six months later and fire her for that reason."

The Court of Appeals also found that the district judge abused its discretion by imposing a find when it provided no notice or an opportunity to respond.

d. Implications

Public employers should be less hesitant to hire older employees out of fear it may not work out and that they may be subject to an age discrimination lawsuit, especially if the individual who hired the employee is the same one that would ultimately terminate the employee.

9. *In re the Appeal of the Determination of the Responsible Authority for ISD #833 that Certain Data About Loren Lorenz Are Accurate and Complete, A16-1395, 2017 WL 3378068 (Minn. Ct. App. Aug. 7, 2017)*

a. Facts

Bus driver was twice involved in crashes where he failed to report them promptly to the District, as required. He was eventually terminated for “conduct unbecoming an employee,” for “belligerent, disrespectful and made threatening remarks” during his discipline meeting, and for a “continued pattern of gross insubordination.”

The employee then sent a letter to the District’s HR Director requesting that the District remove the termination letter from his personnel file pursuant to Minn. Stat. § 13.04, subd. 4 and Minn. R. 1205.1600. The District believed the data contained in the letter was “fully supported by a preponderance of the evidence.” After a hearing, an ALJ issued a recommendation that the District reverse the decision because the employee had “established by a preponderance of the evidence’ that the challenged statement and conclusions contained in the termination letter are not accurate and/or complete as defined in Minn. R. 1205.1500, subp.2.” The Commissioner, however, sided with the District.

b. Issues

Was the employee justified in challenging the accuracy and completeness of his termination letter under the MGDPA?

c. Holding

Under MGDPA, “accurate” means the “data in question is reasonably correct and free from error,” and “complete” means “that the data in question reasonably reflects the history of an individual’s transactions with the particular entity.” Minn. R. 1205.1500, subp. 2.

“Omissions in an individual’s history that place the individual in a false light shall not be permitted.”

The Minnesota Court of Appeals found that the statement that the bus driver made “threatening remarks” was not supported. The Minnesota Court of Appeals examined the dictionary definitions of “threat” and found that the bus driver’s comments did not fit those definitions. The bus driver’s “threatening remarks” were that he would hire an attorney, not that he would physically harm a supervisor, and the Minnesota Court of Appeals found that these remarks would be misinterpreted by future employers, and that the comment in the termination letter was not accurate because it put the bus driver in a false light.

d. Implications

Public employers should be very careful in drafting documents in personnel files, not only to ensure that the document contains accurate information but also that the information is not materially misleading. Although Minnesota Court of Appeals in this case only ordered that the information must be corrected, in more egregious situations there may be a harsher remedy. If a document is challenged, employers should carefully review the document and change the information, if it does not change the outcome, to avoid litigation costs.

D. Education Law

**10. *Long v. IDS #332, A17-0788, A17-0903, 2018 WL 492635*
(Minn. Ct. App. 2018) (only Westlaw citation currently available)**

a. Facts

Two teachers had worked for two different school districts for an initial three year period and then went elsewhere. Eventually, they landed in two different school districts and worked at these school districts for three years. At the end of the third year, both school districts notified these teachers that they were being nonrenewed pursuant to Minn. Stat. § 122.40, subd. 5 because they had not obtained a continuing contract.

b. Issues

Does an initial three-year period at one school district grant a teacher continuing contract rights if they later serve at another school district for a period of one year and are not notified they are being nonrenewed until after the deadline to do so?

c. Holding

The Court of Appeals reviewed the plain language of the statute and found that the statute does not require a teacher to “achieve continuing-contract rights after their [initial] three-year probationary period in order to later be subject to a one-year probationary period.” The Court of Appeals rejected the school districts’ argument that Minn. Stat. § 122.40, subd. 7 compels a different result, and it also rejected the school districts’ public policy arguments. The Court of Appeals stated that the school districts could have nonrenewed the teachers in their first year if they did not want the teachers to have a continuing contract.

d. Implications

If a teacher has served an initial three-year term and you later hire this teacher, make sure to nonrenew the teacher in a timely manner if you do not want to grant this teacher continuing contract rights. If you fail to meet the deadline, the teacher will have continuing contract rights.

E. Public-Sector Union Dues

11. *Janus v. AFSCME, Council 31*, 851 F.3d 746 (7th Cir. 2017), cert. granted, 138 S. Ct. 54 (U.S. Sep. 28, 2017) (No. 16-1466)

a. Facts

Mark Janus, a child-support specialist in the Illinois Department of Healthcare and Family Services, along with two other plaintiffs, are not full dues-paying members of AFSCME, but are required, under Illinois law, to pay mandatory union fees, also known as “agency fees.” In this case, the Plaintiffs are challenging these mandatory agency fees, by which non-members pay the cost of the representational services they receive from a public sector union, including the cost of collective bargaining and grievance handling.

The Petitioners argue that agency fees violate their First Amendment rights, and are asking the Court to overturn its long-standing precedent established in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), which holds that requiring non-members to pay for collective bargaining, contract administration, and grievance adjustment does not violate the First Amendment, so long as non-members can opt out of paying for political and ideological activities that are not directly related to the union's core representational role.

b. Issues

Should *Abood* be overruled and public-sector union agency fee arrangements declared unconstitutional under the First Amendment?

c. Implications

If the Court overturns *Abood* (as will likely be the case), public sector unions will no longer be able to collect fees or dues from employees without their permission. Consequently, while the details of such a ruling remain to be seen, the provisions of PELRA that allow unions to collect fair-share fees from non-members will likely become null and void when the Court issues its decision in the coming weeks.

F. Labor Arbitration

12. *City of Richfield v. Law Enforcement Labor Services, Inc.*, 2018 Minn. App. LEXIS 190 (Minn. Ct. App. 2018)

a. Facts

Nathan Kinsey, a police officer with the Richfield Police Department (RPD), was terminated in April 2016 based on allegations of excessive force during a traffic stop in October 2015. During the stop, Officer Kinsey was filmed shoving and hitting a Somali male in the head after the male refused to comply with the officer's orders to move along. Officer Kinsey did not file a use of force report. When the video surfaced online, the RPD conducted an internal investigation into the incident and the officer was fired. The Union representing Officer Kinsey, Law Enforcement Labor Services (LELS) filed a grievance challenging the termination.

After a full hearing, Arbitrator Charlotte Neigh ruled that the officer did not use excessive force as alleged, and she thus overturned the termination and ordered reinstatement. However, the Arbitrator did find that the officer's failure to file a use of force, although arguably not required under the City's use of force policy, constituted a lapse in judgment warranting a three-day suspension.

Following the issuance of the arbitration award, the City petitioned the district court to vacate the award on the basis that Arbitrator Neigh's reinstatement order violated public policy articulated in PELRA and Minnesota Police Officer Standards and Training (POST) standards. Initially, the district court dismissed the City's case on the ground that the award didn't violate any well-defined and dominant public policy and the courts are not allowed to reassess labor arbitration decisions on the merits. On appeal, however, the Court of Appeals reversed the district court and vacated the award on public policy grounds.

b. Issues

Does an arbitration award reinstating a police officer who failed to report an incident where he used physical force; admitted he should have reported the incident; and had previously been disciplined, trained, and counseled for failing to adequately report prior instances of force violate a clear public policy, requiring vacation of the award.

c. Holding

On page 21 of the Court of Appeals decision, the Court held that "Reinstating Kinsey—an officer who admittedly failed to report his use of force when he should have and has had prior offenses and warnings regarding the same duty to report—interferes with the RPD's legal obligation to establish and enforce minimum standards of conduct for its police officers. Specifically, it interferes with the clear public policy in favor of police officers demonstrating self-regulation by being transparent and properly reporting their use of force. Further, the arbitration award interferes with the public policy against police officers using excessive force because the only way a city and police department can successfully uphold that public policy is if they are given the opportunity to review occasions involving the use of force."

d. Implications

The Court’s holding is unquestionably narrow and based on the specific law-enforcement-related facts of the case. The Court even went out of its way to point out that “our decision today is only the second time this court has vacated an arbitration award involving the reinstatement of a Minnesota Police Officer because of a violation of public policy.” The Court did not modify the standard for vacating arbitration awards generally, and thus this case will likely have little impact outside the law enforcement use-of-force reporting context.

RRM: #282597