

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1213**

Anoka County, Anoka, Minnesota,
Respondent,

vs.

American Federation of State, County & Municipal Employees,
Council 5, South St. Paul, Minnesota,
Relator,

Bureau of Mediation Services,
Respondent.

**Filed March 27, 2023
Affirmed
Klaphake, Judge ***

Bureau of Mediation Services
File No. 22PCE1956

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Considered and decided by Reyes, Presiding Judge; Larson, Judge; and Klaphake,
Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

In this certiorari appeal, relator-union challenges an order issued by respondent-agency on a petition for determination of an appropriate collective bargaining unit. Because respondent-agency did not err by determining that relator's proposed bargaining unit was not an appropriate collective bargaining unit and that respondent-county's alternative proposal was an appropriate collective bargaining unit, we affirm.

DECISION

Relator The American Federation of State, County & Municipal Employees, Council 5, South St. Paul, Minnesota (the union) challenges respondent Bureau of Mediation Services' (BMS) decision to deny its certification petition for a bargaining unit consisting of "[a]ll employees of the Anoka County Libraries who meet the definition of public employee under Minnesota Statute 179A.03 excluding confidential and supervisory employees."

I. Standard of Review.

Decisions of the commissioner of BMS relating to the appropriateness of a proposed collective bargaining unit may be reviewed on certiorari by this court. Minn. Stat. § 179A.051(a) (2022). Agency decisions are presumed to be correct, "and deference is shown to an agency's conclusions in the area of its expertise." *In re 2005 Adjustment of Charges*, 768 N.W.2d 112, 119 (Minn. 2009). We review the decision of BMS 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).

An agency’s decision is arbitrary and capricious if the agency

- (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency’s expertise.

In re Schmalz, 945 N.W.2d 46, 54 (Minn. 2020) (quotation omitted). “An agency’s conclusions are not arbitrary and capricious if a rational connection between the facts found and the choice made is articulated.” *Fine v. Bernstein*, 726 N.W.2d 137, 142 (Minn. App. 2007), *rev. denied* (Minn. Apr. 17, 2007). “Substantial evidence” is: “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; and (5) evidence considered in its entirety.” *CUP Foods, Inc.*, 633 N.W.2d 557, 563 (Minn. App. 2001), *rev. denied* (Minn. Nov. 13, 2001). The party challenging the agency’s decision bears the burden of proof to establish the findings are not supported by substantial evidence. *Id.* “Where the evidence is conflicting or more than one inference may be drawn from the evidence, findings must be upheld.” *Id.* at 562. We review conclusions of law, including BMS’s application of the Public Employment Labor Relations Act (PELRA), *de novo*. *In re Eden/Eden House*, 928 N.W.2d 326, 333 (Minn. 2019).

II. BMS’s decision is not arbitrary or capricious and is supported by substantial evidence in the record.

PELRA governs public-sector labor-management relations in Minnesota. *See* Minn. Stat. §§ 179A.01-.60 (2022). Minnesota Statutes section 179A.09, subdivision 1, provides:

In determining the appropriate unit, the commissioner [of BMS] 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.

The union first argues that BMS improperly weighed its internal policy factors over the above statutory factors, known as “community of interest factors,” when it determined that the union’s proposed unit was not an appropriate bargaining unit. The union argues that BMS treated its policy preference as a threshold for the union to overcome before analyzing whether its proposed unit could be deemed an appropriate bargaining unit. We are not persuaded.

In determining that the union’s proposed unit was not an appropriate bargaining unit, and that the county’s alternative proposed unit consisting of “[a]ll employees of the Anoka County Libraries who meet the definition of public employee under Minnesota Statute 179A.03 excluding confidential and supervisory employees” was an appropriate bargaining unit, BMS first noted its longstanding practice and general policy preference to avoid overfragmentation by only certifying four units in county government. The decision

notes that “[i]t is [BMS’s] policy, absent compelling reasons otherwise or stipulation by the parties, to only certify four basic bargaining units in counties to prevent over-fragmentation of bargaining units.” Overfragmentation is a relevant policy consideration as PELRA “and its statutory coordinates attempt to eliminate the ‘overfragmentation’ which might result from the certification of individual bargaining units.” *Minn. State Coll. Bd. v. Pub. Emp. Rels. Bd.*, 228 N.W.2d 551, 561 (Minn. 1975). After noting BMS’s policy preference, the order states that its “view in favor of four broad occupationally based bargaining units in government is a general preference and subject to examination considering the statutory community of interest factors outlined in Minn. Stat. § 179A.09 and the facts of the particular case.” BMS then thoroughly analyzed each community-of-interest factor and ultimately concluded that “based on the previous decisions of [BMS], the testimony and evidence presented by the parties, and the careful application of Minn. Stat. § 179A.09, the [u]nion’s proposed bargaining unit is not an appropriate bargaining unit and would result in over-fragmentation of bargaining units in Anoka County.” Our review of the record shows that BMS acted within its authority by determining that the risk of overfragmentation weighed against certification of the union’s proposed bargaining unit.

The union next argues that BMS failed to give proper consideration to certain community-of-interest factors that carry more weight and otherwise failed to properly weigh all statutory factors. Again, we are not persuaded. In determining the appropriate bargaining unit, “[t]he commissioner shall place particular importance upon the history and extent of organization, and the desires of the petitioning employee representatives.” Minn. Stat. § 179A.09, subd. 1. Here, in its analysis of the community-of-interest factors, BMS

determined that the fifth factor—the history of collective bargaining for the union’s proposed unit—weighed in favor of the union’s proposed bargaining unit. Relying on one of its earlier decisions and in looking at the overall organizing history in Anoka County, BMS found that there was “strong evidence that a broad bargaining unit would not lead to stable and constructive labor relations.” But BMS determined that the other statutory factors were either neutral or weighed against the union’s proposed unit. BMS also discussed the desires of the petitioning employee representatives, stating that it “noted the particular importance of these factors when it weighed the factors in total.” Ultimately, BMS concluded that the union’s proposed bargaining unit was not an appropriate unit.

The union does not dispute that BMS considered each statutory factor but argues that certain factors should have carried more weight. We interpret the union’s argument as a challenge to the weight BMS placed on that evidence in determining that the proposed unit shared similarities with other county positions. But it is within the agency’s discretion to weigh evidence and judge the credulity of witness testimony. *CUP Foods, Inc.*, 633 N.W.2d at 563. “Unless manifestly unjust, inferences must be accepted even though it may appear that contrary inferences would be better supported by the record.” *Id.* While the union does not agree with BMS’s analysis, the decision shows that BMS was aware of, and considered, each relevant factor. Our review is deferential, and we will not “substitute [our] judgment for that of the agency.” *Minneapolis Police Dept. v. Kelly*, 776 N.W.2d 760, 766 (Minn. App. 2010). And our review of the record leads us to conclude that BMS’s findings are supported by substantial evidence in the record and are not arbitrary or capricious.

Finally, the union raises concerns regarding the procedure BMS used in analyzing its petition. The union argues that BMS compared its proposal to the county's proposal in a side-by-side fashion rather than deciding in sequential order. BMS asserts that "[a]lthough not established as a requirement under PELRA, it is BMS' longstanding practice to determine whether a petitioned-for bargaining unit is 'an' appropriate unit, rather than the best possible unit, and thus to first consider the petition union's proposed unit before examining alternative proposals." We acknowledge that in its evaluation of the community-of-interest factors, BMS appeared to depart from this policy when it compared the unit proposed by the union with the unit proposed by the county in a side-by-side fashion. And to the extent BMS departs from its policies in the future, it "must set forth a reasoned analysis for the departure that is not arbitrary and capricious." *In re 2005 Adjustment of Charges*, 768 N.W.2d at 120.

Yet the record shows BMS ultimately evaluated the union's petition using its established standard. Thus, we conclude that BMS did not depart from its normal procedure. And because the union has not satisfied its burden of showing that the order is erroneous, arbitrary or capricious, or unsupported by record evidence, we conclude that BMS did not err by determining that the union's proposed bargaining unit is not an appropriate collective bargaining unit, and that the county's alternative proposed unit was the appropriate bargaining unit.

Affirmed.