

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1088**

In the Matter of a Petition for Clarification of an Appropriate Unit.

Minnesota Association of Professional Employees,
Relator,

vs.

State of Minnesota, et al.,
Respondents,

American Federation of State, County and Municipal Employees, Council 5,
Respondent.

**Filed May 3, 2021
Vacated
Ross, Judge**

Bureau of Mediation Services
File No. 20PCL1368

Justin D. Cummins, Cummins & Cummins, LLP, Minneapolis, Minnesota (for relator)

Keith Ellison, Attorney General, Hillary A. Taylor, Assistant Attorney General, St. Paul, Minnesota (for respondents State of Minnesota, et al.)

Josie Doris Hegarty, South St. Paul, Minnesota (for respondent American Federation of State, County and Municipal Employees, Council 5)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Smith, Tracy M., Judge.

SYLLABUS

Under Minnesota Statutes section 43A.07, subdivisions 2–3 (2020), the Commissioner of the Minnesota Department of Management and Budget, not the Bureau of Mediation Services, has exclusive jurisdiction to review unit-reclassification petitions.

OPINION

ROSS, Judge

The Minnesota Department of Management and Budget reclassified a state-employee position following a job audit that determined that the position had changed substantially over time. The Minnesota Association of Professional Employees, which represented the bargaining unit that previously included the position, petitioned the Bureau of Mediation Services to reconsider the department's decision. Because the Bureau of Mediation Services lacked jurisdiction to decide this petition, we vacate its decision.

FACTS

The state created the Telephone Equipment Distribution Program Specialist position in the 1980s and, for the purpose of collective-bargaining-unit alignment, designated it within the Community Services Program Specialist 1 class. The Minnesota Department of Management and Budget delegated the authority to perform job audits to the Minnesota Department of Human Services, *see* Minn. Stat. § 43A.36, subd. 1 (2020), which audited the position in 1998. Based on that audit, which concluded that the position's purpose, responsibilities, and context had not substantially changed, the human-services department left the position's classification unchanged. But in 2017, the human-services department consolidated job classifications, which resulted in the position "mov[ing] laterally" into a different class—the Human Services Program Specialist class.

The supervisor overseeing the position announced a vacancy in 2019, prompting a review of job responsibilities by the management-and-budget department, which

determined that the position’s duties had transformed “due to changes in technology and changes within the division.” The management-and-budget department then conducted an audit to assess the extent of the changes and to determine whether to reclassify the position.

The audit found that the position had changed substantially since 1998 and that a new coordinator oversaw the employees holding the position. This meant that these employees no longer fulfilled some of the previous duties of the position—developing, assessing, and modifying promotional strategies and outreach plans. Without these responsibilities, the position had evolved to require only technical, nonprofessional skills. The management-and-budget department therefore reclassified the position from the Human Services Program Specialist class to the State Program Administrator Technical Specialist class. This reclassification moved the position from one bargaining unit to another, specifically, from the Minnesota Association of Professional Employees (MAPE) to the American Federation of State, County and Municipal Employees (AFSCME).

Seeking to retain the position, in November 2019 MAPE petitioned the Bureau of Mediation Services (BMS) to review the management-and-budget department’s reclassification decision. BMS characterized MAPE’s appeal as a dispute about whether the position had changed substantially. Finding that it had, BMS concluded that the management-and-budget department appropriately reclassified it.

This appeal follows.

ISSUE

Did the Bureau of Mediation Services have jurisdiction to review the Commissioner of the Minnesota Department of Management and Budget's reclassification decision?

ANALYSIS

MAPE challenges BMS's affirmance of the management-and-budget department's reclassification of the state's Telephone Equipment Distribution Program Specialist position. But we need not reach MAPE's substantive arguments if BMS lacked jurisdiction to decide MAPE's petition contesting the reclassification. BMS's subject-matter jurisdiction is a matter of statutory construction, which we consider *de novo*. *See In re Clarification of an Appropriate Unit*, 880 N.W.2d 383, 386 (Minn. App. 2016). For the following reasons, we hold that BMS lacked jurisdiction, and we therefore vacate the BMS decision.

The legislature defines BMS's distinct duties related to job classification and assignment to bargaining units:

The Commissioner [of BMS] shall assign state employee classifications . . . and supervisory positions to the appropriate units when the classifications or positions . . . have been significantly modified in occupational content subsequent to assignment under these sections All the employees in a class, excluding supervisory and confidential employees, shall be assigned to a single appropriate unit.

Minn. Stat. § 179A.10, subd. 4 (2020); *see also* Minn. Stat. § 179A.03, subd. 5 (2020) (defining “[c]ommissioner” as BMS commissioner). BMS is also responsible for “determining the appropriate unit,” a duty that requires it to “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.” Minn. Stat. § 179A.09, subd. 1 (2020). A “position” refers to a job, or “a group of duties and responsibilities assigned or delegated by competent authority, requiring the full-time or less than full-time employment of one person.” Minn. Stat. § 43A.02, subd. 31 (2020). A “class” is “one or more positions sufficiently similar with respect to duties and responsibilities.” *Id.*, subd. 11 (2020). A “unit” refers to a grouping of classifications for compensation purposes or, in other words, a bargaining unit, Minn. Stat. § 179A.10, subd. 2 (2020), which an employee organization exclusively represents, Minn. Stat. § 179A.03, subd. 8 (2020). In short, bargaining units consist of various classifications, each of which includes various positions.

BMS’s authority is distinct from duties assigned to the management-and-budget department. BMS’s authority is limited to assigning the higher-level organizational component of classifications to bargaining units and to assigning specified, supervisory positions to appropriate bargaining units. Minn. Stat. § 179A.10, subd. 4. These statutorily designated duties do not include the lower-level organization of assigning positions to classifications. Instead, “[t]he commissioner [of the department of management and budget] shall . . . assign[] . . . all positions in the classified service to job classes.” Minn. Stat. § 43A.05, subd. 1 (2020). The legislature also empowers the management-and-budget commissioner, among other things, to create new classes, to allocate new positions to an appropriate class, and to reclassify a position. Minn. Stat. § 43A.07, subd. 2.

Despite the express statutory job-assignment classification power in the department of management and budget and the absence of express statutory power to BMS to

determine job classification, MAPE contends that BMS has the power to review the department's reclassification decision. It bases this contention on BMS's power to "determine[s] appropriate units," which "[e]ach . . . consists of the classifications or positions assigned to [them]." Minn. Stat. §§ 179A.04, subd. 2, .10, subd. 2 (2020). Because the department's reclassification decision incidentally moved the position to a different unit, argues MAPE, reviewing the department's decision falls to BMS. It is true, as MAPE asserts, that BMS's petition-subject-matter duties include reviewing issues related to "certification or decertification as the exclusive representative of an appropriate unit." Minn. Stat. § 179A.04, subd. 1 (2020); *see also* Minn. R. 5510.0910 (Minnesota Administrative Rules referring to "unit clarification petition[s]"). But the duties regarding units plainly differ from duties regarding position-classification decisions.

We are not persuaded to a different conclusion by MAPE's reliance on the BMS rule that refers to BMS petitions for "a determination of the [BMS] commissioner regarding an appropriate unit involving [] inclusions or exclusions of *positions or job classifications* in an appropriate unit." Minn. R. 5510.0310, subp. 24 (emphasis added). BMS's authority to review position placement within bargaining units is limited to supervisory positions. Minn. Stat. § 179A.10, subd. 4. MAPE unconvincingly attempts to cast its BMS petition as a bargaining-unit-composition issue, suggesting on appeal that MAPE was no longer the appropriate bargaining unit after MMB removed the Telephone Equipment Distribution Program Specialist position from it. This attempt flows from the statute that affords BMS jurisdiction to review bargaining-unit compositions. *See* Minn. Stat. § 179A.09, subd. 1. But this issue is new and not within the scope of this appeal, as MAPE premised its petition

entirely on the department's position reclassification, not on the appropriateness of MAPE as the bargaining unit.

We add that the legislature did not leave interested persons without a remedy. The appropriate course for challenging the classification is to petition the management-and-budget department. *See* Minn. Stat. § 43A.07, subd. 3 (explaining how to trigger a reclassification review). We also add that BMS had the opportunity to decide this issue as we have without delving into the merits. As a matter of procedure, the department contested MAPE's BMS petition by insisting that BMS lacked jurisdiction. And as a matter of substance, BMS had previously already recognized the distinction we have outlined here and concluded that "[t]he Bureau does not have jurisdiction to review position assignments to classifications." *In re Petition for Clarification of an Appropriate Unit Univ. of Minn., Unit 6, Minneapolis*, BMS Case No. 02-PCL-1141 (May 28, 2003). The record sheds no light as to why BMS addressed MAPE's petition in substance instead of rejecting it on jurisdictional grounds or why it did not even address the department's jurisdictional objection.

DECISION

We conclude that BMS lacked jurisdiction to decide MAPE's position-reclassification petition. We therefore vacate the BMS decision without addressing its merits.

Vacated.