No. ____

IN THE

Supreme Court of the United States

KATHLEEN URADNIK,

Petitioner,

v.

INTER FACULTY ORGANIZATION, ST. CLOUD STATE UNIVERSITY, and BOARD OF TRUSTEES OF THE MINNESOTA STATE COLLEGES AND UNIVERSITIES,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Three times in recent years, this Court has recognized that schemes compelling public-sector employees to associate with labor unions impose a "significant impingement" on those employees' First Amendment rights. *Knox v. Service Employees*, 567 U. S. 298, 310–11 (2012); *Harris v. Quinn*, 134 S. Ct. 2618, 2639 (2014); *Janus v. AFSCME*, 138 S. Ct. 2448, 2483 (2018). The most recent of those decisions, *Janus*, likewise recognized that a state's appointment of a labor union to speak for its employees as their exclusive representative was "itself a significant impingement on associational freedoms that would not be tolerated in other contexts." 138 S. Ct. at 2478. The lower courts, however, have refused to subject exclusive representation schemes to any degree of constitutional scrutiny, on the mistaken view that this Court approved such arrangements in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984). The question presented is therefore:

Whether it violates the First Amendment to appoint a labor union to represent and speak for public-sector employees who have declined to join the union.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Kathleen Uradnik was Plaintiff–Appellant in the court below.

Respondents, who were Defendants–Appellees in the court below, are the Inter Faculty Organization, St. Cloud State University, and the Board of Trustees of the Minnesota State Colleges and Universities.

Because the Petitioner is not a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

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As a condition of her employment as a public university professor, Petitioner Kathleen Uradnik is compelled by Minnesota law to accept a labor union as her "exclusive representative" to speak (as the statute puts it) "on behalf" of her on what this Court has recognized to be "matters of substantial public concern." *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2460 (2018). That state-law requirement is, as this Court observed in *Janus*, "a significant impingement on associational freedoms that would not be tolerated in other contexts." *Id.* at 2478. Yet the courts below, and others to consider the issue, have refused to subject such arrangements to any degree of constitutional scrutiny, on the mistaken view that this Court's decision in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), held that they involve no impingement of First Amendment rights at all.

The result of those decisions is to broadly sanction compelled representation of unwilling public employees and subsidy recipients like home healthcare workers, irrespective of their speech and associational interests. In this instance, Minnesota law recognizes a labor union as representing and speaking on behalf of Dr. Uradnik, despite that she vehemently opposes its positions and advocacy on issues ranging from fiscal policy to university governance. Yet the union, per Minnesota law, regularly speaks for her on these issues in collective bargaining sessions, through "meet

and confer" sessions on matters of academic and university policy, in grievance proceedings, and elsewhere.

That result cannot be squared with this Court's First Amendment jurisprudence. The "freedom of speech 'includes both the right to speak freely and the right to refrain from speaking at all.'" *Janus*, 138 S. Ct. at 2465 (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)). "The right to eschew association for expressive purposes is likewise protected." *Id.* (citing authorities). *Janus* considered it beyond debate that the First Amendment bars a state from "requir[ing] all residents to sign a document expressing support for a particular set of positions on controversial public issues—say, the platform of one of the major political parties." *Id.* at 2464. But that is what Minnesota requires of public university faculty by assigning them a representative to take positions on a host of controversial public issues on their behalf. And, vague references to "labor peace" aside, no one has ever explained how compelling public employees to accept unwanted representation furthers any compelling or legitimate state interest.

Like with public-sector agency fees prior to *Janus*, public-sector compelled representation has been assumed to be constitutional by reference to private-sector practices, "under a deferential standard that finds no support in [the Court's] free speech cases." *Id.* at 2480. It is a striking anomaly that, following *Janus*, public workers may not be compelled to subsidize a union's speech but may still be forced to accept that

speech, made on their behalf by a state-appointed representative, as their own.

That anomaly requires correction by this Court. Even after *Janus* specifically identified compelled-representation regimes as an "impingement" of First Amendment rights, the lower courts have misread *Knight* as holding to the contrary. But *Knight* considered no compelled-speech or -association challenge to public-sector exclusive representation, only the claim that public workers had a right to be heard by the state in certain "meet and confer" sessions with union representatives. This Court alone has the power to correct that mistaken understanding of *Knight* and give "a First Amendment issue of this importance" the consideration it deserves. *Harris v. Quinn*, 134 S. Ct. 2618, 2632, 2639 (2014).

OPINIONS BELOW

The Eighth Circuit's judgment affirming the district court is reproduced in the Appendix (Pet.App.1), as are the district court's opinion (Pet.App.3) and judgment (Pet.App.14).

JURISDICTION

The Eighth Circuit entered judgment on December 3, 2018. Pet.App.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The relevant statutory provisions are reproduced in the Appendix (Pet.App.38), as are relevant provisions

of the Respondents' collective bargaining agreement (Pet.App.71).

STATEMENT OF THE CASE

A. Minnesota Compels Public Employees To Accept an "Exclusive Representative" that Speaks "On Behalf" of Them

The State of Minnesota empowers public employers to require their employees, as a condition of employment, to accept an "exclusive representative" that speaks "on behalf" of them. Minn. Stat. § 179A.03, subd. 8.

Minnesota law allows a union to become "the exclusive representative of all employees in [a bargaining] unit" by a majority vote of employees or by submitting proof that a majority of employees wish to be represented by the union. Minn. Stat. § 179A.12 subd. 2–3, 10. Upon certification as the exclusive representative, the union continues in that role indefinitely, unless and until decertified or replaced. Minn. Stat. § 179A.12 subd. 1.

Once certified, the union has the exclusive right "to meet and negotiate with the employer on behalf of all employees in the appropriate unit." Minn. Stat. § 179A.03, subd. 8; *see also* Minn. Stat. § 179A.06, subd. 5 (providing that "[p]ublic employees, through their certified exclusive representative, have the right and obligation to meet and negotiate in good faith with their employer regarding grievance procedures

and the terms and conditions of employment"). Minnesota public employers, in turn, are required "to meet and negotiate in good faith with the exclusive representative of its employees" over the "terms and conditions of employment." Minn. Stat. §§ 179A.13, subd. 2(5), 179A.14, subd. 1.

Mandatory topics of negotiation include "the hours of employment, the compensation therefor including fringe benefits except retirement contributions or benefits other than employer payment of, or contributions to, premiums for group insurance coverage of retired employees or severance pay, and the employer's personnel policies affecting the working conditions of the employees." Minn. Stat. § 179A.03, subd. 19.

In addition, for "professional employees" like teachers and professors, a public employer must also regularly negotiate with the union (or its representatives) in "meet and confer" sessions over "matters that are not terms and conditions of employment." Minn. Stat. § 179A.08.

B. The Board Recognizes the Union To Speak "On Behalf" of the Petitioner

The Petitioner, Dr. Kathleen Uradnik, is a professor of political science at St. Cloud State University, a public university that is part of the Minnesota State Colleges and Universities. Pet.App.3.

Pursuant to Minnesota law, the Board of Trustees of the Minnesota State Colleges and Universities (the "Board") has recognized the Inter Faculty Organiza-

tion (the "Union") as "the exclusive bargaining representative" for "all faculty members." Pet.App.71. Their collective bargaining agreement provides, in a section titled "Exclusive Right," that "[t]he Employer will not meet and negotiate relative to those terms and conditions of employment subject to negotiations with any employee groups or organizations composed of employees covered by this Agreement except through the [Union]." Pet.App.73–74.

Dr. Uradnik disagrees with the Union's positions and advocacy on many issues, including issues related to terms and conditions of employment and to governance of the University, and for that reason has refused to join it as a member. *See* Pet.App.34–36. Nonetheless, because she is employed on the faculty of St. Cloud State University, Minnesota law recognizes the Union as her "representative" that speaks "on behalf" of her. Pet.App.73; Minn. Stat. § 179A.03, subd. 8.

In that capacity, the Union speaks out on a variety of subjects. The agreement reflects the Union's and the Board's negotiations on the terms and conditions of employment of the University's faculty, including tenure, promotions, wages, benefits, grievances, the school year, workload, coaching assignments, office hours, severance, retirement, leaves of absence, professional development and evaluation, and so on. *See* Pet.App.71 *et seq*.

The agreement also designates the Union as the representative to exercise the rights of faculty members to "meet and confer" about "all matters" that are

not terms and conditions of employment. Minn. Stat. § 179A.08; Pet.App.85–86. Among other things, this right includes an exclusive right to "confer on the need for faculty to serve on System-level committees, after which the [Union] shall appoint the faculty." Pet.App.86. Additionally, the agreement affords local affiliates of the Union authority to establish committees to meet and confer with university officials. Pet.App.86–88. To that end, the Union and the University have established an extensive set of search, service, and governance committees, which in turn participate in setting academic policy at the University. *See* Pet.App.23–24.

The Union is also involved in setting policy through its role in the grievance process, as specified in the agreement. The exclusive representative has the right to participate in every stage of grievance proceedings and thereby represent the view of faculty "as to the interpretation or application of any term or terms" of the agreement. Pet.App.105. Moreover, although a faculty member raising a grievance may decline to be represented by the Union with respect to a grievance, only the Union has the right to commence and escalate a grievance proceeding. Pet.App.107–10. Indeed, the Union has declined to file a grievance on behalf of Dr. Uradnik. Pet.App.36

C. Proceedings Below

On July 6, 2018, Dr. Uradnik filed a complaint challenging the compelled-representation regime maintained by the Respondents, alleging that it violates

her rights under the First and Fourteenth Amendments to be free from compelled speech and compelled association. Pet.App.16. She then moved for a preliminary injunction.

While that motion was pending, the Eighth Circuit decided *Bierman v. Dayton*, a challenge by homecare providers to Minnesota's extension of its labor relations statute to in-home workers subsidized by the state's Medicaid program. 900 F.3d 570 (8th Cir. 2018). The appeals court rejected the providers' claim challenging the state's recognition of an exclusive representative as violating their associational rights. It held that, under this Court's decision in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), a government's "recognizing an exclusive negotiating representative" for public workers does "not impinge on the right of association." 900 F.3d at 574.

The district court in this case then denied Dr. Uradnik's request for an injunction. She had no likelihood of success on the merits, it determined, because "*Knight* and *Bierman* foreclose her claims." Pet.App.11. In the alternative, it held that Minnesota's exclusive-representation regime satisfied exacting scrutiny because it is "is likely the least restrictive means possible for employees who are members to still enjoy the benefits of union representation." Pet.App.10. Accordingly, the district court entered judgment in the Respondents' favor. Pet.App.14.

Dr. Uradnik appealed. Faced with recent Eighth Circuit precedent upholding Minnesota's exclusive-

representation regime, as well as a subsequent order in that case denying en banc review, Dr. Uradnik conceded that her claims were controlled by *Bierman* and moved the appeals court for summary affirmance, so that she could obtain prompt relief from a court that could decide the issue. The Respondents did not oppose the motion. The Eighth Circuit summarily affirmed the district court on December 3, 2018. Pet.App.1.

REASONS FOR GRANTING THE PETITION

The petition presents a question of profound importance that has never received careful consideration by this Court. The appointment of an exclusive representative to speak on behalf of public employees is an obvious impingement on their First Amendment rights, as the Court recognized in *Janus*. Yet the lower courts understand the Court to have held, in *Knight*, that such regimes implicate no First Amendment interests at all. *Knight*, however, had no occasion to pass on that issue, because it was not raised or argued. As a result, public workers whom *Janus* recognized to have the right to be free from subsidizing a labor union's speech may nonetheless be compelled to enter an expressive association with a union and to suffer it to speak for them, no matter their disagreement with the words it puts in their mouths. That is, if anything, a more severe impingement of First Amendment injury than that disapproved in *Janus*, and it is unjustified by any state interest, let alone the compelling one required by strict or exacting scrutiny. The Court should give this important issue the full

and fair consideration that it deserves. And this case, which challenges a typical exclusive-representation regime and presents the constitutional issue squarely, is the ideal vehicle to do so.

I. The Lower Courts Have Misread *Knight* To Exempt State-Compelled Union Representation from Constitutional Scrutiny

The court below, like others, viewed this Court's decision in *Knight* as controlling on the question of whether public-sector exclusive-representation regimes pass First Amendment muster. *Knight*, however, gave zero consideration to the issue.

Knight was, to be sure, a challenge to provisions of the same statute at issue here, Minnesota's Public Employment Labor Relations Act. The plaintiffs, college instructors, raised three claims, the first two of which were subject to summary affirmance by this Court. *See Knight v. Minnesota Community College Faculty Ass'n*, 460 U.S. 1048 (1983). The first was that the state, by appointing a union as exclusive representative, "impermissibly delegated its sovereign power" in contravention of decisions like *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), and *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936). *Knight v. Minnesota Community College Faculty Ass'n*, 571 F. Supp. 1, 3–4 (D. Minn. 1982). And the second was "that compulsory fair share fees…result in forced association with a political party," a claim that the district court held was controlled by

this Court's decision upholding agency-fee arrangements in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). The district court rejected both of those claims, 571 F. Supp. at 5, 7, and (as noted) this Court summarily affirmed. *See Knight*, 465 U.S. at 278–79 (discussing lower court decision and summary affirmance).

The third claim, which this Court heard on the merits, involved the statute's "meet and confer" process in which public employers exchange views with an exclusive representative "on policy questions relating to employment but outside the scope of mandatory bargaining." *Id*. at 273. The district court had held that the limitation restricting participation in "meet and confer" sessions to representatives selected by the union violated the plaintiffs' First Amendment rights. 571 F. Supp. at 12. Accordingly, as this Court stated in reviewing that decision: "The question presented in this case is whether this restriction on participation in the nonmandatory-subject exchange process violates the constitutional rights of professional employees within the bargaining unit who are not members of the exclusive representative and who may disagree with its views." 465 U.S. at 273. In answering that question, the Court held, first, that the First Amendment confers "no constitutional right to force the government to listen to [the instructors'] views" and, second, that "Minnesota's restriction of participation in 'meet and confer' sessions to the faculty's exclusive representative" did not infringe "[the instructors'] speech and associational rights." *Id*. at 283, 288. The

majority decision does not discuss or even cite compelled-speech or compelled-association precedents other than *Abood*.

That's because neither issue was raised. The instructors' principal brief recognized that the "constitutionality of exclusive representation" was undecided, but expressly "pretermit[ed]" any discussion of it. Brief for Appellees, *Minnesota State Board for Community Colleges v. Knight*, No. 82-898 (filed Aug. 16, 1983), at 46–47, *available at* 1983 U.S. S. Ct. Briefs LEXIS 130. A separate brief filed by the instructors did challenge exclusive representation, but only on nondelegation grounds, without so much as mentioning the First Amendment. Brief for Appellees, *Minnesota Community College Faculty Ass'n v. Knight*, No. 82-977 (filed Aug. 16, 1983), *available at* 1983 U.S. S. Ct. Briefs LEXIS 126. No First Amendment challenge to compelled representation having been raised, the Court had no reason to consider the matter.

Nonetheless, the lower courts have come to regard *Knight* as controlling on that point. The court below, for example, held in *Bierman* that a "State has 'in no way' impinged" on associational rights "by recognizing an exclusive negotiating representative," 900 F.3d at 574, quoting language from *Knight* that actually addressed "Minnesota's *restriction of participation* in 'meet and confer' sessions to the faculty's exclusive representative." 465 U.S. at 288 (emphasis added). The First Circuit committed the same error, conflating *Knight*'s language upholding that restriction on

participation with approval of compelled representation. *D'Agostino v. Baker*, 812 F.3d 240, 243 (1st Cir. 2016). So too the Seventh Circuit, relying on the same language as the court below. *Hill v. SEIU*, 850 F.3d 861, 864 (7th Cir. 2017). *See also Jarvis v. Cuomo*, 660 F. App'x 72, 74 (2d Cir. 2016) (same); *Mentele v. Inslee*, No. C15-5134-RBL, 2016 U.S. Dist. LEXIS 69429, *8 (W.D. Wash. May 26, 2016); *Reisman v. Assoc. Faculties of the Univ. of Maine*, No. 18-cv-307 (D. Me. Dec. 3, 2018). Thus, the lower courts regard themselves as bound by what is, at most, off-hand *dicta* on an issue the Court had no occasion to consider.

As a result, the lower courts have declined to subject exclusive-representation regimes to any degree of constitutional scrutiny, taking off the table a profoundly important question that has never received any deliberate consideration by this Court. Unless and until this Court clarifies the scope of its holding in *Knight*, the constitutionality of exclusive representation will never receive meaningful review.

II. State-Compelled Union Representation Cannot Be Reconciled with This Court's First Amendment Jurisprudence

Review of that issue is warranted because subjecting public workers to state-compelled union representation is at odds with ordinary First Amendment doctrine. Indeed, the Court recently recognized as much when it observed, correctly, that such schemes constitute "a significant impingement on associational freedoms that would not be tolerated in other contexts."

Janus, 138 S. Ct. at 2478. And if *Janus* stands for anything, it is that there is no labor-relations exception to the First Amendment.

When state law appoints a union to represent unwilling public workers, it compels their speech. The Minnesota statute here recognizes the Union as the Petitioner's "representative" and expressly provides that, in that role, the Union speaks "on behalf of all employees," including those like the Petitioner who have declined to join the Union and object to its speech. Minn. Stat. §§ 179A.12, subd. 10, 179A.03, subd. 8. That speech by the Union is, as the statute itself recognizes, regarded as the speech of the employees themselves: "Public employees, through their certified exclusive representative, have the right and obligation to meet and negotiate in good faith with their employer regarding grievance procedures and the terms and conditions of employment." Minn. Stat. § 179A.06, subd. 5. So, when the Union speaks, it is speaking for the Petitioner, putting words in her mouth. *See Janus*, 138 S. Ct. at 2474 ("[W]hen a union negotiates with the employer or represents employees in disciplinary proceedings, the union speaks for the *employees*…."). And, after *Janus*, there can be no dispute that this speech concerns "matters of substantial public concern," *id.* at 2460, including public-sector wages and benefits and the governance of public institutions.

The state's compulsion of the Petitioner's speech on these issues is, to say the least, an impingement of her First Amendment right to be free from compelled

speech. "Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning, and for this reason, one of [the Court's] landmark free speech cases said that a law commanding 'involuntary affirmation' of objected-to beliefs would require 'even more immediate and urgent grounds' than a law demanding silence." *Id*. at 2464 (quoting *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 633 (1943)). For that reason, government-compelled speech is subject to strict scrutiny. *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 800–01 (1988).

Likewise, compelled union representation impinges on associational rights. An association "is protected by the First Amendment's expressive associational right" if the parties come together to "engage in some form of expression, whether it be public or private." *Boy Scouts of America v. Dale*, 530 U.S. 640, 648 (2000). That is, of course, the entire purpose of the Union's appointment as the Petitioner's representative—to speak on behalf of her and other employees. *Compare United States v. United Foods*, 533 U.S. 405, 411–12 (2001) (finding violation where the compelled speech "itself, far from being ancillary, is the principal object of the regulatory scheme").

"Freedom of association…plainly presupposes a freedom not to associate." *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984); *see also Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.,* 475 U.S. 1, 12 (1986) (plurality opinion) ("[F]orced associations that burden protected speech are impermissible").

Compelled association is therefore subject, at a minimum, to "exacting scrutiny" and so must at least "serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." *Knox v. Serv. Employees Int'l Union, Local 1000*, 567 U.S. 298, 310 (2012).

Compelling public workers to submit to representation by a labor union fails either degree of scrutiny, strict or exacting, because it is unsupported by any compelling state interest. There is no interest in avoiding "free-riders" at play, because there is no possible argument that the Petitioner and other nonmembers are seeking to "enjoy[] the benefits of union representation without shouldering the costs," *Janus*, 138 S. Ct. at 2466. And while the Union has a duty of fairness to all employees, that is no more than a nondiscrimination provision appropriately reflecting the state's own obligation, as the counterparty in bargaining, not to discriminate on the basis of union membership. *See Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 202 (1944) (analogizing a private-sector union's fair-representation duty to the duty "the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates"); *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 69 (2006) (recognizing that government may not "impose penalties or withhold benefits based on membership in a disfavored group" where doing so "ma[kes] group membership less attractive"). Indeed, the Board forbids the Union from discriminating on the basis of Union membership in

the same provision that bars it from discriminating based on "race, creed, religion, color, national origin," etc. Pet.App.71.

As for any state interest in "labor peace," it is neither compelling nor served in any tailored fashion by forcing public employees to accept union representation. *Janus* assumed, without deciding, that a state might have a compelling interest in avoiding "inter-union rivalries" and "conflicting demands from different unions" sufficient to overcome First Amendment objections. 138 S. Ct. at 2466 (quoting *Abood*, 431 U.S. at 220–21)). But, like the rest of *Abood*, this "labor peace" concept was borrowed from another area of the Court's jurisprudence—concerning Congress's Commerce Clause power to regulate economic affairs, *e.g.*, *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 41–42 (1937)—and, without any consideration, given a second life as a First Amendment doctrine. 431 U.S. at 220–21. That the promotion of labor peace might justify congressional regulation of economic affairs, subject only to rational-basis review, says nothing about whether labor-peace interests suffice to clear the higher bar of First Amendment scrutiny. They do not. The Court's cases recognize that the First Amendment does *not* permit government to "substitute its judgment as to how best to speak for that of speakers and listeners" or to "sacrifice speech for efficiency." *Riley*, 487 U.S. at 791, 795. Yet that is, in a nutshell, the labor-peace rationale.

In any instance, labor peace provides no justification for mandating union representation. Irrespective

of exclusive-representation regimes, the First Amendment affords public workers a near-absolute right to speak out themselves on matters of public concern and to join alternative labor organizations, just like they may enter into any number of private associations free from government retaliation. *See, e.g., Heffernan v. City of Paterson*, 136 S. Ct. 1412, 1416 (2016). Even when some other group has been recognized as the exclusive representative, such organizations can still make demands on public employers, spark rivalries, and even foster dissention within the workforce—those potential ills are a consequence of public workers' well-recognized associational rights and are not addressed in any way by exclusive-representation requirements. In this respect, there is a fundamental disconnect between compelling unwilling public workers to accept a labor union as their representative and any claimed interest in labor peace.

At a minimum, any state interest in promoting labor peace can readily be achieved through means significantly less restrictive of speech and associational freedoms than compelling public workers to submit to union representation—namely, by declining to bargain with rival unions. *See Smith v. Arkansas State Highway Employees, Local 1315*, 441 U.S. 463, 465 (1979) ("[T]he First Amendment does not impose any affirmative obligation on the government to listen…."); Tenn. Code. Ann. § 49-5-603 (providing that "professional employees…have the right to refrain" from "negotiat[ing] through representatives").

For all of these reasons, the Court's review is required to cure the conflict between the lower courts' misunderstanding of *Knight* as exempting exclusive-representation regimes from constitutional scrutiny and this Court's First Amendment jurisprudence.

III. The Question Presented Is Important and Frequently Recurring

The importance of the question whether state-compelled union representation passes constitutional muster cannot be gainsaid. In the wake of *Janus*, it is a striking anomaly that public-sector workers, now free from compelled subsidization of union advocacy on "matters of substantial public concern," 138 S. Ct. at 2460, may still be compelled to accept that same advocacy as their own and compelled to associate with a union for the sole purpose of facilitating that advocacy. A compelled-representation regime is literally "a law commanding 'involuntary affirmation' of objected-to beliefs." *Id.* at 2464 (quoting *Barnette*, 319 U.S. at 633). This intrusion on workers' First Amendment rights—and ultimately their rights of freedom of thought and conscience—is greater than that at issue in *Janus* and calls for review.

The question presented is also one that arises frequently. No fewer than four of the courts of appeal have addressed that issue over the past two years. *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir. 2016); *Jarvis v. Cuomo*, 660 F. App'x 72 (2d Cir. 2016); *Hill v. SEIU*, 850 F.3d 861 (7th Cir. 2017); *Bierman v. Dayton*, 900 F.3d 570 (8th Cir. 2018). Each of those courts, as discussed above, has punted on the fundamental

constitutional question, believing it to be controlled by *Knight*. Even so, additional challenges—many of them brought following this Court's decision in *Janus*—are pending in the district courts. Given the importance of the issue to workers forced against their will to accept union representation, the fact that this Court has never squarely addressed the constitutionality of that practice, and the Court's recognition in *Janus* that such regimes do impinge First Amendment rights, it is inevitable that there will be more cases raising that same issue. Unless and until this Court passes judgment on compelled union representation, workers, municipalities, states, and the lower courts will continue to devote significant resources to litigation that this Court can and should resolve in one fell swoop.

IV. This Case Is the Ideal Vehicle To Clarify *Knight*'s Reach and the First Amendment's Application in This Area

This case presents an ideal vehicle for the Court to finally resolve an issue of overriding importance. It squarely presents the issue of whether the First Amendment permits a state to appoint and recognize a labor union as the "exclusive representative" of public workers who have declined to join the union and object to its speech on their behalf. *See* Pet.App.27–28 (claim challenging just that). The courts below passed on that precise issue. Pet.App.2, Pet.App.6–11. And it is dispositive of the merits of this appeal. There is no issue regarding the Petitioner's standing, mootness, or any other justiciability concern.

Moreover, compared to other cases, this one involves a more typical factual scenario. In particular, the Petitioner is a state employee, and it is state employees who are by far the most numerous subjects of unwanted union representation under state law. By contrast, other recent challenges to exclusive-representation regimes have involved subsidy recipients like home healthcare workers, raising a host of issues separate from the core one of whether states may compel representation at all. *Compare Harris v. Quinn*, 134 S. Ct. 2618 (2014) (challenge to agency fees by subsidy recipients), *with Janus*, 138 S. Ct. at 2461 (challenge to agency fees by state employee). Hearing this case would permit the Court to address the question presented in the most common factual context in which it is likely to arise and thereby provide the clearest possible guidance to the lower courts, avoiding the confusion that may ensue from a decision premised on idiosyncratic facts.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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DECEMBER 2018

APPENDIX

TABLE OF APPENDICES

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 18-3086

Kathleen Uradnik,

Plaintiff-Appellant

v.

Interfaculty Organization; St. Cloud State University; Board of Trustees of the Minnesota State Colleges and Universities

Defendants - Appellees

Appeal from U.S. District Court for the District of Minnesota (0:18-cv-01895-PAM)

JUDGMENT

Before LOKEN, SHEPHERD and KELLY, Circuit Judges

Kathleen Uradnik appeals the denial of her motion for preliminary injunction. Uradnik challenges the constitutionality of an exclusive collective bargaining representative in the public sector, asserting that "the University and State of Minnesota [should]

not appoint the Union to speak for her and not force her into an expressive association with it."

We review the district court's denial of a preliminary injunction for an abuse of discretion. S.J.W. ex rel. Wilson v. Lee's Summit R-7 Sch. Dist., 696 F.3d 771, 776 (8th Cir. 2012). "Whether a preliminary injunction should issue involves consideration of (1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest." Id. (quoting Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109, 113 (8th Cir. 1981)). The most significant of these factors in this case is the likelihood of success on the merits, and on this factor we agree with the district court that Uradnik cannot show a likelihood of success on the merits of her compelled speech argument. See Janus v. Am Fed. of State, Cty., & Munic. Employees, 138 S. Ct. 2448, 2478 (2018); Harris v. Quinn, 134 S. Ct. 2618, 2640 (2014);. The district court's order denying the motion for a preliminary injunction is affirmed.

December 03, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Kathleen Uradnik, Plaintiff, v. Inter Faculty Organization, St. Cloud State University, and Board of Trustees of the Minnesota State College and Universities, Defendant.	Civ. No. 18-1895 (PAM/LIB) **MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff's Motion for a Preliminary Injunction (Docket No. 18) For the following reasons, the Motion is denied.

BACKGROUND

Plaintiff Kathleen Uradnik is a tenured Political Science professor at St. Cloud State University ("SCSU"). She has worked there for 19 years. Plaintiff seeks to enjoin Defendants the Board of Trustees of the Minnesota State Colleges and Universities, St. Cloud State University, and the Inter Faculty Organization ("IFO") from regarding the IFO as her representative and allowing it to speak on her behalf.

(Uradnik Decl. (Docket No. 19) at ¶ 10.) The IFO acts as Plaintiff's exclusive representative for purposes of negotiating, bargaining, and conferring with her public employer (SCUSU).

The IFO represents Plaintiff and other faculty at public universities in Minnesota under the Public Employment Labor Relations Act ("PELRA"). Minn. Stat. ch. 179A. PERLA divides most public employees into "bargaining units" and allows the employees in each unit to designate an exclusive representative to bargain with their employer on their behalf. See Minn. Stat. §§ 179A.06, subd. 2. The IFO was elected and certified in 1975 as the exclusive representative for teaching faculty at Minnesota's seven public universities (Simpson Aff. at ¶ 12.) Once a bargaining unit has elected an exclusive representatives, PERL requires public employees to "meet and negotiate" with these exclusive representatives on issues surrounding the terms and conditions of employment. See Minn. Stat. §§ 179A.06, subd. 5; 179A.07, subd. 2. PERLA also grants public employees the right to "meet and confer" with their employer on matters outside the scope of mandatory negotiations; exclusive representatives speak for the employees in these sessions as well. See Minn. Stat. §§ 179A.07, subd. 3; 179A.08, subd. 2.

Plaintiff is not a member of the IFO. (Uradnik Decl. at ¶ 8.) She disagrees with the IFO on many issues and positions and claims that Minnesota law forces her to associate with the Union. (Id. at ¶ 2.) Plaintiff argues that they exclusive representation provisions of PERLA violate her First Amendment

rights to freedom of speech and freedom of association. (Pl's Supp. Mem. (Docket No. 19) at 6.) Specifically, Plaintiff claims that the government is compelling her speech by allowing the IFO to speak on her behalf as the faculty's exclusive representative. (Id.)

DISCUSSION

A preliminary injunction is "an extraordinary remedy that may only be rewarded upon a clear showing that the plaintiff is entitled to such relief." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008). When deciding whether to issue a preliminary injunction, courts consider four factors: (1) the probability that movant will succeed on the merits; (2) the threat of irreparable harm to the movant; (3) the balance of harm the injunction would have on the movant and the opposing party; and (4) the public interest. Dataphase Sys., Inc. v. CL Sys., Inc., 640 F.2d 109, 113 (8th Cir. 1981). The Eighth Circuit requires a "more rigorous standard for demonstrating a likelihood of success on the merits" when a plaintiff is seeking an injunction of governmental policies implemented through legislation or regulation. Planned Parenthood Minn., N.D., S.D. v. Rounds, 530 F.3d 724, 733 (8th Cir. 2008). Under this standard, the movant must have "more than just a fair chance [of prevailing]," and rather must be "likely to prevail on the merits." Id. at 731-32.

A. Likelihood of Success on the Merits

Plaintiff does not have a likely chance of success on the merits, because the Supreme Court and the Eighth Circuit have already rejected her arguments. Even if exclusive representation by union rose to a First Amendment violation, PELRA would survive First Amendment scrutiny.

1. Compelled Speech

a. Supreme Court and Eighth Circuit precedent

The Supreme Court dealt with substantially similar arguments brought by a group of community college instructors in Minnesota State Board of Community Colleges v. Knight, 465 U.S. 271 (1984). Like Plaintiff, they argued that the exclusive representation PELRA requires violated their First Amendment speech and associational rights. Id. at 278. The Court reasoned that PELRA's requirement that the exclusive representative speak on behalf of the employees in "meet and confer" sessions did not infringe the instructors' speech and associational rights. Id. at 280. Nor had PELRA restrained appellees' freedom to speak on any education-related issue or to associate or not associate with whom they pleased, including the exclusive representative. Plaintiff states her argument is distinguishable from Knight because she alleges that PELRA compels her to speak through the IFO, rather than restricting her speech at "meet and confer" sessions. (Pl's Supp. Mem. at 11.) But this distinction does not render Knight inapplicable. The Court in Knight broadly rejected the appellee's First

Amendment free speech arguments, indicating that the decision applies regardless of the type of speech at issue.

Additionally, a group of home care providers has already presented a compelled speech argument against PELRA in the recent Eighth Circuit case Bierman v. Dayton, 900 F.3d 570 (8th Cir. 2018). While the Court did not directly address "compelled speech," appellants made multiple compelled-speech arguments in their briefing. See Appellants' Br. at 21, 23, Bierman, 900 F.3d (No. 17-1244); see also Appellants' Reply Br. At 5, 8, 17-18, Bierman. Despite these arguments, the Bierman court still held that "[t]here is no meaningful distinction between this case and Knight." Bierman, 900 F.3d at 574.

Plaintiff also heavily relies on the recent Supreme Court ruling in Janus v. American Federation of State, County and Municipal Employees, Council 31 for her argument that she is likely to succeed on the merits. 138 S. Ct. 2448 (2018). But Janus involved mandatory union fees paid by non-union members, not mere representation by a union. See generally id. While the Court addressed compelled speech, it noted that it is "not disputed that the State may require that a union serve as exclusive bargaining agent for its employees." Id. at 2478. The Court "simply [drew] the line at allowing the government to go further still and require all employees to support the union irrespective of whether they share its views." Id. The Eighth Circuit has also distinguished the Illinois law at issue in Janus from PELRA: "[r]ecent holdings in

[Janus] and [Harris v. Quinn] do not supersede Knight." Bierman, 900 F.3d at 574.

The main distinction between Janus and the instant case is that the employees in Janus were required to subsidize the union through agency fees, even if they were not members or did not want to associate with the union. Janus, 138 S. Ct. at 2460. That is simply not the case here. Plaintiff is not required to pay fees, attend meetings, endorse the union, or take any other direct actions against her will. (See IFO's Opp'n Mem. (Docket No. 26) at 15.) She merely complains that the IFO compels her speech in violation of the First Amendment by acting as the exclusive representative of all faculty at Minnesota's public universities. (See Pl.'s Supp. Mem. at 6.) Although the IFO is speaking on behalf of SCSU faculty, Plaintiff is not a member of the IFO and has made that clear throughout her career. (Uradnik Decl. at ¶ 8.) The IFO speaks for the collective, and not for individual members; those individuals may speak their mind freely and speak to their public employer on their behalf. (See Bodelson Aff. (Docket No. 34) at ¶7.) The Supreme Court recognized this distinction in Knight. See Knight, 465 U.S. at 276. Plaintiff has not established that she likely to succeed on the merits of her compelled speech claim.

b. Level of Scrutiny

Even if Knight and Bierman did not preclude Plaintiff's compelled speech argument, PELRA would pass the required level of constitutional scrutiny for compelled speech. Plaintiff argues that strict scrutiny applies in compelled speech cases, largely because of

the Supreme Court's language in Janus. (See Pl.'s Supp. Mem. at 7 n.2.) However, the Janus decision and earlier Supreme Court precedent show that "exacting" scrutiny is the appropriate standard. In Janus, the Supreme Court declined to answer the scrutiny question definitively, stating" "we again find it unnecessary to decide the issue of strict scrutiny because the [law in question] cannot survive under even the more permissive standard [exacting scrutiny]." Janus, 138 S. Ct. at 2465. Other Supreme Court decisions considering scrutiny as the standard. See id. at 2484.[1] Under the Janus definition of exacting scrutiny, a statute compelling speech must "serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." Id. at 2465 (quoting Knox v. SEIU, Local 1000, 567 U.S. 298, 310 (2012)).

Under exacting scrutiny analysis, PELRA serves a compelling state interest. First, it serves the state in-

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[1] See also U.S. v. United Foods, 533 U.S. 405, 411 (2001) ("compelled funding for advertising must pass First Amendment scrutiny"); Knox v. SEIU, Local 1000, 567 U.S. 298, 310 (2012) ("compulsory subsidies for private speech are subject to exacting First Amendment scrutiny"); Roberts v United States Jaycees, 468 U.S. 609, 623 (1984) (infringements on associational rights may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannon be achieved through significantly less restrictive means); Rumsfield v. Forum for Acad. & Inst'l Rights, Inc., 547 U.S. 47, 62 (2006) (compelled statements of opinion are subject to First Amendment scrutiny); Harris .v Quinn, 134 S. Ct. 2618, 2639 (2014) (agency fee provisions require passage of "exacting First Amendment scrutiny" (quoting Knox)).

terest of providing Minnesota's public sector employees with representation and greater bargaining power. Second, PERLA promotes the compelling state interest of "labor peace." (See IFO's Opp'n Mem. at 36-37.) "This concept recognizes that without majority rule, confusion and conflict would result from attempting to enforce multiple agreements specifying different employment terms and that inter-union rivalries would create dissension and conflicting demands within the workforce." (Id. at 36.) "'[L]abor peace,' in this sense of the term, is a compelling state interest." Janus, 138 S. Ct. at 2465.

Second, these state interests could not be accomplished through "significantly less restrictive means." The benefits unions provide to Minnesota's public employees are already tailored to minimize First Amendment speech and associational harms. The non-member faculty at SCSU are not charged an agency fee or subsidy; they are not required to join the union; they can speak out against the union and speak with their employers without the union if they see fit; they are not compelled to attend any meetings or promote the union individually. (See IFO's Opp'n Mem at 15; see also Bodelson Aff. at ¶ 8.) The exclusive representation requirement is likely the least restrictive means possible for employees who are members to still enjoy the benefits of union representations. Without exclusive representation, the Union's power and persuasion would be significantly eroded and the state interest in labor peace would be undermined. Because PELRA serves a compelling state interest and is already tailored in a non-restrictive manner, the statute passes exacting scrutiny.

Plaintiff cannot show a likelihood of success on the merits of her compelled speech argument. Knight and Bierman foreclose her claims, and regardless the statue in question survives exacting scrutiny analysis.

2. Compelled Association

Similarly, Plaintiff has no likelihood of success on her compelled association argument. The Eight Circuit specifically found that Knight foreclosed a similar compelled association argument. Bierman, 900 F.3d at 574. And in Knight, the Court held that instructors' associational freedom was not impaired, because they were free to form whatever advocacy groups they liked. See Knight, 465 U.S. at 288-90. Because Plaintiff's compelled-association argument is virtually identical to the arguments Knight and Bierman rejected, she has no chance of success on the merits of those arguments.

B. Irreparable Harm

A court must also consider whether a Plaintiff seeking a preliminary injunction will suffer irreparable harm absent the injunction. Dataphase, 640 F.2d at 113. Plaintiff argues that she will suffer irreparable harm because her First Amendment freedoms will be violated without an injunction in place. (Pl.'s Supp. Mem. at 12.) Because the Courts in Knight and Bierman rejected similar claims of constitutional harm, Plaintiff cannot show irreparable harm.

Further, she cannot show that her association with the IFO in general has harmed her. She has never been forced to join or associate with the IFO and

is not a member. (Uradnik Decl. at 2.) Her lack of membership has not harmed her career, as she has received tenure, chaired her department, and even started her own programs and courses. (See IFO's Opp'n Mem. 16-19; see also Bodelson Aff. ¶¶ 4-8.) Due to University open-door policy, Plaintiff has also been able to speak to SCSU administrators freely, without having to rely on the IFO to do so for her. (Bodelson Aff. at ¶ 7.) Further, she has even reached out to the IFO in the past for their assistance with certain matters. (IFO's Opp'n Mem. at 19-20).

Plaintiff has not established infringement of her First Amendment freedoms, and therefore she cannot show that she will suffer irreparable harm in the absence of an injunction.

C. Balance of Equities and Public Interest

The last two Dataphase factors regard the balance of harms between the parties and the public interest. Restricting PERLA would cause great harm to both Defendants and the public interest, undermining union protections and forcing the IFO to change its practices. Both the Eighth Circuit and Supreme Court in Bierman and Knight have found PERLA constitutional, and Janus has not changed their holdings. "[T]he [Janus] decision never mentioned Knight, and the constitutionality of exclusive representations standing alone was not at issue[.] [W]hee a precedent like Knight has direct application in a case, we should follow it." Bierman, 900 F.3d at 574. Restricting a law that the Supreme Court has upheld as constitutional would cause great harm to the State and IFO, while causing no harm to Plaintiff.

CONCULSION

Supreme Court and Eighth Circuit precedent forecloses Plaintiff's claims and in any event, the exclusive representation provisions in question would survive First Amendment scrutiny.

Accordingly, **IT IS HEREBY ORDERED that** Plaintiff's Motion for a Preliminary Injunction (Docket No. 18) is **DENIED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 27, 2018

/s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge

UNITED STATES DISTRICT COURT

District of Minnesota

Kathleen Uradnik, Plaintiff(s), v. Inter Faculty Organization, St, Cloud State University, and Board of Trustees of the Minnesota State Colleges and Universities, Defendant(s).	**JUDGMENT IN A CIVIL CASE** Case Number: 18-cv-1895 (PAM/LIB)

☐ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☐ **Decision by Court**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUGED THAT:

Plaintiff's Motion for a Preliminary Injunction (Docket No. 18) is **DENIED**.

Date: September 28, 2018

KATE M. FOGARTY, CLERK

/s/Lynnette Brennan
(By) Lynnette Brennan, Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

KATHLEEN URADNIK, Plaintiff, v. INTER FACULTY ORGANIZATION. ST. CLOUD STATE UNIVERSITY, BOARD OF TRUSTEES OF THE MINNESOTA STATE COLLEGE AND UNIVERSITIES, Defendants.	Civil Case No.:

COMPLAINT

Kathleen Uradnik, for her Complaint against the Inter Faculty Association; St. Cloud St University; and the Board of Trustees, Minnesota State Colleges and Universities (collectively, "Defendants"), alleges as follows:

Nature of the Action

1. The First Amendment protects the individual rights of free speech and association, including the rights *not* to speak and *not* to associate. For example, public employees who do not belong to a labor union

"should not be required to fund a union's political and ideological projects unless they choose to do so." *Knox v. Serv. Employees Int'l Union, Local 1000*, 567 U.S. 298, 315 (2012). Furthermore, "[b]ecause a public-sector union takes many positions during collective bargaining that have powerful political and civic consequences, the compulsory fees constitute a form of compelled speech and association that imposes a significant impingement on First Amendment rights." *Id*. at 311-12 (quotations and citations omitted). As the Supreme Court has now made clear in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, No. 16-1466, Slip Op. (June 2018), that type of impingement on First Amendment rights is impermissible.

2. In violation of these principles, Minnesota law authorizes state universities to recognize a labor union as the "exclusive representative" for groups of its employees, such that those employees are compelled to associate with the union and the union in turn speaks for those employees—whether they want it to or not. The Defendants in this case have done exactly that, agreeing that the Inter Faculty Association is the exclusive representative of employees of St. Cloud State University, like the Plaintiff, whether or not they want the Inter Faculty Association's representation or agree with its speech and petitioning of government on their behalf. Moreover, the agreement the Defendants have executed under Minnesota law provides that only the Inter Faculty Association may bargain as to the terms and conditions of employment as St. Cloud State University, thereby depriving the

Plaintiff and others of the right to petition the government on their own behalf.

3. As the Supreme Court has now recognized, "[d]esignating a union as the employees' exclusive representative substantially restricts the rights of individual employees. Among other things, this designation means that individual employees may not be represented by any agent other than the designated union; nor may individual employees negotiate directly with their employer." Janus, Slip Op. at 2. For that reason, and because the union's advocacy is attributed to and on behalf of employees, that designation violates employees' speech and petitioning rights, as well as their associational rights, in contravention of the First Amendment.

4. Additionally, the Defendants in this case have negotiated special preferences for union members, including preferences that tilt the scales in union members' favor in such matters as tenure and promotion decisions. This system unlawfully allocations state granted benefits and state-imposed burdens on the basis of political association. That scheme, too, violates the First Amendment.

Parties

5. The Plaintiff, Kathleen Uradnik, is a professor of political science at St. Cloud St. University. Dr. Uradnik is a "public employee" within the meaning of Minnesota Statue ¶ 179A.03 subd. 13.

6. Defendant St. Cloud State University (the "University") is a public university in Minnesota. The University is part of the Minnesota State Colleges

and Universities System, which is governed and regulated by statutes, see, e.g., Minn. Stat. § 136F.10, is overseen by trustees appointed by the governor and confirmed by the Minnesota Senate, Minn. Stat. § 136F.02, and is funded from the state treasury, Minn. Stat. §§ 135A.01, 135A.031

7. Defendant Board of Trustees, Minnesota State Colleges and Universities (the "Board") is the Minnesota public authority charged with "all powers necessary to govern that state colleges and universities" within its purview, including St. Cloud State University. Minn. Stat. § 136F.06, subd. 1. The Board is a "public employer" within the meaning of Minnesota's public-employees labor-relations code. Minn. Stat. § 179A.03, subd. 15.

8. Defendant Inter Faculty Association (the "Union") is an employee organization" as defined in the Minnesota public-employees labor-relations code, Minn. Stat. § 179A.03, subd. 6, and represents employees at St. Cloud State University.

Jurisdiction and Venue

9. This case raises claims under the First and Fourteenth Amendments of the federal Constitution as authorized by 42 U.S.C. § 1983 and the doctrine of *Ex Parte Young*, 209 U.S. 123 (1908). Jurisdiction is proper under 28 U.S.C. § 1331.

10. Dr. Uradnik, the Board, the University, and the Union are all residents of Minnesota. Venue is proper in this District under 28 U.S.C. § 1391(b).

Factual Allegations

11. Under Minnesota law, a union may become the exclusive bargaining representative for public employees in a bargaining unit by obtaining formal recognition under Minnesota law. Minn. Stat. § 179A. 12.

12. The union can obtain this recognition in two steps.

13. First, the union may obtain a certification election by presenting proof to Minnesota's employee-relations board that at least 30 percent of employees in a proposed bargaining unit wish to be represented by the union. Minn. Stat. § 179A, 12, subd. 3.

14. Second, if the Minnesota employee-relations board concludes that the proposed bargaining unit is appropriate under Minnesota law, it must conduct an election. Minn. Stat. § 179A. 12, subds. 5-6. If the union obtains at least a majority of votes of bargaining-unit employees in the election, it is certified as the exclusive representative of employees in the bargaining unit. Minn. Stat. § 179A.12, subd. 8.

15. A public employer must bargain collectively with a union that obtains status as the exclusive representative of some or all its employees. Minn. Stat. § 179A.13, subd. 2(5).

16. The scope of those mandatory negotiations includes the "terms and conditions of employment" for employees of the public employer. Minn. Stat. § 179A. 14, 1(a). This includes "the hours of employment, the compensation therefor including fringe benefits except retirement contributions or benefits other than

employer payment of, or contributions to, premiums for group insurance coverage of retired employees or severance pay, and the employer's personnel policies affecting the working conditions of the employees." Minn. Stat. § 179A.03. subd. 19.

17. Additionally, Minnesota law identifies a class of "professional employees" and affords such employees the right "to meet and confer with a representative or committee of the public employer" regarding "all matters that are not terms and conditions of employment." Minn. Stat. § 179A.08. The statue authorizes employees of a public employer to designate a single "representative" to represent all employees of that employer. Minn. Stat. § 179A.08, subd. 2.

18. A union's status as exclusive representative curtails the rights of employees to "express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment" where that expression of views would "circumvent the rights of the exclusive representative." Minn. Stat. § 179A.06, subd.1.

19. Minnesota law also provides that unions and public employers may agree to deduct money from the pay checks of non-union members and pay that money to a union. Minn. Stat. § 179A.06, subd. 3. The provision is plainly unconstitutional under the Supreme Court's *Janus* decision.

20. The Board and the Union are parties to a collective bargaining agreement with a term from 2017 through 2019. *See* Exhibit A (the "Agreement")

21. The Agreement establishes a bargaining unit of "all faculty members" at public universities under the Board's purview.

22. The Agreement provides that the Union is the "exclusive bargaining representative" of those persons.

23. The Agreement provides, in a section called "Exclusive Right," that [t]he Employer will not meet and negotiate relative to those terms and conditions of employment subject to negotiations with any employee groups or organizations composed of employees covered by the Agreement are all faculty members within the bargaining unit, both union members and non-members.

24. The Agreement records the Board's and Union's negotiated points of agreement, including those pertaining to wages, benefits, grievances, the school year, workload, coaching assignments, office hours, severance, retirement, leaves of absence, and so on.

25. The Agreement also includes Article 6 titled "Association Rights." That article allows the Union to require the Board to deduct money from the pay checks of non-union members and give that money to the Union. Under the Supreme Court's *Janus* decision, that Article is plainly unconstitutional.

26. The Agreement also designates the Union as the representatives to exercise the rights of employees of the Board to "meet and confer" and "all matters" that are not terms and conditions of employment. Art. 6, § B.

27. Among other things, this right includes an exclusive right to "confer on the need for faculty to serve on System-level committees, *after which the [Union] shall appoint the faculty."* Art. 6, § B, subd. 1 (emphasis added). Additionally, the Agreement affords local affiliates of the Union to establish committees to meet and confer with university officials. Art. 6, § B, subd. 2.

28. Under that Article, the Union and the University have established an extensive set of search, service, and governance committees.

29. These committees, composed of Union-appointed faculty, exercise significant influence over affairs at the University. Express provisions of the Agreement afford the Union-run, Union-staffed committees the right to confer over such things as the University's affirmative action plan, Art 2, § C, Subd.2, the choice of presidential designees to act in the place of the University president, Art. 5, § A subd. 25, the workload expectations for faculty, Art. 10, § B, subd. 3, identification of duty and non-duty days for faculty, Art. 10, § D, subd. 1, the academic calendar, Art. 10 § E, compensation for coaches and athletic trainers, Art. 10 § G, subd. 4, establishing endowed chairs, Art. 11, § O, assigning positions for summer sessions, Art, 13, & D, awarding funds for professional improvement, Art 19, § A, subd. 4, setting procedures of sabbatical leaves, Art 19, § C, subd. 1, establishing departments and department chairs, Art. 20, § I, subd. 1, appointing department chairs, Art. 20, § D, subd. 2, compensating directors for their administrative work, Art. 20, § I, subd. 1, laying off tenured

faculty, Art. 23, § A, subd. 2, setting the schedule for awarding tenure, Art. 25, § B, and establishing the standards for awarding tenure, Appendix G.

30. In addition to the areas listed in the Agreement, the Union and the University maintain standing and special committees that cover almost every area of higher education administration and faculty development, including but not limited to; academic affairs, assessment, accreditation, applied research budget, curriculum, enrollment, faculty research grants, undergraduate general studies, graduate studies, international studies, and technology.

31. In addition, the Union controls faculty appointments to all System and University search committees, from the system chancellor down to university presidents and lower-level administrators. For example, union faculty members serve on the search committees responsible for selecting their deans, who are their direct supervisors. Non-Union members cannot participate in the selection of these officials.

32. As a practical matter, serving as a Union-appointed committee member is typically a prerequisite to advancing at St. Cloud State University. Among other things, it is a practical prerequisite to obtaining both tenure and promotion, which are separate procedures under the Agreement.

33. Indeed, the Agreement requires faculty members to perform "[s]ervice to the university and community" as a criterion for continued employment and advancement, including tenure and promotion. Art.

22, § B, subd. 5. Appendix G of the Agreement provides examples of the types of evidence that a faculty member can show to establish this record of service. These include, among others, "serving on contributing to program, department, school/college, university, and system committees and governance" and "participating in accreditation, program review, and assessment."

34. With the sole exception of department-level committees, the Union assigns faculty membership on all of these committees.

35. The Union generally excludes non-Union members from membership on these committees and leaves committee sears vacant when there are not enough Union faculty members willing to serve.

36. The University and the Union regularly encourage faculty members to participate on search, service, and governance committees as a convenient and established form of service to the university.

37. Service on these administrative committees is an important qualification for those seeking professional positions in higher education administration. Non-Union faculty members at the University face significant obstacles in obtaining this experience because they are excluded from participation on search, service, and governance committees.

38. Exclusion from committee service also denies non-union faculty members in ability to associate and serve with their administrators and colleagues in an

ongoing professional capacity, to develop close relationships with them, and to enjoy the other intangible benefits that come with such service.

39. Dr. Uradnik is a tenured faculty member at the University

40. Dr. Uradnik is not a member of the Union.

41. Dr. Uradnik disagrees with the Union on many issues related to governance of the University.

42. Due to the Union's status as exclusive representative of University faculty, the Union represents Dr. Uradnik, despite the fact that she does not consent to its representation.

43. Due to the Union's status as exclusive representative of University faculty, the Union takes positions on behalf of and attributable to Dr. Uradnik without her affirmative consent and on issues with which she disagrees with the Union's positions.

44. The Union takes those positions through speech, association, and petitioning of government.

45. Because the Union is Dr. Uradnik's representative, its speech, association, and petitioning of government with parties other than the University, including in speech to the public, are undertaken on behalf of Dr. Uradnik and are attributable to her.

46. Due to the Union's status as exclusive representative of University faculty, Dr. Uradnik has no avenue to negotiate her own terms and conditions of employment with the University.

47. Due to the Union's status are exclusive representative of University faculty, Dr. Uradnik has no avenue to process her own grievances with the University without the Union's interference. Instead, the Union would serve as her representative, speaking on her behalf whether or not she agrees with its positions or believes that its positions further her interests. "[W]hen a union controls the grievance process, it may, as a practical matter, effectively subordinate the interests of an individual employee to the collective interests of all employees in the bargaining unit." *Janus*, Slip Op. at 16-17 (quotations marks and alterations omitted).

48. Due to the Union's status as exclusive holder of the statutory right to meet and confer, Dr. Uradnik has no avenue to exercise the meet and confer rights the Union possesses.

49. Dr. Uradnik desires to and has repeatedly volunteered to serve on certain committees at the University, but the Union exercises control over those appointments and will not consent to Dr. Uradnik's appointment due to her status as a non-Union faculty member.

Count I: Designating a Union as Employees' "Exclusive Representative" Violates the First Amendment

50. The Plaintiff incorporates and re-alleges each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

51. By designating the Union as the Plaintiff's exclusive representative, Minnesota law and the Agreement violate the Plaintiff's exclusive representative, Minnesota law and the Agreement violate the Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution.

52. That designation compels the Plaintiff to associate with the Union.

53. That designation attributes the Union's speech and petitioning to the Plaintiff.

54. That designation restricts the Plainitff's speech and petitioning.

55. The Plaintiff has no adequate remedy at law.

56. The controversy between Defendants and the Plaintiff is a definite and concrete dispute concerning the legal relations of parties with adverse legal interests.

57. The dispute is real and substantial, as the Union continues to hold itself out as the Plaintiff's exclusive representative and its designation as such restricts the Plaintiff's rights.

58. The declaratory relief sought is not based on a hypothetical state of facts, nor would it amount to a mere advisory opinion, as the parties dispute the legality of the Union's designation as the Plaintiff's exclusive representative.

59. As a result of the foregoing, and actual and justiciable controversy exists between the Plaintiff and the Union regarding their respective legal rights, and the matter is ripe for review.

Count II: Granting Union Preferences Violates the First Amendment

60. The Plaintiff incorporates and re-alleges each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

61. By designating the Union as the exclusive representative to exercise meet and confer rights under Minnesota law and by awarding the Union the right to select individuals to meet-and-confer committees that, as a practical matter, exercise substantial influence over affairs at St. Cloud State University, the Agreement violates the Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution.

62. These rights discriminate against the Plaintiff and others who decline to associate with the Union.

63. These rights attribute the Union's speech and petitioning to the Plaintiff.

64. These rights restrict the Plaintiff's speech and petitioning.

65. The Plaintiff has no adequate remedy at law.

66. The controversy between Defendants and the Plaintiff is a definite and concrete dispute concerning the legal relations of parties with adverse legal interests.

67. The dispute is real and substantial, as the Union continues to hold itself out as the Plaintiff's exclusive representative and its designation as such restricts the Plaintiff's rights.

68. The declaratory relief sough is not based on a hypothetical state of facts, nor would it amount to a mere advisory opinion, as the parties dispute the legality of the Union's designation as the Plaintiff's exclusive representative.

69. As a result of the foregoing, an actual and justiciable controversy exists between the Plaintiff and the Union regarding their respective legal rights, and the matter is ripe for review.

Costs and Attorney's Fees

70. Pursuant to 42 U.S.C. § 1988, the Plaintiff seeks an award of costs and attorneys' fees incurred in the litigation of this case.

Prayer for Relief

For these reasons, the Plaintiff requests that the Court:

(A) Enter a judgment declaring that Minnesota's exclusive-representation law and the Agreement impermissibly abridge the Plaintiff's First Amendment speech, petitioning, and associational rights by designating the Union as the Plaintiff's exclusive representative;

(B) Enter a judgment declaring that Defendants' discrimination against non-members of the Union impermissibly abridges the

Plaintiff's First Amendment speech, petitioning, and associational rights;

(C) Enter an injunction barring Defendants from recognizing the Union as the Plaintiff's exclusive representative or representative and from recognizing the Union as the exclusive bearer of meet-and-confer rights;

(E) Enter an injunction barring Defendants from discriminating against non-members of the Union;

(F) Make and award of costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988(b);

(G) Grant the Plaintiff additional or different relief as the Court deems just and proper.

July 6, 2018 Respectfully submitted,

/s/ Danyll W. Foix

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

KATHLEEN URADNIK, Plaintiff, v. INTER FACULTY ORGANIZATION, ST. CLOUD STATE UNIVERSITY, AND BOARD OF TRUSTEES OF THE MINNESOTA STATE COLLEGE AND UNIVERSITIES, Defendant.	Civ. No. 18-1895- PAM/LIB

DECLARATION OF KATHLEEN URADNIK

Pursuant to 28 U.S.C. § 1746, I, Kathleen Uradnik, declare and state as follows:

1. I am over the age of 18 years and am competent to make this declaration. I have personal knowledge of the fact stated herein, and if called as a witness, I could and would competently testify thereto.

2. I am a tenured political science professor at St. Cloud State University (the "University") in St. Cloud, Minnesota.

3. I am an employee of the State of Minnesota, hired pursuant to the policies and employment contract negotiated and enforced by the Board of Trustees of the Minnesota State Colleges and Universities Systems (the "System").

4. The Inter Faculty Organization (the "Union) has been designated as the exclusive bargaining agent for faculty employees in the seven universities of the System.

5. The System has entered into a series of collective bargaining agreements with the Union, including the latest "Agreement." A true and correct copy of the Agreement is attached as Exhibit A.

6. Under that Agreement, the bargaining unit includes all faculty members at St. Cloud State University and other universities under the System's control. See Agreement Art. 2, § B.

7. I belong to the bargaining unit covered by the Agreement.

8. I am not a member of the Union.

9. Under Minnesota law and the Agreement, and without my affirmative consent, the Union acts as my exclusive representative and agent to the System when collectively bargaining, in grievance proceedings, in other contracts with the System and its agents and employees, and when engaging in other public and governmental advocacy.

10. The Union speaks on my behalf. The Union's speech to and petitioning of the government in its representative capacity is imputed to me because of the Union's status under Minnesota law and the Agreement as my agent and representative, despite that I do not authorize the Union to advocate or otherwise speak on my behalf.

11. My unwanted association with the Union is forced upon me by Minnesota law and government officials, despite my actual refusal to associate with the Union.

12. I oppose many of the positions the Union has taken, including on political and policy matters.

13. I oppose numerous of the positions that the Union has taken on my behalf relating to, among other things, wages, hours, and conditions of employment. Indeed, the Union has taken positions as my exclusive representative that are contrary to my conscience and beliefs.

14. Specifically, I oppose the Union's position regarding the definition and practice of "shared governance" that lies at the heart of the Agreement and governs the relationship between the System and its university faculty employees.

15. I oppose the Union's right under the Agreement to control, process, and award hundreds of thousands of dollars in public System funds for faculty research and professional development.

16. I oppose the additional compensation and perquisites given to Union faculty members for performance of job duties when non-union faculty members are ineligible for the same.

17. I oppose the Union's decision to reject the filing of my grievance seeking to remove me from service on the search committee, as well as the Union's grievance seeking to remove me from service on the search committee from my dean.

18. I oppose the Union's practice of leaving committee seats vacant when I and other non-union faculty members have volunteered to serve on them.

19. I oppose requiring seniority to be the sole substantive criteria in layoff decisions to the exclusion of any merit factors, as well as the concept of "super tenure," under Art. 23, § B, subd. 3 (c).

20. I oppose positions advocated by the Union that favored or resulted in the cutting of academic programs rather than allowing a reduction in fringe benefits for faculty.

21. I oppose the Union's choice to take no confidence votes in administrators, including the former President of St. Cloud State University and the former Chancellor of the System.

22. I am restricted from speaking on my own behalf or petitioning the government on my own behalf by virtue of the Union's designation as my exclusive bargaining agent.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 26, 2018

Kathleen Uradnik
Kathleen Uradnik

MINNESOTA STATUTES (2018)

179A.03 DEFINITIONS.

Subdivision 1. **General.** For the purpose of sections 179A.01 to 179A.25, the terms defined in this section have the meanings given them unless otherwise stated.

Subd. 2. **Appropriate unit.** "Appropriate unit" or "unit" means a unit of employees determined under section 179A.09 to 179A.11. For school districts, the term means all the teachers in the district.

Subd. 2a. Board**.** "Board" means the Public Employment Relations Board under section 179A.041.

Subd. 3. **"Bureau"** means the Minnesota Bureau of Mediation Services.

Subd. 4. **Confidential employee.** "Confidential employee" means an employee who as part of employee's job duties:

(1) is required to access and use labor relations information as that term is defined in section 13.37, subdivision 1, paragraph (c); or

(2) actively participates in the meeting and negotiation on behalf of the public employer.

Subd. 5. **Commissioner.** "Commissioner of the Minnesota Bureau of Mediation Services" or "commissioner" means the commissioner of the Bureau of Mediation Services.

Subd. 5a. **Court employee.** "Court employee" means a public employee employed by the supreme

court, court of appeals, or a judicial district that is under section 480.181, subdivision 1, paragraph (b).

Subd. 6. **Employee organization.** "Employee organization" means 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.

Subd. 7. **Essential employee.** "Essential employee" means firefighters, peace officers subject to licensure under sections 626.84 to 626.863, 911 system and police and fire department public safety dispatchers, guards at correctional facilities, confidential employees, supervisory employees, assistant county attorneys, assistant city attorneys, principals, and assistant principals. However, for state employees, "essential employee" means all employees in law enforcement, public safety radio communications operators, health care professionals, correctional guards, professional engineering, and supervisory collective bargaining units, irrespective of severance, and no other employees. For University of Minnesota employees, "essential employee" means all employees in law enforcement, nursing professional and supervisory units, irrespective of severance, and no other employees. "Firefighters" means salaried employees of a fire department whose duties include, directly or indirectly, controlling, extinguishing, preventing, detecting, or investigating fires. Employees for whom the state court administrator is the negotiating employer are not essential employees. For Hennepin Healthcare System, Inc. employees, "essential employees" means all employees.

Subd. 8. **Exclusive representative.** "Exclusive representative" means an employee organization which has been certified by the commissioner under section 179A.12 to meet and negotiate with the employer on behalf of all employees in the appropriate unit.

Subd. 9. **Fair share fee challenge.** "Fair share fee challenge" means any proceeding or action instituted by a public employee, a group of public employees, or any other person, to determine their rights and obligations with respect to the circumstances or the amount of a fair share fee.

Subd. 10. **Meet and confer.** "Meet and confer" means the exchange of views and concerns between employers and their employees.

Subd. 11. **Meet and negotiate.** "Meet and negotiate" means the performance of the mutual obligations of public employers and the exclusive representatives of public employees to meet at reasonable times, including where possible meeting in advance of the budget making process, with the good faith intent of entering into an agreement on terms and conditions of employment. This obligation does not compel either party to agree to a proposal or to make a concession.

Subd. 12. **Principal; assistant principal.** "Principal" and "assistant principal" means any person so licensed by the commissioner of education who devotes more than 50 percent of the time to administrative or supervisory duties.

Subd. 13. **Professional employee.** "Professional employee" means:

(1) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (iv) requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education, an apprenticeship, or training in the performance of routine mental, manual, or physical processes; or

(2) any employee, who (i) has completed the course of advanced instruction and study described in clause (1), item (iv); and (ii) is performing related work under the supervision of a professional person to qualify as a professional employee as defined in clause (1); or

(3) a teacher.

Subd. 14. **Public employee or employee.** (a) "Public employee" or "employee" means any person appointed or employed by a public employer except:

(1) elected public officials;

(2) election officers;

(3) commissioned or enlisted personnel of the Minnesota National Guard;

(4) emergency employees who are employed for emergency work caused by natural disaster;

(5) part-time employees whose service does not exceed the lesser of 14 hours per week or 35 percent of the normal work week in the employee's appropriate unit;

(6) employees whose positions are basically temporary or seasonal in character and: (i) are not for more than 67 working days in any calendar year; or (ii) are not for more than 100 working days in any calendar year and the employees are under the age of 22, are full-time students enrolled in a nonprofit or public educational institution prior to being hired by the employer, and have indicated, either in an application for employment or by being enrolled at an educational institution for the next academic year or term, an intention to continue as students during or after their temporary employment;

(7) employees providing services for not more than two consecutive quarters to the Board of Trustees of the Minnesota State Colleges and Universities under the terms of a professional or technical services contract as defined in section 16C.08, subdivision 1;

(8) employees of charitable hospitals as defined by section 179.35, subdivision 3, except that employees of charitable hospitals as defined by section 179.35, subdivision 3, are public employees for purposes of sections 179A.051, 179A.052, and 179A.13;

(9) full-time undergraduate students employed by the school which they attend under a work-study program or in connection with the receipt of financial

aid, irrespective of number of hours of service per week;

(10) an individual who is employed for less than 300 hours in a fiscal year as an instructor in an adult vocational education program;

(11) an individual hired by the Board of Trustees of the Minnesota State Colleges and Universities to teach one course for three or fewer credits for one semester in a year;

(12) with respect to court employees:

(i) personal secretaries to judges;

(ii) law clerks;

(iii) managerial employees;

(iv) confidential employees; and

(v) supervisory employees;

(13) with respect to employees of Hennepin Healthcare System, Inc., managerial, supervisory, and confidential employees.

(b) The following individuals are public employees regardless of the exclusions of paragraph (a), clauses (5) and (6):

(1) an employee hired by a school district or the Board of Trustees of the Minnesota State Colleges and Universities except at the university established in the Twin Cities metropolitan area under section 136F.10 or for community services or community education instruction offered on a noncredit basis: (i) to replace an absent teacher or faculty member who is a public employee, where the replacement employee is

employed more than 30 working days as a replacement for that teacher or faculty member; or (ii) to take a teaching position created due to increased enrollment, curriculum expansion, courses which are a part of the curriculum whether offered annually or not, or other appropriate reasons;

(2) an employee hired for a position under paragraph (a), clause (6), item (i), if that same position has already been filled under paragraph (a), clause (6), item (i), in the same calendar year and the cumulative number of days worked in that same position by all employees exceeds 67 calendar days in that year. For the purpose of this paragraph, "same position" includes a substantially equivalent position if it is not the same position solely due to a change in the classification or title of the position; and

(3) an early childhood family education teacher employed by a school district.

Subd. 15. **Public employer or employer.** (a) "Public employer" or "employer" means:

(1) the state of Minnesota for employees of the state not otherwise provided for in this subdivision or section 179A.10 for executive branch employees;

(2) the Board of Regents of the University of Minnesota for its employees;

(3) the state court administrator for court employees;

(4) the state Board of Public Defense for its employees;

(5) Hennepin Healthcare System, Inc.; and

(6) notwithstanding any other law to the contrary, the governing body of a political subdivision or its agency or instrumentality which has final budgetary approval authority for its employees. However, the views of elected appointing authorities who have standing to initiate interest arbitration, and who are responsible for the selection, direction, discipline, and discharge of individual employees shall be considered by the employer in the course of the discharge of rights and duties under sections 179A.01 to 179A.25.

(b) When two or more units of government subject to sections 179A.01 to 179A.25 undertake a project or form a new agency under law authorizing common or joint action, the employer is the governing person or board of the created agency. The governing official or body of the cooperating governmental units shall be bound by an agreement entered into by the created agency according to sections 179A.01 to 179A.25.

(c) "Public employer" or "employer" does not include a "charitable hospital" as defined in section 179.35, subdivision 2, except that a charitable hospital as defined by section 179.35, subdivision 2, is a public employer for purposes of sections 179A.051, 179A.052, and 179A.13.

(d) Nothing in this subdivision diminishes the authority granted pursuant to law to an appointing authority with respect to the selection, direction, discipline, or discharge of an individual employee if this action is consistent with general procedures and standards relating to selection, direction, discipline,

or discharge which are the subject of an agreement entered into under sections 179A.01 to 179A.25.

Subd. 16. **Strike.** "Strike" means concerted action in failing to report for duty, the willful absence from one's position, the stoppage of work, slowdown, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purposes of inducing, influencing, or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment.

Subd. 17. **Supervisory employee.** "Supervisory employee" means a person who has the authority to undertake a majority of the following supervisory functions in the interests of the employer: hiring, transfer, suspension, promotion, discharge, assignment, reward, or discipline of other employees, direction of the work of other employees, or adjustment of other employees' grievances on behalf of the employer. To be included as a supervisory function which the person has authority to undertake, the exercise of the authority by the person may not be merely routine or clerical in nature but must require the use of independent judgment. An employee, other than an essential employee, who has authority to effectively recommend a supervisory function, is deemed to have authority to undertake that supervisory function for the purposes of this subdivision. The administrative head of a municipality, municipal utility, or police or fire department, and the administrative head's assistant, are always considered supervisory employees.

The removal of employees by the employer from a nonsupervisory appropriate unit for the purpose of

designating the employees as "supervisory employees" shall require either the prior written agreement of the exclusive representative and the written approval of the commissioner or a separate determination by the commissioner before the redesignation is effective.

Subd. 18. **Teacher.** "Teacher" means any public employee other than a superintendent or assistant superintendent, principal, assistant principal, or a supervisory or confidential employee, employed by a school district:

(1) in a position for which the person must be licensed by the Professional Educator Licensing and Standards Board or the commissioner of education; or

(2) in a position as a physical therapist, occupational therapist, art therapist, music therapist, or audiologist.

Subd. 19. **Terms and conditions of employment.** "Terms and conditions of employment" means the hours of employment, the compensation therefor including fringe benefits except retirement contributions or benefits other than employer payment of, or contributions to, premiums for group insurance coverage of retired employees or severance pay, and the employer's personnel policies affecting the working conditions of the employees. In the case of professional employees the term does not mean educational policies of a school district. "Terms and conditions of employment" is subject to section 179A.07.

Subd. 20. MS 2006 [Renumbered subd 5a]

MINNESOTA STATUTES 2018

179A.06 RIGHTS AND OBLIGATIONS OF EMPLOYEES.

Subdivision 1. **Expression of views.** Sections 179A.01 to 179A.25 do not affect the right of any public employee or the employee's representative to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as this is not designed to and does not interfere with the full faithful and proper performance of the duties of employment or circumvent the rights of the exclusive representative. Sections 179A.01 to 179A.25 do not require any public employee to perform labor or services against the employee's will.

If no exclusive representative has been certified, any public employee individually, or group of employees through their representative, has the right to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, by meeting with their public employer or the employer's representative, so long as this is not designed to and does not interfere with the full, faithful, and proper performance of the duties of employment.

Subd. 2. **Right to organize.** 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. Confidential employees of the state, confidential court employees, and confidential University of Minnesota employees are excluded from bargaining. Supervisory and managerial court employees are excluded from bargaining. Supervisory, managerial, and confidential employees of Hennepin Healthcare System, Inc., are excluded from bargaining. Other confidential employees, supervisory employees, principals, and assistant principals may form their own organizations. An employer shall extend exclusive recognition to a representative of or an organization of supervisory or confidential employees, or principals and assistant principals, for the purpose of negotiating terms or conditions of employment, in accordance with sections 179A.01 to 179A.25, applicable to essential employees.

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. Except for organizations which represent supervisors who are: (1) firefighters, emergency medical service employees certified under section 144E.28, 911 system public safety dispatchers, peace officers subject to licensure under sections 626.84 to 626.863, guards at correctional facilities, or employees at hospitals other than state hospitals; and (2) not state or University of Minnesota 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.

Subd. 3. **Fair share fee.** An exclusive representative may require employees who are not members of the exclusive representative to contribute a fair share fee for services rendered by the exclusive representative. The fair share fee must be equal to the regular membership dues of the exclusive representative, less the cost of benefits financed through the dues and available only to members of the exclusive representative. In no event may the fair share fee exceed 85 percent of the regular membership dues. The exclusive representative shall provide advance written notice of the amount of the fair share fee to the employer and to unit employees who will be assessed the fee. The employer shall provide the exclusive representative with a list of all unit employees.

A challenge by an employee or by a person aggrieved by the fee must be filed in writing with the commissioner, the public employer, and the exclusive representative within 30 days after receipt of the written notice. All challenges must specify those portions of the fee challenged and the reasons for the challenge. The burden of proof relating to the amount of the fair share fee is on the exclusive representative. The commissioner shall hear and decide all issues in these challenges.

The employer shall deduct the fee from the earnings of the employee and transmit the fee to the exclusive representative 30 days after the written notice was provided. If a challenge is filed, the deductions for a fair share fee must be held in escrow by the employer pending a decision by the commissioner.

Subd. 4. **Meet and confer.** Professional employees have the right to meet and confer under section 179A.08 with public employers regarding policies and matters other than terms and conditions of employment.

Subd. 5. **Meet and negotiate.** Public employees, through their certified exclusive representative, have the right and obligation to meet and negotiate in good faith with their employer regarding grievance procedures and the terms and conditions of employment, but this obligation does not compel the exclusive representative to agree to a proposal or require the making of a concession.

Subd. 6. **Dues checkoff.** Public employees have the right to request and be allowed dues checkoff for the exclusive representative. In the absence of an exclusive representative, public employees have the right to request and be allowed dues checkoff for the organization of their choice.

Subd. 7. **Concerted activity.** Public employees have the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

MINNESOTA STATUTES 2018

179A.07 RIGHTS AND OBLIGATIONS OF EMPLOYERS.

Subdivision 1. **Inherent managerial policy.** A public employer is not required to meet and negotiate on matters of inherent managerial policy. Matters of inherent managerial policy include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and direction and the number of personnel. No public employer shall sign an agreement which limits its right to select persons to serve as supervisory employees or state managers under section 43A.18, subdivision 3, or requires the use of seniority in their selection.

Subd. 2. **Meet and negotiate.** (a) 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, but this obligation does not compel the public employer or its representative to agree to a proposal or require the making of a concession.

The public employer's duty under this subdivision exists notwithstanding contrary provisions in a municipal charter, ordinance, or resolution. A provision of a municipal charter, ordinance, or resolution which limits or restricts a public employer from negotiating or from entering into binding contracts with exclusive representatives is superseded by this subdivision.

(b) In addition, a public employer may, but does not have an obligation to, meet and negotiate in good faith with the exclusive representative of public employees in an appropriate unit regarding an employer contribution to the state of Minnesota deferred compensation plan authorized by section 356.24, paragraph (a), clause (4), within the limits set by section 356.24, paragraph (a), clause (4).

Subd. 3. **Meet and confer.** A public employer has the obligation to meet and confer, under section 179A.08, with professional employees to discuss policies and other matters relating to their employment which are not terms and conditions of employment.

Subd. 4**. Other communication.** If an exclusive representative has been certified for an appropriate unit, the employer shall not meet and negotiate or meet and confer with any employee or group of employees who are in that unit except through the exclusive representative. This subdivision does not prevent communication to the employer, other than through the exclusive representative, of advice or recommendations by professional employees, if this communication is a part of the employee's work assignment. This subdivision does not prevent communication between public postsecondary employers and postsecondary professional employees, other than through the exclusive representative, regarding policies and matters that are not terms and conditions of employment.

Subd. 5. **Arbitrators pay and hiring.** An employer may hire and pay for arbitrators desired or required by sections 179A.01 to 179A.25.

Subd. 6. **Time off.** A public employer must afford reasonable time off to elected officers or appointed representatives of the exclusive representative to conduct the duties of the exclusive representative and must, upon request, provide for leaves of absence to elected or appointed officials of the exclusive representative or to a full-time appointed official of an exclusive representative of teachers in another Minnesota school district.

Subd. 7. [Repealed, 1Sp2001 c 10 art 2 s 102]

MINNESOTA STATUTES 2018

179A.08 POLICY CONSULTANTS.

Subdivision 1. **Professional employees.** The legislature recognizes that professional employees possess knowledge, expertise, and dedication which is helpful and necessary to the operation and quality of public services and which may assist public employers in developing their policies. It is, therefore, the policy of this state to encourage close cooperation between public employers and professional employees by providing for discussions and the mutual exchange of ideas regarding all matters that are not terms and conditions of employment.

Subd. 2. **Meet and confer.** The professional employees shall select a representative to meet and confer with a representative or committee of the public employer on matters not specified under section 179A.03, subdivision 19, relating to the services being provided to the public. The public employer shall provide the facilities and set the time for these conferences to take place. The parties shall meet at least once every four months.

MINNESOTA STATUTES 2018

179A.12 EXCLUSIVE REPRESENTATION; ELECTIONS; DECERTIFICATION.

Subdivision 1. **Certification continued.** Any employee organization holding formal recognition by order of the commissioner or by employer voluntary recognition on the effective date of Extra Session Laws 1971, chapter 33, under any law that is repealed by Extra Session Laws 1971, chapter 33, is certified as the exclusive representative until it is decertified or another representative is certified in its place.

Any teacher organization as defined by Minnesota Statutes 1969, section 125.20, subdivision 3, which on the effective date of Extra Session Laws 1971, chapter 33, has a majority of its members on a teacher's council in a school district as provided in Minnesota Statutes 1969, section 125.22 is certified as the exclusive representative of all teachers of that school district until the organization is decertified or another organization is certified in its place.

Subd. 2. **Certification upon joint request.** The commissioner may certify an employee organization as an exclusive representative in an appropriate unit upon the joint request of the employer and the organization if, after investigation, the commissioner finds that no unfair labor practice was committed in initiating and submitting the joint request and that the employee organization represents over 50 percent of the employees in the appropriate unit. This subdivision does not reduce the time period or nullify any bar

to the employee organization's certification existing at the time of the filing of the joint request.

Subd. 3. **Obtaining elections.** Any employee organization may obtain a certification election upon petition to the commissioner stating that at least 30 percent of the employees of a proposed appropriate unit wish to be represented by the petitioner. Any employee organization may obtain a representation election upon petition to the commissioner stating that the currently certified representative no longer represents the majority of employees in an established unit and that at least 30 percent of the employees in the established unit wish to be represented by the petitioner rather than by the currently certified representative. An individual employee or group of employees in a unit may obtain a decertification election upon petition to the commissioner stating the certified representative no longer represents the majority of the employees in an established unit and that at least 30 percent of the employees wish to be unrepresented.

Subd. 4. **State unit elections.** The commissioner shall not consider a petition for a decertification election during the term of a contract covering employees of the executive or judicial branches of the state of Minnesota except for a period from not more than 270 to not less than 210 days before its date of termination.

Subd. 5. **Commissioner to investigate.** The commissioner shall, upon receipt of an employee organization's petition to the commissioner under sub-

division 3, investigate to determine if sufficient evidence of a question of representation exists and hold hearings necessary to determine the appropriate unit and other matters necessary to determine the representation rights of the affected employees and employer.

Subd. 6. **Authorization signatures.** In determining the numerical status of an employee organization for purposes of this section, the commissioner shall require dated representation authorization signatures of affected employees as verification of the statements contained in the joint request or petitions. These authorization signatures shall be privileged and confidential information available to the commissioner only.

Subd. 7. **Election order.** The commissioner shall issue an order providing for a secret ballot election by the employees in a designated appropriate unit. The election must be held on one or more sites where those voting are employed or by a mail ballot, as determined by the commissioner. In making this determination, the commissioner shall strive for an election process that provides for maximum participation by the affected employees. The parties affected by this determination may request reconsideration of it by the commissioner under bureau rules.

Subd. 8. **Ballot.** The ballot in a certification election may contain as many names of representative candidates as have demonstrated that 30 percent of the employees in the unit desire them as their exclusive representative. The ballots shall contain a space

for employees to indicate that no representation is desired. The commissioner shall provide and count absentee ballots in all elections.

Subd. 9. **Runoff election.** If no choice on the ballot receives a majority of those votes cast in the unit, the commissioner shall conduct a runoff election between the two choices receiving the most votes.

Subd. 10. **Certification.** Upon a representative candidate receiving a majority of those votes cast in an appropriate unit, the commissioner shall certify that candidate as the exclusive representative of all employees in the unit.

Subd. 11. **Unfair labor practices.** If the commissioner finds that an unfair labor practice was committed by an employer or representative candidate or an employee or group of employees, and that the unfair labor practice affected the result of an election, or that procedural or other irregularities in the conduct of the election may have substantially affected its results, the commissioner may void the election result and order a new election.

Subd. 12. **Bar to reconsideration.** When the commissioner certifies an exclusive representative, the commissioner shall not consider the question again for a period of one year, unless the exclusive representative is decertified by a court of competent jurisdiction, or by the commissioner.

MINNESOTA STATUTES 2018

179A.13 UNFAIR LABOR PRACTICES.

Subdivision 1. **Actions.** (a) The practices specified in this section are unfair labor practices. Any employee, employer, employee or employer organization, exclusive representative, or any other person or organization aggrieved by an unfair labor practice as defined in this section may file an unfair labor practice charge with the board.

(b) Whenever it is charged that any party has engaged in or is engaging in any unfair labor practice, an investigator designated by the board shall promptly conduct an investigation of the charge. Unless after the investigation the board finds that the charge has no reasonable basis in law or fact, the board shall promptly issue a complaint and cause to be served upon the party a complaint stating the charges, accompanied by a notice of hearing before a qualified hearing officer designated by the board at the offices of the bureau or other location as the board deems appropriate, not less than five days nor more than 20 days after serving the complaint, provided that no complaint shall be issued based upon any unfair labor practice occurring more than six months prior to the filing of a charge. A complaint issued under this subdivision may be amended by the board at any time prior to the issuance of an order based thereon. The party who is the subject of the complaint has the right to file an answer to the original or amended complaint prior to hearing and to appear in person or by a representative and give testimony at

the place and time fixed in the complaint. In the discretion of the hearing officer conducting the hearing or the board, any other party may be allowed to intervene in the proceeding and to present testimony. The board or designated hearing officers shall not be bound by the rules of evidence applicable to courts, except as to the rules of privilege recognized by law.

(c) Designated investigators must conduct the investigation of charges.

(d) Hearing officers must be licensed to practice law in the state of Minnesota and must conduct the hearings and issue recommended decisions and orders.

(e) The board or its designees shall have the power to issue subpoenas and administer oaths. If any party willfully fails or neglects to appear or testify or to produce books, papers, and records pursuant to the issuance of a subpoena, the board may apply to a court of competent jurisdiction to request that the party be ordered to appear to testify or produce the requested evidence.

(f) A full and complete record shall be kept of all proceedings before the board or designated hearing officer and shall be transcribed by a reporter appointed by the board.

(g) The party on whom the burden of proof rests shall be required to sustain the burden by a preponderance of the evidence.

(h) At any time prior to the close of a hearing, the parties may by mutual agreement request referral to

mediation, at which time the commissioner shall appoint a mediator, and the hearing shall be suspended pending the results of the mediation.

(i) If, upon a preponderance of the evidence taken, the hearing officer determines that any party named in the charge has engaged in or is engaging in an unfair labor practice, then a recommended decision and order shall be issued stating findings of fact and conclusions, and requiring the party to cease and desist from the unfair labor practice, to post a cease-and-desist notice in the workplace, and ordering any appropriate relief to effectuate the policies of this section, including but not limited to reinstatement, back pay, and any other remedies that make a charging party whole. If back pay is awarded, the award must include interest at the rate of seven percent per annum. The order further may require the party to make reports from time to time, and demonstrate the extent to which the party has complied with the order.

(j) If there is no preponderance of evidence that the party named in the charge has engaged in or is engaging in the unfair labor practice, then the hearing officer shall issue a recommended decision and order stating findings of fact and dismissing the complaint.

(k) Parties may file exceptions to the hearing officer's recommended decision and order with the board no later than 30 days after service of the recommended decision and order. The board shall review the recommended decision and order upon timely filing of exceptions or upon its own motion. If no timely exceptions have been filed, the parties must be

deemed to have waived their exceptions. Unless the board reviews the recommended decision and order upon its own motion, it must not be legal precedent and must be final and binding only on the parties to the proceeding as issued in an order issued by the board. If the board does review the recommended decision and order, the board may adopt all, part, or none of the recommended decision and order, depending on the extent to which it is consistent with the record and applicable laws. The board shall issue and serve on all parties its decision and order. The board shall retain jurisdiction over the case to ensure the parties' compliance with the board's order. Unless overturned by the board, the parties must comply with the recommended decision and order.

(l) Until the record has been filed in the court of appeals or district court, the board at any time, upon reasonable notice and in a manner it deems appropriate, may modify or set aside, in whole or in part, any finding or order made or issued by it.

(m) Upon a final order that an unfair labor practice has been committed, the board or the charging party may petition the district court for the enforcement of the order and for appropriate temporary relief or a restraining order. When the board petitions the court, the charging party may intervene as a matter of right.

(n) Whenever it appears that any party has violated a final order of the board issued pursuant to this section, the board must petition the district court for an order directing the party and its officers, agents, servants, successors, and assigns to comply with the

order of the board. The board shall be represented in this action by its general counsel, who has been appointed by the board. The court may grant or refuse, in whole or in part, the relief sought, provided that the court also may stay an order of the board pending disposition of the proceedings. The court may punish a violation of its order as in civil contempt.

(o) The board shall have power, upon issuance of an unfair labor practice complaint alleging that a party has engaged in or is engaging in an unfair labor practice, to petition the district court for appropriate temporary relief or a restraining order. Upon the filing of any such petition, the court shall cause notice thereof to be served upon such parties, and thereupon shall have jurisdiction to grant to the board or commissioner temporary relief or a restraining order as it deems appropriate. Nothing in this paragraph precludes a charging party from seeking injunctive relief in district court after filing the unfair labor practice charge.

(p) The proceedings in paragraphs (m), (n), and (o) shall be commenced in the district court for the county in which the unfair labor practice which is the subject of the order or administrative complaint was committed, or where a party alleged to have committed the unfair labor practice resides or transacts business.

Subd. 2. **Employers.** Public employers, their agents and representatives are prohibited from:

(1) interfering, restraining, or coercing employees in the exercise of the rights guaranteed in sections 179A.01 to 179A.25;

(2) dominating or interfering with the formation, existence, or administration of any employee organization or contributing other support to it;

(3) discriminating in regard to hire or tenure to encourage or discourage membership in an employee organization;

(4) discharging or otherwise discriminating against an employee because the employee has signed or filed an affidavit, petition, or complaint or given information or testimony under sections 179A.01 to 179A.25;

(5) refusing to meet and negotiate in good faith with the exclusive representative of its employees in an appropriate unit;

(6) refusing to comply with grievance procedures contained in an agreement;

(7) distributing or circulating a blacklist of individuals exercising a legal right or of members of a labor organization for the purpose of preventing blacklisted individuals from obtaining or retaining employment;

(8) violating rules established by the commissioner regulating the conduct of representation elections;

(9) refusing to comply with a valid decision of a binding arbitration panel or arbitrator;

(10) violating or refusing to comply with any lawful order or decision issued by the commissioner or the board;

(11) refusing to provide, upon the request of the exclusive representative, all information pertaining to the public employer's budget both present and proposed, revenues, and other financing information provided that in the executive branch of state government this clause may not be considered contrary to the budgetary requirements of sections 16A.10 and 16A.11; or

(12) granting or offering to grant the status of permanent replacement employee to a person for performing bargaining unit work for the employer during a lockout of employees in an employee organization or during a strike authorized by an employee organization that is an exclusive representative.

Subd. 3. **Employees.** Employee organizations, their agents or representatives, and public employees are prohibited from:

(1) restraining or coercing employees in the exercise of rights provided in sections 179A.01 to 179A.25;

(2) restraining or coercing a public employer in the election of representatives to be employed to meet and negotiate or to adjust grievances;

(3) refusing to meet and negotiate in good faith with a public employer, if the employee organization is the exclusive representative of employees in an appropriate unit;

(4) violating rules established by the commissioner regulating the conduct of representation elections;

(5) refusing to comply with a valid decision of an arbitration panel or arbitrator;

(6) calling, instituting, maintaining, or conducting a strike or boycott against any public employer on account of any jurisdictional controversy;

(7) coercing or restraining any person with the effect to:

(i) force or require any public employer to cease dealing or doing business with any other person;

(ii) force or require a public employer to recognize for representation purposes an employee organization not certified by the commissioner;

(iii) refuse to handle goods or perform services; or

(iv) prevent an employee from providing services to the employer;

(8) committing any act designed to damage or actually damaging physical property or endangering the safety of persons while engaging in a strike;

(9) forcing or requiring any employer to assign particular work to employees in a particular employee organization or in a particular trade, craft, or class rather than to employees in another employee organization or in another trade, craft, or class;

(10) causing or attempting to cause a public employer to pay or deliver or agree to pay or deliver any

money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;

(11) engaging in an unlawful strike;

(12) picketing which has an unlawful purpose such as secondary boycott;

(13) picketing which unreasonably interferes with the ingress and egress to facilities of the public employer;

(14) seizing or occupying or destroying property of the employer;

(15) violating or refusing to comply with any lawful order or decision issued by the commissioner or the board.

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179A.14 NEGOTIATION PROCEDURES.

Subdivision 1. **Initiation of negotiation.** (a) **First agreement.** When an exclusive representative desires to meet and negotiate an initial agreement establishing terms and conditions of employment, the exclusive representative shall give written notice to the employer and the commissioner. If the exclusive representative has not been certified by the commissioner under section 179A.12 within one year of such written notice, the employer has ten days from receipt of the notice to object to the demand to negotiate by petitioning the commissioner to investigate either the appropriateness of the unit or the question of representation that the employer believes is raised by the demand, or both. If the employer does not object within ten days, the employer accepts the obligations of section 179A.07, subdivision 2, and the balance of this chapter with regard to such exclusive representative. If the employer does object by filing a petition under this section, the commissioner shall investigate the petition under section 179A.12, subdivision 5.

(b) **Subsequent agreement.** When a party to a contract desires to meet and negotiate an agreement subsequent to the initial agreement, the party shall give written notice to the other party and to the commissioner at least 60 days before the termination date of the existing contract. If a party fails to give the required 60-day notice, the party is subject to a fine of $10 per day for each day the notice is late. The fine for late notice may be waived at the discretion of the commissioner if the commissioner finds that the failure to

give timely notice did not prejudice the commissioner or the other party in the fulfillment of their responsibilities and duties. The fine for late notice is the only penalty for late notice under this paragraph.

Subd. 2. **Joint negotiations.** Public employers and exclusive representatives of employees may voluntarily participate in joint negotiations in similar or identical appropriate units. It is the policy of sections 179A.01 to 179A.25 to encourage area wide negotiations, and the commissioner shall encourage it when possible.

Subd. 3. **Public meetings.** All negotiations, mediation sessions, and hearings between public employers and public employees or their respective representatives are public meetings except when otherwise provided by the commissioner.

COLLECTIVE BARGINING AGREEMENT [EXCERPTS]

* * *

ARTICLE 1
Parties

This Agreement is entered into by and between the Board of Trustees, Minnesota State Colleges and Universities, hereinafter called the Employer, and the Inter Faculty Organization, hereinafter called the IFO.

ARTICLE 2
Equal Opportunity and Non-Discrimination

Section A. Employer Responsibility. The Employer accepts its responsibility to insure equal opportunity in all aspects of employment for all qualified persons regardless of race, creed, religion, color, national origin, age, disability, reliance on public assistance, sex, marital status, sexual orientation/affectional preference, or any other class or group distinction, as set forth by state or federal anti-discrimination laws, or in Board policy.

Section B. IFO Responsibility. The IFO accepts its responsibility as exclusive bargaining representative, and agrees to represent all faculty members in the bargaining unit without discrimination as to race, creed, religion, color, national origin, age, disability, reliance on public assistance, sex, marital status, sexual orientation/affectional preference, or any other class or group distinction, as set forth by state or federal anti-discrimination laws, or in Board policy.

Section C. Affirmative Action Plan.

Subd. 1. The Employer shall have an Affirmative Action Plan that is uniform in application throughout the Minnesota state universities. The IFO shall have the right to meet and confer on the provisions and procedures of the Plan. The Employer and the IFO are both firmly committed to affirmative action.

Subd. 2. Americans With Disabilities Act. Whenever the Employer or President/designee determines to take actions within the faculty bargaining unit which are necessary for the reasonable accommodation of any qualified disabled individual to effectuate compliance with the Americans with Disabilities Act, or other applicable law prohibiting discrimination on the basis of disability, he/she shall first discuss the action with the affected department/unit. In these decisions, all participants shall adhere to the rules pertaining to confidentiality.

Subd. 3. Processing Allegations of Discrimination and Final Jurisdiction. The IFO recognizes the Employer's obligation to take timely and appropriate action with regard to allegations and findings of discrimination. This includes the Employer's obligation to establish procedures for investigation of discrimination complaints. The IFO shall have the right to meet and confer on the procedures established by the Employer. The Employer recognizes the IFO's obligation to fully represent bargaining unit employees

when asked by employees to do so. The parties recognize that final jurisdiction for resolving claims of discrimination is vested in various state and federal agencies and the courts.

Subd. 4. Voluntary Mediation of Disputes. The IFO and the Employer agree to offer a voluntary mediation option for resolution of allegations of discrimination.

Section D. Association Membership. There shall be no discrimination by the Employer or the Administration because of membership or non-membership in the IFO, or because of activities on behalf of the IFO, nor shall any attempts be made to discourage or encourage membership in the IFO.

ARTICLE 3
Recognition

Section A. Recognition. Pursuant to the Minnesota Public Employment Labor Relations Act of 1971, as amended, the Employer recognizes the Association as the exclusive representative in the appropriate unit as described in the decisions of the Bureau of Mediation Services in the cases 72- PR-180-A, 73-PR-414-A, and 73-PR-431-A dated January 24, 1975; and the Bureau of Mediation decision in cases 72-PR-180-A, 73-PR-414-A and 73-PR-431-A dated April 24, 1975, case 80- PR-1305-A dated June 30, 1980; and case 83-PR-1218-A dated September 9, 1983.

Section B. Exclusive Right. The Employer will not meet and negotiate relative to those terms and conditions of employment subject to negotiations with any employee groups or organizations composed of

employees covered by this Agreement except through the Association.

Section C. Unit Disputes. The parties will attempt to resolve disputes over bargaining unit inclusion or exclusion of new or revised positions. In the event the parties fail to reach agreement within thirty (30) days as to the inclusion or exclusion of such positions, either party may refer the matter to the Bureau of Mediation Services for determination.

ARTICLE 4
Academic Freedom

Section A. Policy. It shall be the policy of MnSCU to maintain and encourage full freedom, within the law, of inquiry, teaching, and research. The Employer shall not discriminate against a faculty member for engaging in political activities or holding or voicing political views, so long as the exercise of this right does not interfere with his/her responsibilities as a faculty member.

Section B. Prohibition. The Employer agrees not to use any mechanical or electronic listening or recording devices except with the faculty member's express consent, and to inform the IFO if that consent is given; provided, however, that nothing herein shall be construed to preclude the recording and/or transcription by court reporter of formal proceedings, including arbitration, where a record or minutes are customarily maintained. Both the Employer and the IFO agree that neither may unilaterally record or transcribe, by court reporter, contract negotiation sessions or grievance meetings, including those at the

universities, without the written consent of the other party.

Section C. Faculty Rights, Responsibilities and Obligations. In the exercise of academic freedom, the faculty member may, without limitation, discuss his/her own subject in the classroom; he/she may not, however, claim as his/her right the privilege of persistently discussing in the class- room any matter which has no relation to the course subject. In extramural utterances, the faculty member has an obligation to not represent himself/herself as an institutional spokesperson, unless so designated by the President.

Section D. Research and Publication. A faculty member is entitled to full freedom in research and in the publication of results, so long as he/she fulfills the requirements of his/her other academic duties

ARTICLE 5
Definitions

Section A. Terms used within this Agreement shall have the following meanings.

Subd. 1. Academic Year. Academic Year is defined as beginning with the start of fall semester and ending with the completion of spring semester.

Subd. 2. Adjunct Appointments. An adjunct appointment is faculty employment pursuant to Article 21, Section E, Subd. 3, for stated periods that carries no implication of future employment.

Subd. 3. Administration. Administration shall mean the Chancellor of the Minnesota State

Colleges and Universities, university presidents, and designees.

Subd. 4. Alternative Session. Alternative session means any session outside of fall, spring and summer sessions.

Subd. 5. Association. Association shall mean the local IFO chapters (Faculty Association) at each university.

Subd. 6. Athletic Appointments. An athletic appointment is faculty employment pursuant to Article 10, Section G.

Subd. 7. Board of Trustees. Board of Trustees or Board shall mean the Board of Trustees of the Minnesota State Colleges and Universities.

Subd. 8. Chancellor. Chancellor shall refer to the Chancellor of the Minnesota State Colleges and Universities.

Subd. 9. Community Faculty. A community faculty appointment is employment at Metropolitan State University pursuant to Article 10, Section J.

Subd. 10. Days. Days means calendar days excluding Saturday, Sunday, and legal holidays as defined by Minnesota Statutes. Where the Agreement sets a specific date, and that date falls on a Saturday, Sunday or holiday on which the University or Chancellor's Office is closed, the due date shall fall on the next regular business day.

Subd. 11. Department Chair. Department chairs are faculty members whose role is generally described in Article 20 and Appendix E.

Subd. 12. Department Recall. Department recall refers to the process specified in Article 20, Section E, by which a department votes whether to recommend that the President/designee declare a vacancy to exist in the departmental chair.

Subd. 13. Domestic Partner. Domestic partner shall mean domestic partner as defined by the Department of Employee Relations. (See Appendix D.)

Subd. 14. Duty Day. Duty Day shall mean a day included in the university calendar or individual faculty member's appointment on which a faculty member engages in duties as described in this Agreement.

Subd. 15. Employee(s), Faculty and Faculty Member. Employee or Faculty Member shall mean a member of the appropriate unit as described in this Agreement. Employees or Faculty shall mean all members of the appropriate unit as described in this Agreement.

Subd. 16. Employer. Employer shall mean the Board of Trustees of the Minnesota State Colleges and Universities, also referred to as MnSCU.

Subd. 17. Endowed Chair. Endowed chairs are positions to which faculty are appointed pursuant to Article 11, Section O. These positions are

funded by sources other than tuition, fees, legislative appropriations to MnSCU, or proceeds from those sources.

Subd. 18. Fixed Term Appointment. A fixed-term appointment is faculty employment pursuant to Article 21, Section E, Subd. 1. Fixed-term employment terminates at the end of the appointment period and carries no implication for future employment.

Subd. 19. Grievance. A grievance means a dispute or disagreement as to the interpretation or application of any term or terms of any contract required under Minnesota Statutes § 179A.21 Subd. 1.

Subd. 20. Grievant. Grievant is a bargaining unit member or a group of unit members, Association or IFO filing a grievance.

Subd. 21. Immediate Family. For purposes of sick leave and bereavement leave pursuant to Article 17, immediate family shall be defined to include the spouse, siblings, children, stepchildren, foster children, grandchildren, wards, grandparents, parents, or parents of a faculty member's spouse. Immediate family shall also include any other individual who regularly resides in the employee's household.

Subd. 22. Immediate Supervisor. Immediate Supervisor shall mean a Dean or other individual, not a member of the bargaining unit, who has supervisory authority over faculty.

Subd. 23. Inter Faculty Organization. Inter Faculty Organization, IFO or Union shall refer to the exclusive representative of the bargaining unit.

Subd. 24. Just Cause. Just Cause as used in this Agreement means that there must be reasons for disciplinary action and that the action taken must be commensurate with the severity of the offense.

Subd. 25. Meet and Confer. Meet and Confer shall mean the exchange of views and concerns between employers and their respective employees at meetings scheduled for this purpose in accordance with Article 6 of this Agreement and the applicable provisions of PELRA.

Subd. 26. Meet and Negotiate. Meet and Negotiate shall mean the performance of the mutual obligations between MnSCU and the IFO to meet at reasonable times, including where possible, meeting in advance of the budget making process, with the good faith intent of entering into an agreement on terms and conditions of employment without compelling either party to agree to a proposal or to make a concession.

Subd. 27. Minnesota State Colleges and Universities System (or MnSCU) or System. System or Minnesota State Colleges and Universities System shall mean System of Minnesota State Colleges and Universities (also known as MnSCU).

Subd. 28. Non-Renewal. Non-renewal refers to the discontinuance of a probationary and/or non-tenure track faculty member's employment pursuant to Article 25, Sections E or F.

Subd. 29. Non-Tenure Track Appointments. A non-tenure track appointment is faculty employment pursuant to Article 21, Section E, Subd. 2. Such appointments are continuing and without the right of tenure.

Subd. 30. Overload. Overload is defined as a specific assignment, acceptable to the faculty member and approved by the President/designee, occurring within a faculty member's period of appointment which is in excess of the faculty member's workload as defined in Article 10 and Article 13.

Subd. 31. PELRA. PELRA shall mean the Minnesota Public Employment Labor Relations Act of 1971, as amended.

Subd. 32. President. President shall refer to the presidents of each university.

Subd. 33. Presidential Designee. Whenever allowed by this Agreement, the use of a designee by the President shall in no way abrogate the responsibility and accountability of the President for the decisions made by the designee. Within thirty days of signing this Agreement, each President will furnish the IFO and the local Association a list of his/her appropriate designees.

A President may revise his/her list of designees after the Association has been provided an opportunity to meet and confer in accordance with Article 6. In the event of a new President being appointed, he/she will submit a list of designees within thirty (30) days of assuming office. No member of the bargaining unit shall be a presidential designee.

Subd. 34. Prior Consideration. Prior consideration refers to the consideration given to current faculty members, in accordance with Article 21, Section A, Subd. 2, or Article 10, Section G, Subd. 6, when a university determines to fill a probationary position.

Subd. 35. Probationary Appointments. A probationary appointment is faculty employment pursuant to Article 21, Section E, Subd. 6. Such employment is for a stated term and is designed to lead to tenure.

Subd. 36. Professional Development Plan. Professional Development Plan (PDP) refers to plans developed by faculty members addressing the criteria contained in Article 22 and Appendix G.

Subd. 37. Professional Development Report or Progress Report. Professional Development Report (PDR) refers to the reports submitted by faculty pursuant to Article 22 describing progress made in respect to achieving objectives as specified in the faculty member's professional development plan.

Subd. 38. Professional Improvement Funds. Professional improvement funds means support funds for improving professional competence provided pursuant to Article 19, Section A.

Subd. 39. Professional Study and Travel Funds. Professional study and travel funds are funds for faculty development provided pursuant to Article 19, Section B.

Subd. 40. Program. Program shall mean units in which a major and/or minor area of curricular study is normally available.

Subd. 41. Promotion. Promotion refers to an increase in academic rank based on the promotion process set forth in Article 25.

Subd. 42. Reassigned Time. Reassigned time shall mean an alternative assignment other than classroom teaching for one or more credit hours during the academic year or summer. For those faculty whose primary assignments are non-classroom instruction, e.g., coaches, librarians and counselors, reassigned time shall mean an alternative assignment other than their principal assignment to fulfill the professional development criteria of Article 22.

Subd. 43. Recall. Recall refers to reemployment in inverse seniority order of laid off faculty in the same or a similar position in the same department or program from which the faculty member was laid off in accordance with Article 23, Section F.

Subd. 44. Recommendation. When the contract requires or provides for a recommendation on a personnel action, the recommendation must include written reasons and must be signed and dated by the person or persons who make said recommendation.

Subd. 45. Release Time. Release time shall mean the granting of a paid exemption from duties normally required or performed. Such release time will be for one or more duty days and does not include sick leave and emergency or personal leave time.

Subd. 46. Resident Faculty. Resident faculty at Metropolitan State University shall be those faculty appointed as fixed-term, probationary or tenured faculty.

Subd. 47. Sabbatical Leave. A sabbatical leave is taken by a faculty member pursuant to Article 19 to enhance professional development, support department/unit goals, and/or meet the instructional, service or research priorities of the university.

Subd. 48. Service. When a written notice or a written response is required to be given under the terms of this Agreement, such notice or response shall be made by personal service or service by first class mail. Personal service shall be deemed complete when the notice or response is handed to or receipted by the party to whom directed. First class mail shall be deemed complete and sufficient service upon mailing to the last home address of

the faculty member contained in the official personnel file.

Subd. 49. Tenured Appointment. A tenured appointment is a faculty appointment pursuant to Article 21, Section E, Subd. 7, upon successful completion of the probationary period. Tenured appointments are for an indefinite period of time and individuals holding such appointments are automatically reappointed annually unless terminated under the provisions of either Article 24 or Article 23.

ARTICLE 6
Association Rights

Section A. Dues Check-Off.

Subd. 1. The Employer agrees to cooperate with Minnesota Management & Budget and the IFO in facilitating the deduction of membership dues established by the IFO from the salary of each faculty member who has authorized such deduction in writing. The aggregate deductions of all faculty members shall be remitted together with an itemized statement to the IFO office no later than fifteen (15) calendar days following the end of each payroll period.

Subd. 2. In accordance with Minnesota Statutes, the IFO may request the Employer to check off a Fair Share fee for each member of the unit who is not a member of the IFO.

Subd. 3. The IFO agrees to indemnify and hold the Employer harmless against any and all

claims, suits, orders or judgments brought or issued against the Employer by a faculty member as a result of any action taken in accordance with the provisions of this Section.

Section B. Meet and Confer

Subd. 1. State IFO Meet and Confer. The IFO shall have the right to meet and confer with the Board or designee(s) pursuant to Minnesota Statutes §179A.08.

Arrangements for meet and confer sessions with the Board shall be in accordance with established Board procedures for meetings. If the meet and confer session is with the Board's designee the procedure shall be as follows.

A mutually acceptable time and place for such conferences shall be arranged upon request of either party. The Employer shall provide the facilities. A written agenda and pertinent materials shall be submitted by the party requesting the meeting at least fourteen (14) calendar days in advance of the scheduled meeting date. Additional matters may be placed on the agenda upon notice of either party. When the subject of meet and confer involves any one of the areas provided below, the other party shall have the right whenever possible to ten (10) days from the time of the meet and confer in which to respond to the party who has placed the item on the agenda. The IFO shall have the right to make policy recommendations including but not limited to the following areas: budget planning and allocations, programs and program

development, long-range planning, and development of campus facilities. Such recommendations may be made at meet and confer sessions, or by presentations at meetings of the Board. Also, subject matters for meet and confer meetings may include matters such as implementation of this Agreement. Nothing in this Section shall be construed to preclude other components of the university or System from making policy recommendations. The IFO President and the Chancellor shall confer on the need for faculty to serve on System-level committees, after which the IFO shall appoint the faculty. By mutual agreement between the IFO President and the Chancellor, the Chancellor in his/her discretion may appoint an agreed-upon number of additional faculty members to serve ex officio as resource persons based on professional expertise.

Subd. 2. University Meetings. The Association may establish a local committee to meet and confer with the President, or when the President is not on campus, his/her designees, at least monthly for the purpose of discussing matters of mutual concern. Additional committees which deal with meet and confer issues or which are appointed via the meet and confer process may be established as mutually agreed to by the Association and the President. The Association and the President shall confer on the need for faculty to serve on college and university-level committees, after which the Association shall appoint the faculty. By mutual agreement between the Association and

the President, an agreed-upon number of additional faculty members may be appointed by the President to serve ex officio as resource persons based on professional expertise. Faculty members appointed to committees in an ex officio capacity will not serve as representatives of other faculty.

The Administration shall provide the facilities and set a mutually acceptable time and place for such conferences upon request of either party. A written agenda shall be submitted by the party requesting the meeting whenever possible at least five (5) duty days in advance of the scheduled meeting. Additional matters may be placed on the agenda upon notice by either party. When the subject of meet and confer involves any one of the areas provided below, the other party shall have the right to ten (10) duty days from the time of the meet and confer in which to respond in writing. Implementation of new policies or changes in existing policies affecting any of the listed areas shall not occur until the opportunity to meet and confer and respond to the proposals has been provided to the Association. Either party may request a meet and confer for a response, the meeting to be held ten (10) duty days after the meet and confer session at which the topic was introduced. In such case no action shall be taken on the topic under consideration prior to the conclusion of this second meet and confer.

Failure of the Association to meet and confer or to respond shall not prevent the Administration from implementing decisions. The Association shall

have the right to make policy recommendations, including but not limited to the following areas: curriculum; evaluation of students; graduation requirements; admission policies; budget planning and allocations; the reallocation of vacant positions that had previously been filled by tenured or probationary faculty members from one department or program to another; programs and program development; long-range planning; development of campus facilities and procedures for the selection of personnel.

Also, subject matters for meet and confer meetings may include matters such as implementation of this Agreement. Nothing in this section shall be construed to preclude other components of the university or System from making policy recommendations.

Section C. Information. The Employer and Administration agree to provide the IFO and Association with information pertaining to the System and university budgets, both present and proposed, and statistical/financial or other information necessary for the negotiation and implementation of collective bargaining agreements or the processing of grievances. Such information shall be supplied, as it becomes available, to the IFO and Association, upon its written request, and within a reasonable time thereafter. This shall include monthly reports of additions and deletions to the unclassified payroll. It is understood that this Section shall not be construed to require the Employer to compile information and statistics in the

form requested which are not already compiled in such form, unless mutually agreeable.

Section D. Communications. In each building containing offices assigned to members of the bargaining unit, the Administration shall set aside appropriate bulletin board space for IFO or Association use. Subject to applicable laws and policies of the Employer and/or the State of Minnesota, the IFO or Association shall have the right to use campus e-mail, Internet access, and the university distribution mail service for disseminating information and communicating with faculty members. This provision shall not be construed to permit the IFO or Association to establish web pages on the Employer's electronic resources or make other similar use of those resources.

Section E. Copies of Agreements. The Employer shall prepare and make available to faculty a final copy of the Agreement. Such copy or copies may be made available in electronic media or posted online.

Section F. Association Membership. The Employer and Administration hereby agree that all employees of the System in this bargaining unit shall have the right to organize freely, join and support the IFO and/or the Association for the purpose of engaging in collective bargaining.

Section G. IFO/Association Business. Duly authorized representatives of the IFO/Association shall be free to transact official IFO/Association business necessary to the performance of IFO/Association responsibilities to bargaining unit members, including grievance representation activities. Such business

may be conducted on the campuses at reasonable times so long as it does not interfere with the normal functioning of the university.

Section H. Release Time.

Subd. 1. Release Time for IFO President. Upon request of the IFO, the IFO President shall be granted release time from his/her university assigned workload in the amount requested. In the event that the amount of release time is less than full time, the scheduling and amount of release time shall be subject to mutual agreement between the affected university, the IFO, and the faculty member.

The IFO shall reimburse the university at the applicable minimum adjunct rate set forth in Article 11, for the amount of release time granted.

In addition, upon request of the IFO, the IFO President shall be granted up to sixty (60) extended duty days to fulfill his/her duties as IFO President. The IFO shall reimburse the university for the full cost of the IFO President's wage and benefit package for each such day.

Subd. 2. Other Release Time. Upon request of the IFO, the Employer shall afford release time to a maximum of two hundred fifty (250) semester credit hours, to IFO or Association officers for purposes of conducting duties at the state or local level. The IFO shall reimburse the Employer for such release time at the applicable minimum adjunct rate set forth in Article 11 for the release time granted for the first one hundred thirty-three

(133) credit hours and the actual replacement cost of the salary and benefits for any additional hours of the release time granted. The total payment by the IFO to the Employer shall not exceed the total actual replacement costs.

Subd. 3. The Association shall notify the President by August 1 yearly as to the number of credits of release time to be used for the academic year.

Section I. Sabbatical. Upon returning to his/her university, a faculty member who has served as IFO President shall be given the right to a one (1) semester sabbatical after serving one (1) term in office, and two (2) semesters if he/she has served more than one (1) term. The sabbatical shall be at full base salary but otherwise consistent with the provisions of Article 19, Section C, Subd. 3-7. This sabbatical leave shall not be counted toward nor be used to deny a sabbatical leave to which the IFO President would be contractually eligible to take from his/her home campus based upon his/her years of service. However, the time served as IFO President shall not be counted as time toward years of service for purposes of eligibility for such contractual sabbatical leave only.

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ARTICLE 10

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Section B. Non-Teaching Faculty Workload. All members of the non-teaching faculty such as those in-

volved in library/learning resources, counseling center, student teacher supervision, full- time intern supervision, and laboratory school teaching/supervision who are members of the appropriate unit shall enjoy full faculty status with all the privileges and responsibilities pertaining thereto. The workload of a non-teaching faculty member shall include maintenance of professional expertise, committee assignments, research, community service and other similar professional activities.

Subd. 1. Librarians/Media Faculty. Librarians/Media Faculty shall be responsible for implementation of library/media services to support the mission and philosophy of each institution. Librarians/Media Faculty on each campus shall recommend to the Administration objectives and methods for library/media services, giving priority to providing services necessary to fulfill the educational needs of students and instructional needs of faculty. The Administration on each campus, after consultation with the librarians/media faculty, shall schedule the library/media services.

Subd. 2. Counseling Center Faculty Members. The workload of a counseling center faculty member shall include client contact hours, preparation for and evaluation of client contacts, maintenance of professional expertise, crisis intervention, and other professional activities.

Subd. 3. Student Teacher Supervisors. The full workload for the academic year or nine-month appointment year of supervisors of student

teachers shall be determined by the President after meeting and conferring with the Association. The meet and confer session shall include consideration of faculty/student teacher ratios and travel requirements.

Subd. 4. Exceptions. For those non-teaching faculty members whose work involves classroom teaching or other special duties and/or projects, the Administration shall assign duties in a manner that will result in a total workload consistent with that of a non-teaching faculty member whose workload does not include a teaching assignment or other special duties and/or projects.

* * *

Section D. Duty Days.

Subd. 1. Regular Appointments. The duty year for faculty members with regular appointments shall consist of one hundred sixty-eight (168) duty days within the academic year. Resident faculty members at Metropolitan State University, the Association, and the President/designee may mutually agree to alternative duty day calendars of 168 duty days during an academic year.

Duty days shall not be scheduled on New Year's Day, Martin Luther King Day, Presidents Day*, Memorial Day, Labor Day, Columbus Day*, Veterans Day*, Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve Day, and Christmas Day.

*The President may, after meeting and conferring with the Association, designate alternate non-duty days for the observance of these days for academic units when such revisions are in the best interests of the university.

* * *

Section E. Academic Calendar. The academic calendar of each university shall be established by the President. Prior to establishing or making changes in the calendar, the President/designee shall afford opportunity to meet and confer with the Association.

* * *

Section G. Athletic Directors, Coaches, and Trainers. This section shall determine workload and compensation for those faculty members whose workload includes intercollegiate athletic coaching. For purposes of this section, an intercollegiate sport shall be defined as a sport that is recognized by the university as having varsity status and whose teams engage in competition with similar teams at other institutions.

Subd. 1. Nothing in this Agreement shall be interpreted as requiring that the university offer any particular sport.

Subd. 2. Categories.

a. Pursuant to Subd. 1, there will be three (3) categories of head coaches: (1) those who coach basketball, football, ice hockey, or volleyball; (2) those who coach soccer, baseball, swimming, gymnastics, wrestling, softball,

cross-country skiing (combined men and women), or spring track; (3) those who coach cross-country skiing, golf, tennis, or winter track.

b. For purposes of determining the type of appointment offered, athletic directors shall be considered to be in category (2).

Subd. 3. Initial Appointments.

a. Head coaches shall, at the option of the President, be offered either an athletic appointment of two (2) to ten (10) years duration or a probationary appointment.

b. Nothing in this Agreement shall preclude the award of a fixed-term contract including head coaching duties in any category in accordance with Article 21, Section E, Subd. 1.

Subd. 4. Compensation.

a. In those cases where the President finds that curricular requirements prevent crediting a percentage of a full-time workload for coaching activities in categories (2) and (3), the President may, after meeting and conferring with the Association, authorize compensation in accordance with Article 12 and Subd. 5a of this section.

b. Individuals hired solely for the purpose of coaching any sport listed in this Article may be compensated at the adjunct faculty rate for the percentage of a full-time workload as listed in Subd. 5a of this section.

c. Head coaches may renegotiate their salaries each time they enter into a renewed athletic appointment.

d. Coaches with athletic appointments may receive a salary supplement not to exceed $120,000 to compensate the coach for activities that exceed the expected work load for a nine-month or academic year appointment, and/or to permit a university to match market salaries for such coaching positions. A salary supplement under this paragraph, if any, shall not be less than the sum of the duty day pay for the assigned extra duty days.

* * *

Section J. Metropolitan State University Community Faculty.

Subd. 1. Definitions. Community Faculty. Community faculty shall be those faculty employed at Metropolitan State University other than fixed-term, probationary, or tenured faculty employed at Metropolitan State University, who perform a range of academic duties including but not limited to teaching, and who are in the bargaining unit and meet the requirements of Minnesota Statute §179A.03, Subd. 14. In addition to the provisions of this section, Section J, Metropolitan State University community faculty, unless noted otherwise in this Agreement, shall be eligible for all benefits provided to faculty holding adjunct appointments.

Subd. 2. Workload. Workload for community faculty shall be no more than ten (10) credits per academic year.

Subd. 3. Salaries.

a. Community faculty members shall be compensated for teaching courses at no less than adjunct rate in Article 11 of the MnSCU/IFO Agreement.

b. Community faculty course instruction payments will begin within one month of the starting date of courses.

c. The following minimum compensation rates for non-class instruction duties will be in effect:

Internship Supervision	**$41.25 per credit per student**
Faculty-designed IS	**$30 per credit per student**
Student-designed IS	**$37.50 per credit per student**
Assessment of Prior Learning	**$35 per credit**
Consultation	**$20 per consultation**
Teaching Workshops	
3-5 hours	**$15 per student**
5+ hours	**$22 per student**

Other	Subject to meet and confer

Subd. 4. Professional Improvement.

a. Professional development and training opportunities shall be provided by the university to community faculty.

b. Professional Improvement Funds of not less than twelve thousand, five hundred dollars ($12,500) in FY 2016 and twelve thousand, five hundred dollars ($12,500) in FY 2017 per year shall be available to community faculty for improving professional competence related to their assignments at Metropolitan State University.

c. The President, after meeting and conferring with the Association, shall establish procedures and criteria for application and awarding of funds to community faculty.

d. Community faculty may be included in system-wide faculty development opportunities as appropriate.

Subd. 5. Department and Program Involvement. For purposes of discussions related to issues included in Article 20, Section A, Subd. 3, community faculty shall be represented in colleges, departments or programs. Representation of community faculty shall be subject to mutual agreement between the President/designee and the Association. Community faculty may partici-

pate in all of their college and departmental meetings, consistent with the requirements of Article 20.

Subd. 6. Appointment.

a. The Dean or his/her designee shall consult with the department or program resident faculty concerning the need for hiring and reappointing community faculty. The department or program resident faculty shall be responsible for evaluating the academic credentials of the candidates and for making recommendations to the President/designee. Community faculty shall report achievements to the Dean at the end of each evaluation cycle as required by Article 22. This report may be used in reappointment recommendations and decisions.

b. Assignments shall be communicated to the community faculty as early as possible, normally by July 1.

Subd. 7. Benefits.

a. Benefits will be determined based on the workload assignment projected in the annual assignment summary. Benefit eligibility and workload will normally be communicated to community faculty by July 1 for the following academic year. All community faculty accrue retirement and other benefits as regulated by state and federal statutes and Article 14, if threshold requirements are met, and may elect to participate in tax sheltered annuities

and the deferred compensation plan, if threshold requirements of the Agreement and appropriate laws are met.

b. Community faculty may purchase optional life and disability coverage if they meet the requirement of Article 14, Section G, and any requirements of law.

c. All community faculty shall be eligible to participate in the health and dental expense account and the dependent care expense account, if they meet the program requirements.

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ARTICLE 11

Salaries

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Section O. Endowed Chairs. Beginning July 1, 2007, after meeting and conferring with the Association, a President may institute standards and procedures for the establishment of an endowed chair position at the university and the selection of a faculty member to fill such positions. The funding to support an endowed chair position must come from sources other than tuition, fees or the legislative appropriation to the Minnesota State Colleges and Universities, or proceeds from the same.

Subd. 1. A faculty member who is selected to serve in an endowed chair position may serve in such position for the period of time specified by the President. A faculty member's period of service in

an endowed chair position may be terminated at any time by the President. Upon completion of a faculty member's period of service in an endowed chair position, the faculty member shall return to his/her prior employment status including salary at the university, if any. If immediately preceding his/her appointment as an endowed chair, a faculty member was not employed at the university in a position of continuing status, his/her employment shall terminate upon completion of his/her service as an endowed chair.

Subd. 2. The salary for a faculty member selected to serve in an endowed chair position shall meet or exceed the minimum salary for a full Professor. A salary set under this section must be in accord with the other compensation provisions in this Agreement. Service in an endowed chair position shall not be understood to be equivalent to service as a department chair as described in Article 20.

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ARTICLE 16

Severance Pay

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Section D. Early Separation Incentive.

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Subd. 4. Institutional Designation. After meeting and conferring with the Association, the President may designate departments or pro-

grams in which faculty members choosing the incentive shall receive compensation equal to their full base salary. The President's designation will be based on reasons that are in the best interest of the university. Payments will be made in a manner consistent with Subdivision 3.

* * *

ARTICLE 19
Professional Improvement

Section A. Professional Improvement Funds.

Subd. 1. Professional improvement funds shall mean support funds for improving professional competence.

Subd. 2. All faculty except adjunct faculty shall be eligible for professional improvement funds.

Subd. 3. The funds distributed shall be no less than four hundred thousand dollars ($400,000) in FY 2016 and four hundred thousand dollars ($400,000) in FY 2017. All funds shall be distributed each fiscal year to the universities on the basis of the number of FTE faculty at each institution. Within thirty (30) days thereafter, a report shall be provided to the IFO indicating the amount allocated to each university.

Subd. 4. The President, after meeting and conferring with the Association, shall establish procedures and criteria for the application and awarding of these funds to individual faculty

members. Awards shall be made by the President.

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ARTICLE 20
Departments and Department Chairpersons

Section A. Departments.

Subd. 1. The President may, after meeting and conferring, designate or redefine various academic departments and programs consistent with the university's mission and scope of academic activity. Departments or programs defined as of the date of execution of this Agreement shall continue to exist unless the President, after meeting and conferring with the Association, redefines departments or programs based upon the needs of the university. Redefinition of departments or programs shall occur no more than once each year, and shall be announced by and effective with the posting of seniority rosters on March 1. Such actions shall not be subject to the provisions of the grievance procedure.

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ARTICLE 22

Professional Development and Evaluation

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Subd. 2. Schedule for Evaluation. Except as otherwise provided herein, the President shall establish a schedule for evaluation, consisting of

time tables for preparation of professional development plans, annual progress reports, and the periodic evaluation and recommendations regarding non-renewal, tenure, and promotion. The local Association shall be afforded the opportunity to meet and confer prior to implementation of this schedule. First year probationary faculty shall complete their plan by the end of fall semester, and shall complete their progress report by the end of the spring semester. Probationary faculty in their second year shall submit their PDP within fifteen (15) working days after completion of the evaluation process of their first year.

ARTICLE 23
Retrenchment

Section A. Retrenchment.

Subd. 1. Defined. A retrenchment is the layoff of tenured or probationary faculty members due to System or university budget reductions, budget reallocations, expenditure freezes, or unfunded increases in operating costs, resulting from action by either the Legislature, the Governor, or MnSCU, or program changes, or enrollment shifts, or legislative mandate.

When retrenchment is first discussed within the Administration, the President shall discuss the topic with the Association at the next meet and confer, in accordance with Article 6. In connection with such duty to meet and confer, the President shall give the reason(s) for considering retrenchment and shall provide information of anticipated

attrition, and statistics and financial data having a bearing on any such retrenchment. The President shall consult with the Chancellor before the issuance of layoff notices.

Subd. 2. Order of Personnel Reductions and Layoff. When retrenchment is first discussed within the Administration, the President shall discuss the topic with the Association at the next meet and confer, in accordance with Article 6. In connection with such duty to meet and confer, the President shall give the reason(s) for considering retrenchment and shall provide information of anticipated attrition, and statistics and financial data having a bearing on any such retrenchment. The President shall consult with the Chancellor before the issuance of layoff notices.

* * *

ARTICLE 28
Grievance Procedure

The IFO and the Employer agree that they will use their best efforts to encourage an informal and prompt settlement of any complaint that exists with respect to the interpretation and/or application of this Agreement or Employer policies and practices related to terms and conditions of employment. However, in the event such complaint arises between the Employer and the IFO or faculty member which cannot be settled informally, a grievance procedure is described herein.

No determination shall be made by the Employer in the grievance procedure which diminishes, amends,

or otherwise modifies the provisions of this Agreement.

DEFINITIONS

Grievance. Grievance means a dispute or disagreement as to the interpretation or application of any term or terms of any contract required under Minnesota Statutes § 179A.21, Subd. 1.

Grievant. Grievant is a bargaining unit member or a group of unit members, Association or IFO filing a grievance. A grievance filed by the Association which alleges a violation may be initiated at Step II of the grievance procedure. A grievance filed by the IFO which alleges a violation may be initiated at Step III of the grievance procedure.

Days. Day means calendar days, excluding Saturday, Sunday, and legal holidays as defined by Minnesota Statutes. For purposes of the Step II and Step III grievance filing period, and for the Employer's corresponding written response, the term "days" shall not include days within the semester break during December and January for the applicable campus.

Service. Service means personal service or by first class mail.

Reduced to Writing. Reduced to Writing means a concise statement outlining the nature of the grievance, the provision(s) of the contract in dispute, and the relief requested. A grievance shall be filed on the form supplied by the Employer (Appendix A).

Answer. Answer means a concise response outlining the Employer's position on the grievance.

Informal Step.

Whenever a bargaining unit member has a grievance, the bargaining unit member may meet on an informal basis with the appropriate Dean (or equivalent) or other university designee in an attempt to resolve the grievance. The bargaining unit member may be accompanied by an exclusive representative in this process.

Step I.

In the event satisfactory resolution is not achieved through informal discussion, the exclusive representative, within thirty (30) days following the act or omission, giving rise to the grievance or the date on which the grievant reasonably should have known of such act or omission if that date is later, shall complete and forward to the Academic Vice President the written signed grievance form (Appendix A) which shall be signed by the Association grievance representative.

If the exclusive representative or Academic Vice President requests a meeting, the parties shall within seven (7) days of receipt of the grievance arrange a meeting and endeavor to mutually resolve the grievance. The Academic Vice President shall then respond to the grievance in writing within ten (10) days of the meeting of the parties. If the exclusive representative or Academic Vice President does not request a meeting at Step I, the Academic Vice President shall respond to the grievance in writing within ten (10) days of the receipt of the grievance at Step I.

Step II.

If the grievance is still unresolved after the response of the Academic Vice President or designee, it may be presented to the President/designee by the exclusive representative within ten (10) days after the receipt of the Step I response. If the exclusive representative or President requests a meeting, the parties shall within seven (7) days of receipt of the grievance arrange a meeting and endeavor to mutually resolve the grievance. The President shall respond to the grievance in writing within ten (10) days of the meeting of the parties. When the exclusive representative or President do not request a meeting at Step II, the President shall respond to the grievance in writing within ten (10) days of receipt of the grievance at Step II.

Step III.

If the grievance is still unresolved at Step II and the IFO desires to appeal, it shall be referred by the IFO, in writing, to the Chancellor within twenty (20) days after the response at Step II. The Chancellor or his/her designee and the IFO representative shall within ten (10) days of the receipt of the grievance arrange a meeting at a time mutually agreeable to the parties. If the grievance is settled as a result of such meeting, the settlement shall be reduced to writing and signed by the Chancellor or his/her designee, and the IFO representative. If no settlement is reached, the Chancellor or his/her designee shall give a written response to the IFO within ten (10) days following the meeting.

Step IV.

If the grievance is still unresolved after the response of the Chancellor or his/her designee, the exclusive representative may, within fifteen (15) days, request arbitration by serving a written notice on the other party of its intention to proceed with arbitration.

The Chancellor or his/her designee and the IFO representative shall endeavor to select a mutually acceptable arbitrator to hear and decide the grievance.

Expedited Arbitration. Expedited arbitration, as defined by the American Arbitration Association, shall be used with respect to all disciplinary actions clearly labeled by the Employer as either an oral or written reprimand. If expedited arbitration is used, the parties will make their best efforts to hold the arbitration hearing within 45 days of the receipt of the Step IV notification. If a party is unable to agree to a hearing within the 45 day period, the arbitration shall proceed, except that the other party may give notice that the expedited procedures will not be followed. Expedited arbitration may be used by the parties with respect to other disputes upon mutual agreement of the IFO and the Employer's Step III representative.

Regular Arbitration. The scheduling of the hearing date for all grievances submitted to non- expedited arbitration shall be accomplished within twenty-five (25) days after receipt of available dates from the arbitrator.

The arbitration proceeding shall be conducted by an arbitrator to be selected from a permanent panel of five (5) arbitrators. The parties shall use an alternating striking method to select an arbitrator from the

permanent panel to hear a grievance. The members of the permanent panel shall be selected by the following method: the IFO and the Chancellor's designee shall each submit a list of five (5) arbitrators until agreement is reached on a permanent panel. Vacancies on the panel that arise during the term of this agreement shall be filled by mutual agreement or by each party submitting lists of three (3) arbitrators, until a replacement is agreed upon. The parties may, by mutual agreement, add or remove members from the permanent arbitration panel.

Each party shall be responsible for equally compensating the arbitrator for his/her fee and necessary expenses.

The arbitrator shall not have the power to add to, subtract from, or modify in any way the terms of the existing Agreement.

The decision of the arbitrator shall be final and binding on all parties to the dispute unless the decision violates any provision of the laws of Minnesota or rules or regulations promulgated thereunder, or municipal charters or ordinances or resolutions enacted pursuant thereto, or which causes a penalty to be incurred thereunder. The decision shall be issued to the parties by the arbitrator, and a copy shall be filed with the Bureau of Mediation Services, State of Minnesota.

All grievances shall be processed during the normal workday whenever possible, and employees shall not lose wages due to their necessary participation. For purposes of this paragraph, employees entitled to

wages during their necessary participation in a grievance proceedings are as follows:

a. The number of employees equal to the number of persons participating in the grievance proceeding on behalf of the public employer; or

b. If the number of persons participating on behalf of the public employer is less than three (3), three (3) employees may still participate in the proceedings without loss of wages.

The parties, by mutual written agreement, may waive any step and extend any time limits in a grievance procedure. If timely filed at Step I, grievances filed during the months of May through August, may, at the choice of the Faculty Association, be held in abeyance and shall be scheduled for a meeting within fourteen (14) calendar days of the start of the fall calendar. Mutual written agreement may be established by a computer message requesting, and a written computer message or other writing confirming, the waiver or the extension. However, failure to adhere to the time limits may result in a forfeit of the grievance, or, in the case of the Employer, require mandatory alleviation of the grievance as outlined in the last statement by the exclusive representative.

The provisions of this grievance procedure shall be severable, and if any provision or paragraph thereof or application of any provision or paragraph under any circumstance is held invalid, it shall not affect any other provision or paragraph of this grievance procedure or the application of any provision or paragraph thereof under different circumstances. Within

thirty (30) days after the execution of the Agreement, the IFO shall furnish to the Employer a list of all persons authorized to act as grievance representatives and shall update the list as needed.

The Employer will furnish the names of the Employer's designees to deal with grievances at each step of the grievance procedure. No member of the bargaining unit shall be an Employer designee for any step in the grievance procedure.

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