STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN STATE EMPLOYEES UNION (WSEU), AFSCME, COUNCIL 24, AFL-CIO,	:	
Complainant,	:	Case CXXXIII No. 24823 PP(S)-61
vs.	:	Decision No. 17115-C
STATE OF WISCONSIN,	:	
Respondent.	:	

Appearances:

Lawton & Cates, Attorneys at Law, 110 East Main Street, Madison, Wisconsin 53703, by Mr. Richard V. Graylow, appearing on behalf of the Complainant.

Mr. Sanford N. Cogas, Attorney at Law, Department of Employment Relations, 149 East Wilson Street, Madison, Wisconsin 53702, appearing on behalf of the Respondent.

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT BUT REVERSING EXAMINER'S CONCLUSION OF LAW AND ORDER

Examiner James D. Lynch having, on October 1, 1980, issued Findings of Fact, Conclusion of Law and Order, together with Memorandum Accompanying, in the above-entitled matter wherein said Examiner concluded that the refusal of the State of Wisconsin to furnish certain information requested by Wisconsin State Employees Union (WSEU), AFSCME, Council 24, AFL-CIO, during bargaining on a collective bargaining agreement covering wages, hours and working conditions of certain employes of the State of Wisconsin, did not constitute a refusal to bargain in good faith within the meaning of Sec. 111.84(1)(d) and (a) of the State Employment Labor Relations Act; and said Labor Organization having timely filed a petition requesting the Commission to review the Examiner's decision; and the Commission, having reviewed the Examiner's decision, the record, the petition for review, and the briefs filed in support and in opposition thereto, being satisifed that the Examiner's Findings of Fact be affirmed, but that his Conclusion of Law and Order be reversed,

NOW, THEREFORE, it is

ORDERED

1. That the Examiner's Findings of Fact be, and the same hereby are, affirmed.

2. That the Examiner's Conclusion of Law be, and the same hereby is, reversed to read as follows:

> That Respondent, State of Wisconsin, by its agents, refused to bargain collectively in good faith within the meaning of the State Employment Labor Relations Act, with Wisconsin State Employees Union (WSEU), AFSCME, Council 24, AFL-CIO, as the exclusive collective bargaining representative of certain of its employes, by refusing to furnish said labor organization with the survey made by it and relied upon by it, during collective bargaining with said Labor organization, to support its wage offers for the 1979-1980 biennium, and that, therefore the State of Wisconsin, by its agents, committed unfair labor practices in violation of Secs. 111.84 (1)(d) and (a) of the State Employment Labor Relations Act.

3. That the Examiner's Order be, and the same hereby is, reversed to read as follows:

> That Respondent State of Wisconsin, its officers and agents, shall cease and desist from refusing to bargain collectively with Wisconsin State Employes Union (WSEU), AFSCME, Council 24, AFL-CIO, as the exclusive collective bargaining representative of certain employes of Respondent, State of Wisconsin, by refusing to furnish said labor organization, when requested to do so, information which is relevant and reasonably necessary to said labor organization's duty and responsibility as said collective bargaining representative, including any survey prepared by Respondent, State of Wisconsin, in support of wage and salary offers made by it during collective bargaining.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of March, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary L. Covelli, Chairman

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Morris Slavney, Commissioner

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Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT
BUT REVERSING EXAMINER'S CONCLUSION OF LAW AND ORDER

The Pleadings

In its complaint initiating the instant proceeding the Union alleged that, by refusing to divulge information based on wage surveys claimed to have been made by the State to justify its offer on wage and salary increases, for employes of the State represented by the Union during negotiations in June, 1979, and by refusing to permit the Union to inspect and/or copy the surveys and/or other written materials upon which said surveys were made, the State committed unfair labor practices within the meaning of Secs. 111.84(1)(a) and (d) of the State Employment Labor Relations Act (SELRA).

The State, in its answer, denied the unfair labor practices alleged contending that after it had refused to furnish the information it had increased its offer, that it supplied "information" in support of said subsequent offer, and therefore that the complaint was moot.

The Examiner's Decision

The Findings of Fact made by the Examiner were summarized in the Memorandum accompanying his decision as follows:

> The facts herein are simple and undisputed. In June of 1979 the Union and the Employer were engaged in collective bargaining for a successor labor agreement to the agreement existing between them which was to expire on June 30, 1979. On June 11, 1979, the Employer tendered to the Union an initial wage offer of approximately 6% per annum for the fiscal years 1979 and 1980. The Union asked the Employer for an explanation of how the Employer had arrived at the 6% wage figure as one "that was fair and equitable and justifiable in line with the current economy." The Employer responded that it ". . . had looked at similar jobs in the public and private sectors and their levels of compensation, that we had looked at levels of settlement in the private and public sector, that we had looked at wage and price controls and the results and settlements under those, that we had looked at various settlements that had been made available that was information available to us at that time." The Union then made a formal request of the Employer to be provided with all information documents and materials which the Employer had used in formulating said offer. The Employer refused to provide such information stating that it was under no obligation to do so. The Union thereafter rejected the Employer's wage offer. On June 14, 1979, the Employer made a second wage offer of 6 1/2% per annum for the fiscal years 1979 and 1980. The Union again made its request for information similar to that which it had earlier requested and the Employer made a similar refusal. At a later date the parties entered into a collective bargaining agreement addressing, among other things, the issue of wages.

The Examiner concluded that the matter was not moot, and with respect to the merits the Examiner concluded that the State had not committed the violation alleged, and thereupon dismissed the complaint. The Examiner's rationale in reaching such a conclusion on the merits can be summarized as follows:

(a) The duty to bargain in good faith includes the duty on the part of an employer to supply a labor organization representing its employes, upon request, with sufficient information to enable the labor organization to understand and intelligently discuss issues raised in bargaining, provided the information is related and reasonably necessary to its dealings in its capacity as the representative of the employes.

(b) This duty only arises when the employer places a matter in issue (such as in the case of an alleged inability to pay or an alleged competitive disadvantage) and there is no reported case where the duty has been imposed when the union seeks to place in issue the underlying basis for an initial wage proposal when the employer has made no claim placing the underlying basis of its initial offer in issue.

(c) To place such a duty of disclosure on an employer under the latter circumstances is unlike the situation when the employer has placed the matter in issue, since: (1) it would not foster the collective bargaining process and would instead give the union a tactical advantage by allowing it to use such information, gained in the initial states of bargaining, to its advantage and to strip the employer of its ability to bargain as that term is commonly understood; and (2) there is no showing that the information is relevant as opposed to being "helpful", in the sense of giving the union a tactical advantage in bargaining.

The Petition for Review

The Union seeks Commission review of specific Findings of Fact made by the Examiner, as well as of the dismissal of the complaint. The Union did not file a brief in support of its petition for review, but rather urges the Commission to rely on its arguments presented during the course of the hearing before the Examiner, and its brief filed with the Examiner. The State likewise relies on the arguments and brief presented to the Examiner.

Discussion

We find no error in the Examiner's Findings of Fact. They were essentially undisputed during the course of the hearing and in the briefs filed with the Examiner. We therefore have affirmed the Examiner's Findings of Fact.

We also agree with the Examiner that the matter is not moot. Neither party has excepted to that determination by the Examiner, and therefore, we adopt his discussion in regard thereto.

With regard to the refusal to bargain issue, we disagree with the Examiner's conclusion that the State's conduct does not constitute a violation of Section 111.84(1)(d) of SELRA. In reaching his decision the Examiner concluded, in effect, and we disagree, that there had been no showing that the information sought was relevant.

Even though it is true that the Union first requested that the State justify its initial proposal in bargaining, a fact heavily relied upon by the Examiner, we are of the opinion that such a distinction is not important. What is important is whether the information sought is relevant to bargaining. Whether such information is put into issue by a claim made by the State or arises in response to a request or inquiry by the Union is immaterial; the sole issue is if it is relevant and reasonably necessary to the Union's ability to function in its capacity as the representative of the employes in negotiating a successor collective bargaining agreement.

In this regard the Examiner correctly recited the applicable law as follows:

> Intertwined with the duty to bargain in good faith is a duty on the part of an Employer to supply a labor organization

> representing employes, upon request, with sufficient information to enable the labor organization to understand and intelligently discuss issues raised in bargaining . . . Information requested by a labor organization must be relevant and reasonably necessary to its dealings in its capacity as the representative of the employes. 1/

Further with respect to information relating to wages, it has been held that wage and related information is presumptively relevant so that the Union need not explain its specific need for such information. 2/ We think the Court's reasoning for the rule of presumptive relevance is sound because as the Court stated, in the Shell Oil case, ". . . It avoids potentially endless bickering between management and the Union over the specific relevance of information, the very nature of which might render its relevance obvious."

It is within this context, then, that we must view the information sought by the Union and the State's refusal to provide same.

It was after the State had made its first and second wage offer that the Union requested the State to explain how it had arrived at its wage figures as one "that was fair and equitable and justifiable in line with the current economy". The Stated replied that it ". . . had looked at similar jobs in the public and private sectors and their levels of compensation, that we had looked at levels of settlement in the private and public sectors, that we had looked at wage and price controls and the results and settlements under those, that we had looked at various settlements that had been made available to us at that time". The State further stated that among the sources from which it derived its information, was a survey of comparable jobs of both private and public sector employers. When the Union asked for all information, documents and materials used in formulating its offer, the State refused claiming it had no obligation to do so.

First it should be made clear that the State was not obligated to prove that its offer was fair, equitable or justifiable as the Union apparently demanded. If an employer merely relies on its general impression of the state of the economy, knowledge of its own financial situation, and on its general knowledge of other settlements obtained through newspapers, publications, etc., then a mere statement of same is sufficient and no production of materials is necessary. Nor is an employer obligated to turn over its file to the union upon an overbroad request to provide all information, documents and materials which the employer had used in formulating its initial wage offer. But when a party, as here, conducts a wage survey and then informs the other party that it relies, at least in part, on such survey in justifying its wage offer, the survey since it is tied to the wage offer, becomes relevant to the negotiations and the party is obligated to supply such information upon request. Although the State did not conduct a formal survey resulting in a written graph or chart for presentation, it nevertheless did gather information as to comparable jobs in the private and public sector including municipalities and other states. Thus the State, since it informed the Union that it relied on same, was obligated to provide the Union with the result of its informal survey even if the results could only be conveyed verbally across the table.

1/ Sheboygan Schools (11990-A,B) 1/76.

2/ Shell Oil Co. v. NLRB, CA 9, 1971, 77 LRRM 2043.
Boston Herald - Traveler Corp. v. NLRB, CA 1, 1955, 36 LRRM 2220.

Based on the above, the Commission has reversed the Examiner, and we have concluded that the State's refusal to provide the information relied upon by the State in support of its offer to the Union during the course of the negotiations constituted a refusal to bargain in good faith, and that by such action the State committed unfair labor practices within the meaning of Secs. 111.84(1)(d) and (a) of SELRA. Inasmuch as the parties have negotiated and executed two collective bargaining agreements since the occurrence of the activity involved, we deem that a cease and desist order is the appropriate remedy herein.

Dated at Madison, Wisconsin this 17th day of March, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary L. Covelli, Chairman

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Morris Slavney, Commissioner

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Herman Torosian, Commissioner