STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS' EDUCATION ASSOCIATION,

Complainant,

٧5.

Case 198 No. 38947 MP-1989 Decision No. 24729-A

MILWAUKEE BOARD OF SCHOOL DIRECTORS,

Respondent.

Appearances:

Perry, First, Lerner, Quindel, & Kuhn, S.C., ty Mr. Richard Perry with Ms. Judith E. Kuhn on the brief, 823 North Cass Street, Milwaukee, WI 53202, appearing on behalf of Milwaukee Teachers Education Association.

Mr. Grant F. Langley City Attorney of the City of Milwaukee, by
Mr. Stuart S. Mukamal, Assistant City Attorney, 800 City Hall,
200 East Wells Street, Milwaukee, WI 53202-3551, appearing on behalf of
Milwaukee Board of School Directors.

EXAMINER'S FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

On June 16, 1987, the abovenoted Complainant filed with the Commission a complaint of prohibited practices alleging that the abovenamed Respondent was committing prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 4, Stats., by imposing certain pre-conditions on Complainant's access to certain information from Respondent. The Commission appointed the undersigned Marshall L. Gratz, a member of its staff, to act as Examiner in the matter and to make and issue Findings of Fact, Conclusion of Law and Order, as provided in Sec. 111.07(5), Stats.

Pursuant to notice, the Examiner conducted hearing in the matter on September 23, 1987 at City Hall in Milwaukee, at which the parties were given full opportunity to present their evidence and arguments. Briefing in the matter was completed on December 21, 1987. The Examiner has considered the evidence and arguments and, being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

- 1. The Complainant, Milwaukee Teachers Education Association (referred to herein as MTEA), is a labor organization with its offices at 5130 West Vliet Street, Milwaukee, Wisconsin 53208. At all material times, James Colter has been MTEA's Executive Director, and Donald Deeder and Sam Carmen have been MTEA Assistant Executive Directors.
- 2. The Respondent, Milwaukee Board of School Directors (referred to herein as MBSD), is a municipal employer with its principal offices at 5225 West Vliet Street, Milwaukee, Wisconsin 53201. MBSD operates the Milwaukee Public Schools. At all material times, Edward R. Neudauer has been Executive Director of the Department of Employee Relations within MBSD's Division of Human Resources, David Kwiatkowski has been MBSD's Manager of Labor Relations and Edward Burnette has been MBSD's Employee Benefits and Records Administrator.
- 3. MTEA has at all material times been the exclusive collective bargaining representative of four separate collective bargaining units of MBSD employes together totalling between 7,000 and 8,000 employes and consisting of the teachers unit, the substitute teachers unit, the aides unit and the accountant's unit. MTEA and MBSD have been parties to a series of collective bargaining agreements

covering each of those units, including a teacher unit agreement with a term of July 1, 1986 to June 30, 1988. There has been no contention herein that any of those units is an inappropriate bargaining unit or that any of those agreements contains any provision requiring MBSD to provide MTEA with the information at issue herein.

4. On February 19, 1987, Neudauer wrote Deeder a letter. That letter (also referred to herein as MBSD's information release policy), read in pertinent part as follows:

It has been brought to my attention that individuals in your bargaining unit are contacting you directly with questions concerning their salaries, benefits, and absence records. Inasmuch as the employee records center and the payroll department are the keepers of these records, it is inappropriate that these employees contact you for this information. In addition, your efforts to provide this information to employees have caused inconvenience and increased cost for our division in that you have been requesting that we provide you with copies of these records.

To resolve this problem, the following procedure is to be followed immediately:

- Employees with questions concerning their salaries, benefits, or absence records are to contact us directly for an explanation.
- If an employee is dissatisfied with our response, he or she may contact the MTEA for assistance.
- The MTEA must then provide us with a statement signed by the employee indicating:
 - The name of the Milwaukee Public Schools employee contacted.
 - The reason for dissatisfaction with the response.
 - The information in question may be released to the MTEA.

Feel free to call me if you have questions.

5. Following conversations between various MTEA and MBSD representatives regarding that letter, Carmen wrote Kwiatkoswski as follows, with copies to Deeder and Neudauer:

This letter shall serve to summarize our meeting in the above captioned matter of Friday, March 13, 1987. Present in addition to you and I was Mr. Don Ernest.

I reviewed the circumstances identified in Dr. Neudauer's letter whereby he established that the Employee Benefits Section would no longer accept credit/salary inquiries from Mr. Deeder unless the individual teacher had checked with MPS first. I reminded you that MTEA is the exclusive bargaining representative for all personnel in the teacher unit and as such had a duty to represent all employees in the unit. I further stated that we considered Dr. Neudauer's procedure to be an interference with the MTEA's right to represent employees and strongly requested that the letter be withdrawn.

You indicated that you wanted the MTEA position in writing and I indicated I would provide it. I trust this accurately reflects that conversation.

Neudauer wrote to Carmen by letter dated June 25, 1987, as follows:

I have had an opportunity to come across your letter March 16, 1987, with respect to my letter to Don Deeder on salary inquiries. I believe the letter is extremely self serving and does not accurately reflect our conversation.

We have, in the past, and will continue to provide the MTEA material necessary to enforce the individual contract. What Mr. Deeder was requesting goes far beyond the scope of normal representation. It would be akin to saying the MTEA wants to answer a pension question, so any teacher who makes a request for pension counseling is entitled to all the records the pension office has and they must supply copies to the MTEA so they can make their recommendation.

What we are simply saying is, if there is a payroll inquiry, the individual should call the Milwaukee Public Schools and attempt to determine the facts. If there is a dispute or if they have any further questions once they have determined the facts about salary placement, increments, or whatever, then they should be free to contact the MTEA. We will work as we have in the past in providing information.

For Mr. Deeder to attempt to run a duplicate payroll operation and to attempt to answer each teacher's individual payroll question by requesting a copy of that teacher's payroll record is something we have never negotiated. This would be a tremendous strain on our office in producing such information.

All the self-serving letters aside, the MTEA in this case is asking to be very intrusive in the day-to-day operations of our department which would require additional staff and additional expenditures or money.

I believe if you reflect accurately as to what you actually need, there is no denial of legitimate requested information for you to accurately represent employees.

Carmen's letter above accurately described MTEA's position as stated at a March 13, 1987 meeting which Neudauer did not attend. The conversation between Neudauer and MTEA representatives referenced by Neudauer in the first paragraph of his June 25 letter above was a different conversation with MTEA representatives on the same subject.

- 6. Since the issuance of Neudauer's February 19, 1987 letter, above, MBSD's Department of Labor Relations personnel have followed the policy set forth therein with respect to all MTEA representatives and all MTEA bargaining units, refusing to provide MTEA representatives with answers to employe questions concerning matters such as salaries, benefits and absence records unless the MTEA representative provides a signed employe statement meeting the requirements set forth in the letter quoted in Finding of Fact 4, above.
- 7. The information to which MBSD had addressed and applied its information release policy, above, constitutes information about questions arising under a collective bargaining agreement. That information is both relevant and reasonably necessary to MTEA's functioning as exclusive representative of the bargaining unit of the MBSD employe involved in the inquiry, including but not necessarily limited to MTEA's functions of policing MBSD's collective bargaining agreement compliance as a part of MTEA's contract administration role.
- 8. It has not been shown herein that MBSD's motiviation in imposing the above information release policy was other than to relieve its office personnel of what it perceived to be the unnecessary and unproductive time spent in response to MTEA information requests over and above what MBSD perceived would be spent if the employes submitted their requests to MBSD directly in the first instance and then pursued the inquiry through MTEA only if dissatisfied with MBSD's response.

- 9. It has not been shown herein that MTEA's requests for the information described in Finding of Fact 6 were made in bad faith or that MTEA's primary purpose for requesting said information was other than to provide answers to inquiries from employes in bargaining units it represents concerning whether the employe was receiving the proper wages, benefits or rights to which he/she was entitled under the applicable collective bargaining agreement.
- 10. There has been no showing herein that requiring MBSD to respond to MTEA's requests for the information described in Finding of Fact 6, without the pre-conditions contained in MBSD's information release policy, has been or would be unduly burdensome on MBSD.
- 11. By conditioning its release to MTEA of the information described in Finding of Fact 6 as stated in its February 19, 1987 letter, MBSD has failed and refused, upon request, to supply MTEA with information relevant and reasonably necessary to MTEA's functioning as exclusive collective bargaining representative of the bargaining units of the employes involved.
- 12. By conditioning its release to MTEA of the information described in Finding of Fact 6 as stated in its February 19, 1987 letter, MBSD has engaged in conduct the reasonable tendency of which is to interfere with the right of MTEA-represented employes to bargain collectively with MBSD through MTEA and to interfere with the right of MTEA-represented employes to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection.

CONCLUSION OF LAW

MBSD, by its issuance and application of the information release policy contained in its February 19, 1987 letter, has committed prohibited practices and, more particularly, has refused to bargain collectively with a representative of a majority of its employes in an appropriate bargaining unit within the meaning of Sec. 111.70(3)(a)4 and has, derivatively, interfered with municipal employes in the exercise of their rights guaranteed in Sec. 111.70(2), Stats., in violation of Sec. 111.70(3)(a)1, Stats.

ORDER 1/

IT IS ORDERED that Respondent Milwaukee Board of School Directors, its officers and agents, shall immediately:

Section 111.07(5), Stats.

^{1/} Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

⁽⁵⁾ The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

Cease and desist

- a. from applying the information release policy contained in its letter of February 19, 1987.
- b. from issuing and applying any other policy which in like or related manner imposes unlawful conditions on MTEA's access, upon request, to salary, benefit and absence record information concerning members of MTEA-represented bargaining units.
 - c. from refusing to bargain with MTEA in any like or related manner.
- d. from interfering with employe rights guaranteed by Sec. 111.70(2), Stats., in any like or related manner.
- 2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:
- a. Rescind the letter of February 19, 1987, and notify MTEA in writing and within 20 days of the date of this decision that said letter has been rescinded.
- b. Cause the notice set forth in Appendix A to be signed and posted for at least 30 calendar days in conspicuous places where MBSD notices to employes in each of the MTEA bargaining units are usually posted.
- c. Notify the Wisconsin Employment Relations Commission in writing within 20 days of the date of this decision what steps it has taken to comply with the above order.

Dated at Madison, Wisconsin this 5th day of May, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

by Warman .

APPENDIX A

NOTICE TO ALL MILWAUKEE BOARD OF SCHOOL DIRECTORS EMPLOYES REPRESENTED BY MILWAUKEE TEACHERS EDUCATION ASSOCIATION (MTEA)

Pursuant to an order Wisconsin Employment Relations Commission examiner, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify all MTEA-represented employes that:

WE HAVE RESCINDED our letter dated February 19, 1987, wherein we had conditioned our release to MTEA of routine salary, benefit and absence records information upon MTEA's presentation of a signed employe request for release of the information to MTEA stating: that the employe had previously contacted MBSD directly for the information, that the employe is dissatisfied with the information provided in response, the name of the MBSD representative contacted for the information, and the reason why the employe is dissatisfied with the MBSD representative's response to the employe's request.

WE WILL NOT establish any other policy which in like or related manner imposes unlawful conditions on MTEA's access, upon request, to salary, benefit and absence record information concerning members of MTEA-represented bargaining units.

WE WILL NOT refuse to bargain with MTEA in any like or related manner.

WE WILL NOT interfere with employe rights guaranteed by Sec. 111.70(2), Stats., in any like or related manner.

Dated	this	day of	, 1988.	
		Вv		
		-, .	Edward R. Neudauer	
			Executive Director	
			Department of Employee Relations	
			Milwaukee Board of School Directors (M	MBSD)

MILWAUKEE PUBLIC SCHOOLS

MEMORANDUM ACCOMPANYING EXAMINER'S FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

BACKGROUND

In its complaint, MTEA alleges that MBSD is violating Sec. 111.70(3)(a)1 and 4, Stats., by conditioning its release to MTEA of certain wage, benefit and related information relevant and necessary for MTEA's performance of its role as exclusive representative, on MBSD receipt of a written employe request for release of the information to MTEA stating: that the employe had previously contacted MBSD directly for the information, that the employe is dissatisfied with the information provided in response, the name of the MBSD representative contacted for the information, and the reason why the employe is dissatisfied with the MBSD representative's response to the employe's request. The complaint requests that MBSD's conduct be declared unlawful both as a refusal to bargain and as interference with the right of bargaining unit employes to be represented by their majority representative with respect to concerns relating to wages, hours and conditions of employment. The complaint further requests cease and desist and such other and further relief as may be appropriate in the circumstances.

In its answer, MBSD admits that it has imposed the abovenoted conditions upon its release of certain information to MTEA, but it denies that the information is either relevant or necessary to MTEA's representational functions and asserts that the information is sought by MTEA only for its own institutional and public-relations purposes unrelated to representation of bargaining unit members. MBSD denies that its conduct has interfered with MTEA's ability to perform its function as exclusive representative and asserts that the conditions imposed are necessary for the effective and efficient functioning of MBSD's Division of Human Resources. MBSD requests that the complaint be dismissed in its entirety and for such other and further relief as may be appropriate in the circumstances.

POSITION OF COMPLAINANT

MTEA argues that as the exclusive collective bargaining representative of the employes involved, it is entitled to the wage, benefit and related information at issue in order to represent the employes effectively. It argues that there is no requirement that the information be requested in the context of processing a formal grievance, but rather that the information can be requested by a majority representative in order to evaluate grievances and weed out those that are without merit, to engage in its own surveillance and policing of the contract, or to fashion proposals for its next negotiations with the employer. Citing, City of Janesville, Dec. No. 22943-A (3/86) aff'd by operation of law, -B (WERC, 3/86) and NLRB v. Acme Industrial, 385 U.S. 432, 64 LRRM 2069, 2070 (1967). MTEA asserts that "Information relative to wages and fringe benefits is presumptively relevant to carrying out the bargaining agent's duties, there being no need to make a case by case determination of the relevancy of such requests." Citing, Milwaukee Board of School Directors, Dec. No. 15825-B (6/79), aff'd by operation of law, -C (WERC, 7/79). The MTEA, acting on behalf of all unit employes has a right and obligation under Sec. 111.70(4)(d)1, Stats., to monitor MBSD's direct dealings with employes on salary and benefit matters to ensure that they are not inconsistent with the collective bargaining agreement and do not prejudice the rights of other employes. MTEA argues that MBSD has placed conditions on that right which interfere with MTEA's ability to police its contract and screen grievances effectively and which therefore constitute a refusal to bargain in violation of Sec. 111.70(3)(a)4, Stats.

MTEA further argues that requiring a smed employe statement before releasing salary and benefit information interjects an unlawful barrier to the exculsive representative's access to information necessary and relevant to its representational function. Citing, City of Janesville, supra., NLRB v. Jaggars-Chiles-Stovall, 639 F.2d I344, 106 LRRM 2821 (CA5, 1981), cert. den., 454 U.S. 826, 108 LRRM 2558 (1981) and NLRB v. Item Co., 220 F.2d 936, 35 LRRM 2709 (CA 5, 1955), cert. den., 350 U.S. 836, 36 LRRM 2716 (1955). Here, MTEA contends that MBSD has conditioned release of the information to MTEA not only on a signed employe request but also on an initial employe contact directly with MBSD personnel and an employe complaint about his/her treatment by

MBSD staff. MTEA notes that there is no contention that the salary and benefit information is confidential, and that there is no evidence to support MBSD's contention either that there has been an increase in MTEA's information requests or that such requests are unduly burdensome to MBSD.

MTEA asserts that MBSD has interposed the instant conditions because it does not like it when employes call their union with wage and benefit inquiries rather than calling MBSD directly. While MBSD may not like it, employes have a right to deal with their employer on wages and benefits through their exclusive representative. Citing, City of Janesville, supra. MBSD's conditions force MTEA to tell employes that MTEA is unable to help them and that the employe must seek out the desired information themselves. It is often difficult for employes to do so because bargaining unit employes are working during most of MBSD's regular office hours. In addition, the employe must remember the name of the MBSD representative(s) spoken with, and must complain about someone at the MBSD office merely to get a liary or benefit verification from their union. MTEA asserts that this interferes with the employes' right to union representation and thereby constitutes a violation of Sec. 111.70(3)(a)1, Stats. Citing, Milwaukee Board of School Directors, Dec. No. 20139-B (6/83), modified by examiner -C (7/83), modified, -D (WERC, 6/85).

MTEA therefore reiterates its requests for relief specified in its complaint.

POSITION OF RESPONDENT

MBSD argues that its conduct did not constitute a violation of MERA in any respect.

MBSD acknowledges that in appropriate circumstances a municipal employer has an obligation to provide information upon request to the exclusive representative of its employes. It argues, however, that an exclusive representative's right of access to information is not unlimited; that both the obligation and the type of disclosure that will satisfy it turn upon the circumstances of the particular case, citing, Detroit Edison Co. v. NLRB, 440 U.S. 301, 314, 100 LRRM 2728, (1979); that the information sought must be relevant and necessary to the exclusive representative's function as collective bargaining representative, i.e., to collective bargaining or contract administration; that the production of the information must not be unduly burdensome to the employer; and that the employer may charge the labor organization for the reasonable cost of generating and supplying the information sought. Citing, Outagamie County, Dec. No. 17393-B (4/80), aff'd by operation of law, -C (WERC, 4/80) (held employer lawfully conditioned release of "considerable data" requested by exclusive representative on the latter's agreement to pay employer's reasonable costs of production thereof) and Milwaukee Board of School Directors, Dec. No. 16635-A (5/82)(Gerleman) and Browne v. MBSD, 83 Wis.2d 316, 332 (1978) (fair share cases recognizing dichotomy between permissible expenditures by an exclusive representative).

MBSD emphasizes that the routine informational requests covered by its disputed information release policy (i.e., routine informational inquiries by one of MTEA's members) are not within the purview of information relevant and necessary to the processes of collective bargaining and contract administration that make up the exclusive representative's representational function. Citing, Milwaukee Board of School Directors, Dec. No. 19477-A, (10/82), aff'd by operation of law, -B (WERC, 10/82) ("informational questions or responses do not constitute bargaining." Dec. No. 19477-A at 9); and Madison Metropolitan School District, Dec. No. 15629-A (5/78), aff'd by operation of law, -B (WERC, 5/78). MBSD argues that because

"representation" extends only to situations involving "collective bargaining and contract administration," it necessarily follows that there must either be a "dispute" or some other problem or matter of controversy between the parties to a collective bargaining agreement and requiring some form of negotiation or administration of such an agreement for a "representational" situation to arise. Such a situation may arise in the context of conventional collective

bargaining. It may also arise in the context of a grievance, complaint, or some other form of dissatisfaction either by the labor organization as an entity or by one of its members. An informational inquiry does not fail within any of those categories since it does not portend a "dispute," a matter of "dissatisfaction" or "problem" to which "representation" can attach. At best, it may be described as a "pre-representational" stage that may or may not ripen into a "representational" context. There is absolutely no reason as to why routine informational inquiry of this type may not lawfully be (or should not be) handled by the MBSD's own employer, who, after all, are the "keepers of the records" at issue and thus most likely to be familiar with them . . . Similarly, there is no need for an individual employee to seek "representation" in such a context . . .

MBSD brief at 19-20. MBSD argues that it is more appropriate for an employe who has a routine informational inquiry to first contact those in the best position to provide an efficient and expeditious response. If any dissatisfaction or "dispute" arises, MTEA may freely obtain the information upon a simple presentation of the name of the MBSD employe contacted and the reasons for dissatisfaction. These prerequisites will assist the MBSD in providing better service to its employes; they are by no means burdensome; and they do not preclude the MTEA in any way from obtaining information necessary for any legitimate "representational" function. Citing, City of Menomonee Falls, Dec. No. 15650-C (2/79), aff'd by operation of law, -D (WERC, 3/79).

MBSD asserts that MTEA's challenge of the information release policy is another of MTEA's efforts to advance its institutional interests by holding itself out as an alternative information center to MBSD, even though all of the information would originate from the MBSD. While MTEA is free to advance such interests, MERA does not compel MBSD to assist the MTEA in that effort.

MBSD asserts that the disputed information release policy is necessary to avoid imposition of undue and unnecessary burdens upon MBSD's office employes. MBSD asserts that the evidence shows that MTEA requests for routine information tend to be more complicated and extensive and to involve considerably more effort to respond to that do direct contacts from the employe seeking the same information or answer. MTEA's people tend to request documents more often than individual employes do and their inquiries are frequently less situation-specific than when the employe asks the question directly. Providing such copies can be time consuming, especially when they involve records outside of the Department of Employee Relations. While the record evidence has not precisely quantified the extent of the problem, the evidence does reveal that there were complaints from employes of the Department of Employee and that there had been an increase in the volume of time-consuming inquiries from MTEA. Since the MBSD has been providing professional and courteous responses to direct employe inquiries, there is no reason why MTEA should have to have a role in the routine processing of employe information requests. The fact that MTEA has been permitted to do so in the past is of no consequence, since this is a matter of MBSD's internal office administration policy which management is free to change in its discretion. Notably, there is no agreement provision requiring provision of such information to MTEA, whereas there are many other types of information which the parties' agreement does require MBSD to provide either upon request or on a periodic basis. Whether there were other means of solving the problem of increasingly burdensome information requests from MTEA is not relevant. The District chose a lawful means of addressing that problem, and there is no basis in law to interfere with that decision.

For those reasons, MBSD requests that the complaint be dismissed in its entirety.

DISCUSSION

It has long been held that the statutory duty to bargain in good faith requires a Wisconsin public or private sector employer in appropriate circumstances to supply certain information upon request to the exclusive representative. <u>E.g.</u>, Milwaukee Board of School Directors, Dec. No. 15825-B,

supra, and cases cited therein at Notes 9-10. "(F)ailure to provide the information is as much a breach of the duty to bargain as if the Employer failed to meet and confer with the Union in good faith. Once a good faith demand has been made, it is incumbent upon the Employer to make the information available promptly and failure to do so will be equated with a refusal. (citations omitted)" Id. at 17-18. "The information to which that duty generally applies is that which is relevant and reasonably necessary to the exclusive representative's negotiations with the employer for a collective bargaining agreement as well as that relevant to the representative's policing of the administration of an existing agreement, Id. at 17. The information requested need not relate to a pending dispute with the employer. E.g., J.I. Case Co. v. NLRB, 253 F.2d 149, 41 LRRM 2679 (CA7, 1958)("The courts have recognized that the information the Unions are entitled to have from management 'should not necessarily be limited to that which would be pertinent to a particular existing controversy." Id., 41 LRRM at 2683); NLRB v. Whitin Machine Works, 217 F.2d 593, 35 LRRM 2215 (CA4, 1954)(per curiam); Prudential Insurance Co. v. NLRB, 412 F.2d 77, 71 LRRM 2254 (CA2, 1969), cert. den. 396 U.S. 928, 72 LRRM 2695 (1969); Boston Herald-Traveler Corp. v. NLRB, 223 F.2d 58, 62, 63, 36 LRRM 2220 (CA1, 1955); and NLRB v. Item, supra. The exclusive representative's right to such information is not absolute and is to be determined on a case-by-case basis, as is the type of disclosure that will satisfy that right. E.g., Detroit Edison, supra, 100 LRRM at 2733; see also, Outagamie County, supra. Where the information is relative to wages and fringe benefits, it is presumptively relevant and necessary to carrying out the bargaining agent's duties, such that no proofs of relevance or necessity are needed and the burden is on the employer to justify its nondisclosure. E.g., Milwaukee Board of School Directors, Dec. No. 13825-B, supra, and cases cited therein at Note 10. In cases involving other types of information, the burden is on the exclusive representative in the first instance to demonstrate the relevancy and necessity of said information to its duty to represent unit employes. Id. at 17.

In the instant case, the Examiner is satisfied that the information sought by the MTEA falls within the presumptively relevant and necessary category. The disputed February 19 letter describes the information to which it applies as bargaining unit employes' "questions concerning their salaries, benefits, and absence records." Illustrative examples referred to in the record include employe questions about whether they are being paid at the proper salary rate (tr.21), whether the employe was paid a particular amount for a job performed (tr.26), whether the employe qualified for an additional day of accumulated sick leave credited to those who meet certain attendance standards (tr.31), whether MBSD properly coded certain time off as compensable injury time rather than personal absence time (tr.39), whether the employe is eligible for certain HMO or other health insurance benefits or for life insurance benefits (tr. 41), whether the employe has been properly credited toward salary for educational attainments (tr.56), whether and when the employe will be receiving a paycheck containing certain benefits (tr.66), whether the employe is in a vacancy status or some other employment status (tr.66), and whether MBSD's adjustment to the employe's pay to recoup an overpayment was proper (tr.36). The basic thrust of these kinds of questions is whether MBSD is properly granting the employe the salary, benefits and rights provided for in the applicable collective bargaining agreement. That, in turn, brings the information within the category of contract administration and MTEA's policing of MBSD's compliance with those agreements. As noted above, it has long been held that it is not necessary that the information requested relate to a particular grievance, dispute, complaint or a previously expressed employe dissatisfaction. For those reasons, the information at issue herein--which is basically about bargaining unit employes' wages, fringe benefits and contract rights--has been found to be presumptively relevant and reasonably necessary to MTEA's functioning as exclusive representative.

Even if the presumption were not deemed applicable, the evidence of record affirmatively establishes that the information is relevant and reasonably necessary to MTEA's functioning as exclusive representative of the units of MBSD employes involved. It is undisputed that MBSD alone possesses the records necessary to answer the questions at issue, and that it is necessary that MBSD be contacted if such answers are to be obtained. MBSD contends, however, that such matters are not relevant to MTEA's representational role because until the employe has initially contacted MBSD, there can be no dispute or dissatisfaction with MBSD's answers. As noted above, the information need not relate to a particular

pending dispute with the employer to be relevant and reasonably necessary to policing the collective bargaining agreement. Moreover, because MBSD keeps the records and does the calculations involved, it is understandable that some employes will sometimes prefer to have verification of MBSD's agreement compliance done from a knowledgable source independent of MBSD and its personnel. MTEA's Deeder testified that although MBSD's the employe benefits staff does its best to provide honest and sincere responses to employe inquiries (tr.37, 51, 59-60), some employes want their union's independent determination of whether they are being accorded their full rights under the contract in the area in which the question has arisen (tr.30, 52, 60). It stands to reason that in order to provide such an independent verification, MTEA will sometimes find it reasonably necessary to ask for background documents in addition to (or even instead of) MBSD's telephonic or over-the-counter answer to the employe's specific question. It also seems reasonable to conclude, as Deeder further testified, that some employes prefer to avoid direct contacts with MBSD's representatives and find working through their MTEA representative more comfortable and in some instances more convenient given the substantial overlap of their work hours with those of the Central Office staff (tr.52). It is also reasonable to conclude that, as Deeder further testified, some employes will be discouraged from asking questions through MTEA if to do so they are required to first contact MBSD directly and thereafter to identify and essentially criticize one of the office staff in order to obtain an independent MTEA verification of whether they are being compensated or treated in accordance with the parties' argeement (tr.56). In the Ecaminer's opinion, the right to have the exclusive representative ask such questions on their behalf is an integral part of municipal employes' Sec. 111.70(2), Stats., rights "to bargain collectively through representatives of their own choosing" and "to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection."

The Milwaukee Board of School Directors Dec. No. 19477-A, supra, and Madison Schools, supra, cases cited by MBSD do not support its argument that routine informational questions or responses are outside of the scope of the exclusive representative's statutory function. Both of those cases involved alleged individual bargaining by employer agents. In Milwaukee Board it was held that the municipal employer did not engage in untawful individual bargaining about mandatory subjects when its agent had background discussions with employes and thereafter issued a general report concerning the subjects discussed. In Madison Schools it was held that the municipal employer did not engage in unlawful individual bargaining about job sharing just because its agents had on occasion answered questions from participants in job sharing arrangements regarding fringe benefits and seniority rights. Neither the holdings in those cases nor the examiner's statement in Milwaukee Board that "informational questions or responses do not constitute bargaining" has any bearing on whether the exclusive representative has the right--without the sort of pre-conditions imposed herein -- to obtain information with which to answer its bargaining unit members' questions concerning the employer's compliance with the collective bargaining agreement. Those cases confirm that MBSD is not committing unlawful individual bargaining by providing information of the sort at issue herein to employes upon direct employe inquiries. It does not follow, however, that the information involved herein is therefore outside the scope of the representational function of the exclusive representative. MBSD has cited no precedent for its implied assertion that the universe of information which may lawfully be provided to individual employes upon individual inquiry is mutually exclusive from that which must be provided upon request to the exclusive representative, and the Examiner finds that assertion unpersuasive. Similarly, MBSD's unconditional disclosure of the information in question to MTEA would not border upon or constitute unlawful assistance to a labor organization within the meaning of Sec. 111.70(3)(a)2, Stats.

For the foregoing reasons, then, the Examiner has concluded that the information at issue herein is reasonably necessary and relevant to the representational function of MTEA. The burden therefore rests on the District to show that its information release policy is nonetheless justified in all of the circumstances.

MBSD seeks to justify its policy on the grounds that it has not flatly denied MTEA's right to the information in question; that the MTEA's information requests are not a good faith representational effort but rather are an effort to promote

MTEA's member relations and image as a central source of answers to all employe questions; and that MTEA's requests impose needless and unreasonably burdensome incremental time, effort and expense costs on the District which are avoided under the information release policy without depriving the employe either of the information sought or of an opportunity to obtain MTEA verification if the employe is in any way dissatisfied with the MBSD staff's response.

It is true that the disputed policy does not flatly refuse to provide the information to MTEA. Rather, release is conditioned on MTEA's providing a written request for release to MTEA signed by the employe, specifying the name of the MBSD staff member initially contacted by the employe for the information and the reason why the employe is dissatisfied with the MBSD staff member's response to As noted above, those MBSD-imposed pre-conditions present that request. significant obstacles to some employes who would prefer to make contract compliance information inquiries through their union in the first instance. In the Examiner's opinion, MBSD's the requirement of a prior direct employe request for the information from the employer inherently undermines MTEA's ability to police the agreement. See, Prudential Insurance Co. v. NLRB, supra, and NLRB v. Jaggers-Chiles-Stovall, supra. MBSD's pre-conditions also appear at least somewhat akin to a municipal employer's insistence (unlawful under MERA) that the right of the exclusive representative to pursue contract grievances be contractually conditioned on its first obtaining the signature of an aggrieved See, e.g., Waupun Schools Dec. No. 22409 (WERC, 3/85)(municipal employer's bargaining proposal held to be a permissive subject of bargaining where it would condition exclusive representative's access to the contractual grievance procedure upon its obtaining an affected employe's signature on the grievance, because proposal would undermine employes' enjoyment of statutorily protected right to bargain collectively through chosen exclusive representative.)

MBSD argues that pre-conditions on disclosure of relevant and necessary information to the exclusive representative more stringent than those at issue herein were permitted in City of Menomonee Falls, supra. The Examiner disagrees. The examiner in Menomonee Falls held that there was no violation of Sec. 111.70(3)(a)1, Stats., where the police chief had ordered that his permission be obtained before records relating to a particular police and fire commission proceeding were released to anyone. The examiner specifically noted that no one had ever asked the chief for his permission and that there was no evidence suggesting that the exclusive representative would have been denied the information had it merely request it from the chief, who was both the official custodian of those records and who was shown to have been reasonably available to the representative for purposes of such a contact. Id., Dec. No. 15650-C at 14. By Contrast, MBSD has imposed significantly more restrictive conditions than merely requiring MTEA to ask a specified MBSD agent for the information in question.

MBSD has correctly noted that the Federal Court of Appeals in Detroit Edison, supra, found it lawful for the employer to have conditioned release of individual employes' scores on certain promotional examinations on the union providing an individual release signed by the employe involved. However, the Court in that case emphasized that it was basing its decision on the NLRB's failure to adequately accommodate Detroit Edison's concerns that test secrecy is critical to the continuing validity of its costly statistically-validated psychological aptitude testing program and that confidentiality of scores is undeniably important to the examinees. Upon consideration of the "abundantly demonstrated" strength of the company's need for test security, the Court found the arguable relevance of the information was outweighed by the justifications presented by the Company. In the instant case, however, no confidentiality interests have been asserted by MBSD, and there is nothing akin to the strong policy considerations favoring protection of the validity of statisticallyvalidated employer testing in Detroit Edison. See, id. at Note 16.

The Examiner finds MBSD's claim that MTEA's requests for information are not being made in good faith pursuit of representational interests to be contrary to the weight of the evidence. There is no evidence that MTEA has discouraged employes from taking the questions at issue directly to MBSD. On the contrary, MBSD witness Burnette testified that on some occasions prior to the February 19, 1987 letter, MTEA representatives had referred at least some employe inquiries for

direct responses form MBSD (tr.69). In addition, Deeder asserted that MTEA does not discourage employes from directly contacting MBSD for that purpose (tr.31, 50), and the record shows that MBSD receives many more direct employe information requests than it receives through the MTEA (tr.69, 75, 80-81).

The evidence also does not support the contention that MTEA is intent upon making itself a duplicate payroll operation. The fact alone that MBSD's salary history information for periods prior to March, 1984 remains on manually-accessed cardex system (tr.64-65), supports Deeder's testimony (tr.116) that MTEA could not make itself a duplicate payroll operation as regards information now available only from MBSD, even if it wanted to become same. It is also undisputed that Deeder has suggested on several occasions that MBSD broaden the range of information provided to employes by MBSD on the check stub (tr.49), suggesting that MTEA is interested in reducing the need for employes to ask questions of MTEA as well as of MBSD. While there is also evidence that Deeder and MTEA have, at various times in the past, suggested -- without success -- that MTEA be permitted to have an on-line read-only terminal connected to MBSD's mainframe or that MBSD send certain batch data to MTEA through a telephone modem hook up to MTEA's computer; as noted above, neither computer arrangement would have given MTEA a duplicate payroll operation. More importantly, because both of those proposals would likely reduce the time spent by both MBSD and MTEA in exchanging information and answering employe questions, MTEA's purpose for making those proposals appears to be to promote mutual efficiency of operations as much or more than it is to improve MTEA's image with its members.

In sum, the record evidence as a whole does not support MBSD's claim that MTEA's requests for salary, benefits and related information at issue herein have been for an ulterior purpose besides performing the representational function of verifying whether the inquiring employes have been accorded their rights under the agreement. The fact that MTEA's performance of that function may enhance its image in the eyes of unit employes does not remove that function from the scope of its role as exclusive representative any more than employe satisfaction with MTEA contract negotiation results would remove negotiations from the scope of MTEA's role as exclusive representative. cf. Prudential Insurance Co. v. NLRB, suppa, ("Prudential's complaint that the Union may use this information to solicit new members within the unit is simply of no moment." 71 LRRM at 2260).

MBSD has also noted that its agreements with MTEA provide for numerous types of information to be supplied to MTEA but that answers to employe questions of the sort at issue herein are not among those and have never been the subject of a bargaining proposal dealt with between the parties. Those facts do not detract from MTEA's good faith in requesting such information since MTEA relies herein on a basic statutory right of MTEA to information as exclusive representative which right does not depend on the existence of an agreement and which right clearly cannot be said to have been waived in the instant circumstances.

There remains MBSD's contention that answering MTEA's requests for the information at issue has become unduly burdensome on MBSD. In general, the amount of MBSD staff time and resources used in answering an employe information question—whether posed to MBSD directly by the employe or through MTEA—can vary from a few minutes to several hours depending on the complexity of the question, and the number of departments that have to be contacted can vary from one to several. The crucial issue here is to what extent MTEA's initial involvement adds to MBSD's burden, and whether that incremental effort is unduly burdensome.

In that regard, MBSD witnesses Kwiatkowski and Burnette basically testified that they had noticed an increase amounts of MBSD staff time being devoted to generating documents and conducting research in response to MTEA inquiries on behalf of employes in the months preceding issuance of the February 19, 1987 letter and that their subordinates had complained that such inquiries from Deeder and other MTEA representatives were unnecessarily taking an inordinate amount of their time relative to the time that would be taken if the employes contacted MBSD directly. The MBSD witnesses further testified that when employe information requests came to MBSD through MTEA representatives rather than directly from the employe: MBSD was more frequently called upon to do more research and provide more documents, either to support MBSD's answers or to permit MTEA to determine the answers for itself, sometimes without MTEA's ever asking MBSD the particular question posed by the employe; the MTEA representative sometimes calls back with

follow up questions about MBSD-supplied documents or from the employe, which MBSD personnel could have immediately answered for the employe had they been in direct communication; MBSD's time and effort in responding is unnecessarily increased because some MTEA representatives lack the knowledge or experience with the payroll or benefits issues involved that the MBSD personnel have, requiring unnecessarily lengthy explanations. MBSD witness testimony also asserted that there had been an increase in the amount of time MBSD has spent in responding to MTEA employe information requests since Deeder returned to work (apparently circa mid-December, 1986) following recuperation from a heart attack; that since Deeder's return to work, he has no longer been performing certain of the negotiations-related duties he had performed prior to the heart attack and has instead appeared to be devoting more of his time than ever before (and perhaps virtually all of his time) to information request processing, with burdensome consequences for the MBSD staff; and that Deeder's longstanding interest in computers, coupled with MBSD's recent computerization of some of its salary records have apparently contributed to his increased interest and activity in this area, as well.

The MBSD witnesses had no statistical records or other quantitative data to support their testimony in any of the above regards, stating that their people did not have time to develop such information in addition to their own duties. When pressed, Burnette estimated variously that he received two to three (tr.75) or five to six (tr.81) calls per day from MTEA staff members, but he could not estimate the total number he and his subordinates received from MTEA combined (tr.83). In comparison, he stated that he personnally handled approximately 2 calls per hour from employes directly (tr.69).

On the other hand, Burnette admitted: that he can research a fairly complex salary history audit in about 10 minutes (tr.66); that he could recall only one instance in the 18 years Deeder had been handling salary inquiries where an inquiry by Deeder had required one or more follow-up calls (tr.79-80); that MTEA's five or six representatives are generally skilled and conversant in the contractual requirements and know the right questions to ask (tr.73,80); and that, on occasion, the MTEA representative's involvement usefully serves as a buffer between the MBSD staff and the employes, by answering some questions that do not require information in MBSD's records, and by dealing with sometimes angry employes with a sympathetic explanation of the reasons why things are as they are (tr.74,80). The record also establishes that within MTEA, employe information requests tend to be routed to the MTEA staff member specializing in the salary or benefit area involved (tr.27).

The record establishes that because portions of MBSD's salary information is now computerized, some information gathering can be done electronically, though because there in no room for a printer in Burnette's area, it is necessary for him to contact a separate department to arrange for the printout to be made when one is requested (tr.70). Deeder testified without contradiction that he requested only three printouts in the month and a half or two months between his return to work following his illness and MBSD's implementation of the February 19, 1987 letter (tr.27,110). Burnette estimated Deeder's requests for such documentation at a few per month (tr.74). Deeder estimated that it takes MBSD approximately 10 minutes to produce a salary printout (tr.54). It is not clear how many printouts or document requests are received from other MTEA representatives.

On rebuttal, Deeder denied that he was spending any more of his time on employe information request processing he had before his heart attack (tr.117). He asserted that he has been interested in computers for years and that his written request on July 29, 1985 for an MTEA-MBSD computer link occurred at the time MTEA obtained a computer and predated his heart attack by six months (tr.116).

As noted, MBSD produced no financial or other figures showing the comparative burden of processing questions before and after policy implemented.

Upon consideration of the foregoing and the record as a whole, the Examiner is satisfied that MBSD has failed to establish that MTEA's requests for employe information are unduly burdensome to MBSD. It seems fair to conclude that, on balance, MTEA's involvement in an information request tends to increase the amount of information and documentation that MBSD ultimately provides in responding to

it. The evidence does not establish that the incremental effort thereby required of MBSD has been inordinate or that the burden of responding to MTEAs requests on such matters without the February 19, 1987 letter's pre-conditions has been or would be unduly burdensome.

Because MTEA is being called upon by the employes involved to verify the propiety of MBSD's calculations, reporting or other statements of actions, it is not surprising that MTEA will reasonably need enough information and in some instances enough documents upon which to make its own independent judgment in the matter without merely taking MBSD's word for it that the calculation or statement or action is correct. Also, because MTEA representatives are generally more knowledgable and aggressive in pursuing the answers the employes are seeking, it is again not surprising that responding to their inquiries takes somewhat more time and effort than it might typically take in responding to the employe directly.

As noted above, the Examiner is persuaded that MERA provides the employes the right to obtain this kind of information from their employer through their exclusive representative. The exclusive representative has a responsibility and a right to police the employer's compliance with the terms of the parties' agreements, not only when employes raise specific questions in that regard, but even in the absence of any employe inquiry. Again, the fact that the exclusive representative may simultaneously derive "institutional" advantages from obtaining and providing answers to employe questions and concerns about their rights under the agreement does not in any way limit the union's rights to access the information involved from the employer. cf. Prudential Insurance v. NLRB, supra.

MBSD's objectives of providing employes with answers to their questions efficiently and cost-effectively are legitimate objectives. Indeed, the Examiner cannot conclude herein that MBSD issued its information release policy for any other purpose than to further those objectives. Nevertheless, for reasons noted above, the Examiner has found that MBSD's policy deprives employes of the free choice between contacting the employer for the information directly or conducting such an inquiry through the exclusive collective bargaining representative. By unjustifiably imposing pre-conditions on its willingness to disclose information to MTEA that is relevant and reasonably necessary to MTEA's representational function, MBSD has committed a refusal to bargain in violation of Sec. 111.70(3)(a)4, Stats. and, derivatively, an interference with the Sec. 111.70(2), Stats., rights of its employes in violation of Sec. 111.70(3)(a)1, Stats.

Accordingly, the Examiner has fashioned an order requiring MBSD to cease and desist from such prohibited practices in the future, to rescind the February 19, 1987 letter, to post notices to employes, and to report to the Commission regarding its compliance with said order.

Dated at Madison, Wisconsin this 5th day of May, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Marchall L Cratz Examinat