STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MORAINE PARK SUPPORT STAFF ASSOCIATION, WISCONSIN EDUCATION ASSOCIATION COUNCIL,	
Complainant,	Case 31 No. 45188 MP-2438
vs.	Decision No. 26859-B
MORAINE PARK VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT,	
Respondent.	

Appearances:

Mr. Anthony Sheehan, Staff Counsel, P. O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of the Complainant Moraine Park Support Staff Association, Wisconsin Education Association Council.

Edgarton, Ondrasek, St. Peter, Petak & Massey, Attorneys at Law, by Mr. John A. St. Peter, P. O. Box 1276, Fond du Lac, Wisconsin 54936-1276, appearing on behalf of the Respondent Moraine Park VTAE District.

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

On October 1, 1992, Examiner Daniel J. Nielsen issued Findings of Fact, Conclusion of Law and Order in the above matter, wherein he concluded that Respondent Moraine Park Vocational, Technical and Adult Education District had not committed prohibited practices within the meaning of Sec. 111.70(3)(a)4 and 1, Stats., by the manner in which it responded to a request for information submitted by Complainant Moraine Park Support Staff Association, Wisconsin Education Association Council. He therefore dismissed the complaint.

Complainant timely filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.70(4)(a) and 111.07(5), Stats. The parties filed written argument in support of and in opposition to the petition, the last of which was received December 7, 1992.

Having considered the record, the Examiner's decision, and the parties positions on review, the Commission makes and issues the following

ORDER 1/

A. Examiner's Findings of Fact 1 - 8 and 10 - 14 are affirmed.

B. Examiner's Finding of Fact 9 is modified to read:

> 9. That Jensen is the official within the District who designed the process used to make classification and salary placement determinations, and supervised the process which led to the classification

of the new position as a Clerk V and placement of the job at pay range 9.

C. Examiner's Finding of Fact 15 is modified to read:

> 15. There is no specific evidence that the requested documents contain confidential or privileged information.

D. Examiner's Conclusion of Law is affirmed.

E. The Examiner's Order dismissing the complaint is affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of August, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

William K. Strycker /s/
William K. Strycker, Commissioner

I concur in part
and dissent in part

Herman Torosian /s/
Herman Torosian, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

(footnote continued on Pages 3 and 4)

1/ (footnote continued from Page 2)

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(footnote continued on Page 4)

1/ (footnote continued from Page 3)

> (b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.
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> . . .
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> (c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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

The facts are undisputed. The parties disagreed over the appropriate contractual salary range for a new bargaining unit position. In its capacity as the collective bargaining representative of the new position and in furtherance of its role and responsibility to enforce the collective bargaining agreement, the Association made the following request of the District:

> Further, in order to complete its investigation into this matter, the Association Grievance Committee requests a specific description of the procedure used by management personnel in the determination of the classification and salary range assignment given to positions contained within the bargaining unit represented by the Association.
>
> This specific description must include at least: a thorough verbal briefing of the procedure for reclassification/salary range determination along with supportive forms, documents, instructions, etc., used by management for such determinations.

The District provided the requested verbal briefing but refused to provide the requested documents. The District advised the Association as follows:

> . . .
>
> 2. A thorough verbal briefing of the procedure for reclassification/salary range determination was provided to the Association on January 22, 1990.
>
> 3. The Association's request for supporting documents is denied as follows:
>
> a) No bargaining agreement language exists regarding release of such supporting documents. In addition, Article II, Section 2.01 (Management Rights) explicitly states in part, '...the management of the District and the direction of all personnel is vested exclusively in the District...'
>
> b) No statutory obligation exists under Wisconsin Statute 103.13 -- Records Open to Employee. Further, Wisconsin Statute 103.13(6)(d) excludes such supporting documents from release as follows:
>
> 'Materials used by the employer for staff

> management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments or other comments or ratings used for the employer's planning purposes.'

Therefore, grievance denied.

The Association then filed the instant complaint.

The Examiner concluded that the documentary information sought was relevant and reasonably necessary to the Association's performance of responsibilities as bargaining representative. He also rejected the District's contentions that the contractual management rights clause and Sec. 103.13(6)(d), Stats., allowed the District to refuse to provide the information. However, because he believed the verbal briefing did provide or could have provided all of the information contained in the requested documents, the Examiner concluded that the briefing constituted compliance with the Association's request for information, albeit in a different form than requested. He therefore dismissed the complaint.

On review, the Association disputes the Examiner's conclusion that the verbal briefing sufficed. It asks why the District continues to assert a confidentiality defense as to the documents if the verbal briefing provided the same information. It asks how it can specifically justify a request for a specific document when it does not know what documents exist or what information they contain.

The Association further notes that the District did not defend its refusal to provide the documents with the rationale adopted by the Examiner. Thus, the Association contends that, unlike the Examiner, the District did not find the document request to be too broad or ambiguous, or question its purpose, or assert that it had already provided the information sought, albeit in a different form.

Given the foregoing, the Association asks that the Examiner be reversed.

The District urges affirmance of the Examiner's dismissal of the complaint and of a portion of his rationale. However, the District continues to assert that the scope of the Association request is sufficiently broad to also warrant denial thereof under the management rights clause of the bargaining agreement and Sec. 103.13(6)(d), Stats. The District also contends that the Association

has not identified the basis for its need for documents. Finally, the District asserts that the lengthy oral briefings made by the District explained the classification process and provided the opportunity to answer all questions.

We start our consideration of this case by establishing the scope of Association request. As noted earlier herein, the request stated:

> Further, in order to complete its investigation into this matter, the Association Grievance Committee requests a specific description of the procedure used by management personnel in the determination of the classification and salary range assignment given to positions contained within the bargaining unit represented by the Association.
>
> This specific description must include at least: a thorough verbal briefing of the procedure for reclassification/salary range determination along with supportive forms, documents, instructions, etc., used by management for such determinations.

As evidenced by the underlined portions, we find the request to be a generic one seeking documentary evidence as to how the District generally makes salary level determinations and as to whether these general procedures were applied to this position. Thus, although we acknowledge the existence of testimony at hearing that the request extends to management notes, etc., we find such testimony to be at odds with the request to which the District responded. Thus, we will not address the Association's right to notes, etc., either in the context of a duty to bargain information request or in the arbitration proceeding before Arbitrator Vernon.

We affirm the Examiner's conclusion that the "forms, documents, instructions" are relevant and reasonably necessary to the Association's ability to administer the contract. We also agree with the statement of law set out by our colleague as supported by footnotes 3 - 9 inclusive; however, we disagree with his conclusion that information must be provided in the exact form requested. We find the Examiner's rationale for dismissing the complaint persuasive and so affirm.

Regarding the need for the employer to provide the information in the form requested, the Examiner stated:

> The question is narrowed to the necessity for the information in a particular form -- in this case "supportive forms, documents, instructions, etc." -- as opposed to a verbal briefing. The type of disclosure that satisfies the duty to provide information is determined on a case by case basis, and may turn on a

balancing of the Association's claimed interest in a particular format and the District's claimed interest in safeguarding its internal files. 5/

5/ "The exclusive bargaining 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."** Milwaukee Board of School Directors, Dec. No. 24729-A (Gratz, 5/88), at page 10 (emphasis added). See also LaCrosse School District, Dec. No. 26541-A (Crowley, 3/91): "The employer is not required to furnish information in the exact forum (sic) requested by the exclusive representative and it is sufficient if the information is made available in a manner not so burdensome or time-consuming as to impede the process of bargaining." Id., at page 6.

The Examiner stated that the Association had the right to obtain "relevant information rather than specific pieces of paper." He properly concluded that the District had provided the requested information during the oral briefings.

After the District classified the Clerk V position at pay range 9, the Union objected. Two (2) lengthy meetings were held to discuss the classification process and its application to the Clerk V position. On December 11, 1989, the first meeting was held to discuss the Association's concerns. Association representatives compared and contrasted existing positions with the newly created Clerk V position. Duties and responsibilities were discussed and detailed arguments were offered by the Association (TR 49-51). Because the Association was not satisfied with the responses provided by the District's Employee Services Supervisor, a formal information request was submitted (TR 52). On January 22, 1990, a meeting was held in response to the Union's request. The Employee Services Supervisor explained the classification process in great detail. The briefing, which lasted approximately ninety (90) minutes, provided a step-by-step explanation regarding the process and placement of positions. In addition to the detailed explanation, the supervisor answered all questions presented by the Association (TR 55-56, 72-77). The record demonstrates that the mechanism used in this instance has been used previously to resolve disputes of this nature (TR 60-64). Although the Association continued to dispute the result, the Association was unable to identify a need to receive the information in the exact form requested. We agree with the Examiner's conclusion that the information was provided in another form.

The Association generally argued to the Examiner that the documents would give it a better understanding of the District's decision-making process. The Association specifically asserted that it was unable to determine the exact value assigned to the various components of the Clerk V position without additional information. The Examiner stated:

> Nothing in this record indicates why this is so, or why this information could not have been obtained by asking Jensen during the January briefing. In fact, the record is devoid of any evidence that information about the weight assigned to each duty was ever requested prior to the prohibited practice hearing. While the degree of specificity required for an information request varies, (footnote omitted) an employer cannot be required to guess at the object of an information request in order to avoid liability under the duty to bargain. The District must have some reasonable opportunity to understand what information is sought, so that it can seek to satisfy the legitimate interests of the Association and determine whether the request invades some specific and substantial interest of confidentiality.

We agree with the Examiner. The Association did not communicate a lack of understanding regarding the decision-making process. In fact, the record is clear that all questions were answered. Also, as the examiner identified, the record does not demonstrate that information regarding weights assigned to job components, was requested prior to the prohibited practice hearing.

The Association also argued to the Examiner that the documents would allow it to assess the credibility of the verbal briefing. The Examiner rejected this argument holding:

> Acceptance of this argument would create a circular doctrine of law in that its logic requires that, once information is provided, in whatever form, all other forms of the same information be provided for corroboration. This eliminates a party's option of providing information in a form other than that requested, by creating an unlimited right to demand a piece of information in every form in which it exists, so as to cross-check the accuracy all of the other sources of the same information. If there is some reason for the exclusive representative to believe that it is being misled, it has the right to seek corroborative data. However, no such reason has even been articulated in this case. (Footnote omitted.)

Nothing on the record supports that the Association was misled or provided with inaccurate information. The Association did not identify discrepancies or inconsistencies with the information provided at the oral briefings. If discrepancies or inconsistencies were present in the oral briefings, the need for corroboration and verification would have merit. If the explanation lacked credibility, additional documents could possibly be helpful in addressing that problem. Since credibility is not an issue, we agree with the Examiner's conclusion.

In summary, the two conferences were substantial both in time and detail. All questions asked by the Association were answered. The process and results were explained thoroughly. The Association does not contend that it does not understand the process. The Association merely disagrees with the outcome. There were no issues of credibility or integrity raised which may need corroboration. The Association has not been able to identify a need to receive the information in a different form. Following the Association's line of argument, all information would need to be provided in the exact form requested or the employer would be subject to an automatic corroboration argument.

Therefore, we have affirmed the Examiner. 2/

Dated at Madison, Wisconsin this 9th day of August, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/

A. Henry Hempe, Chairperson

William K. Strycker /s/

William K. Strycker, Commissioner

2/ Given the result we reach, it is unnecessary to consider the additional defenses asserted by the District relating to Sec. 103.13(6), Stats., or the management rights clause contained within the collective bargaining agreement.

Concurring and Dissenting Opinion of Commissioner Herman Torosian

I disagree with the majority's decision which stands for the proposition that relevant information sought by the Union does not have to be provided in the form requested, but by any form decided by the Employer, as long as the information is provided. This simply is contrary to both Commission and federal law.

It has long been held that a municipal employer's duty to bargain in good faith pursuant to Sec. 111.70(1)(a), Stats., includes the obligation to furnish, once a good faith demand has been made, information which is relevant and reasonably necessary to the exclusive bargaining representative's negotiations with the employer or the administration of an existing agreement. 3/ Whether information is relevant is determined under a "discovery type" standard and not a "trial type standard." 4/ The exclusive representative's right to such information is not absolute and must be determined on a case-by-case basis, as is the type of disclosure that will satisfy that right. 5/ Where information relates to wages and fringe benefits, it is presumptively relevant and necessary to carrying out the bargaining agent's duties such that no proofs of relevancy or necessity are needed and the

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3/ Milwaukee Board of School Directors, Dec. No. 24729-A (Gratz, 5/88), affirmed Dec. No. 24729-B (WERC, 9/88); Racine Unified School District, Dec. No. 23094-A (Crowley), 6/86), aff'd by operation of law, Dec. No. 23094-B (WERC, 7/86); Outagamie County (Sheriff's Department), Dec. No. 17393-B (Yaeger, 4/80), aff'd by operation of law, Dec. No. 17394-C (WERC, 4/80).

4/ Proctor and Gamble Manufacturing Co. v. N.L.R.B., 102 LRRM 2128 (8th Cir., 1979).

5/ Milwaukee Board of School Directors, Dec. No. 24729-A (Gratz, 5/88) affirmed Dec. No. 24729-B (WERC, 9/88) citing Detroit Edison, supra, and Outagamie County, supra at n. 2.

burden is on the employer to justify its non-disclosure. 6/ In cases involving other types of information, the burden is on the exclusive representative in the first instance, to demonstrate the relevance and necessity of said information to its duty to represent unit employes. 7/ The exclusive representative is not entitled to relevant information where the employer can demonstrate reasonable good faith confidentiality concerns and/or privacy interests of employes. 8/ The employer is not required to furnish

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6/ Milwaukee Board of School Directors, supra n. 2 and 4.

7/ Id.

8/ Detroit Edison, supra; Safeway Stores v. N.L.R.B., 111 LRRM 2745 (10th Cir., 1982); Soule Glass and Glazing Company v. N.L.R.B., 107 LRRM 2781 (1st Cir., 1981).

information in the exact form requested by the exclusive representative and it is sufficient if the information is made available in a manner not so burdensome or time consuming as to impede the process of bargaining. 9/

We all agree the information requested was relevant and thus, in my opinion, the Union was entitled to the information unless the employer could "demonstrate reasonable good faith confidentiality concerns and/or privacy interests of employes." Such a demonstration is lacking in this case. Nor has the Employer justified its refusal to provide the relevant information in the form requested. Case law allows an employer to provide requested information in another form ". . . if the information is made available in a manner not so burdensome or time consuming as to impede the process of bargaining." There is no evidence in this case that the information sought in the form requested was unduly burdensome to the Employer.

The majority, in support of its position, cites the Milwaukee Board of School Directors and LaCrosse cases. But in the Milwaukee case the information sought was found to be relevant and that the production of the information in the form requested was not unduly burdensome to the employer. In the LaCrosse case the information sought was found to be relevant but the employer's refusal to provide it in the form requested was justified for confidentiality reasons.

It appears, the majority's view of the law with respect to providing relevant information is that an employer can provide such information in the form it chooses, even if providing said information is not burdensome to the employer and if no issue of confidentiality exists. My view is that relevant information must be provided in the form requested unless a legitimate and substantial reason for its non-disclosure is shown. Here there was no such reason for not providing "supportive forms, documents, instructions, etc." used by the Employer in making its reclassification/salary range determination.

With respect to the District's management rights and Sec. 103.13(6), Stats., defenses, I affirm the Examiner's rejection of same and his rationale in support thereof.

Dated at Madison, Wisconsin this 9th day of August, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/

Herman Torosian, Commissioner

9/ Cincinnati Steel Casting Co., 24 LRRM 1657 (1949).