STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**LOCAL 382, AFSCME, AFL-CIO,** Complainant,

vs.

**TREMPEALEAU COUNTY,** Respondent.

Case 83
No. 57349
MP-3494

## Decision No. 29598-B

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Appearances:

Shneidman, Myers, Dowling, Blumenfield, Ehlke, Hawks & Domer, by **Attorney Bruce F. Ehlke,** P. O. Box 2155, Madison, Wisconsin 53201-0442 and **Mr. Daniel R. Pfeifer,** Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 18990 Ibsen Road, Sparta, Wisconsin 54656-3755, appearing on behalf of Local 382, AFSCME, AFL-CIO.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Stephen L. Weld,** 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of Trempealeau County.

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

On September 7, 1999, Examiner David E. Shaw issued Findings of Fact, Conclusion of Law and Order with Accompanying Memorandum in the above matter wherein he concluded that Respondent Trempealeau County had committed prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 1, Stats., by failing to provide requested information to Complainant Local 382, AFSCME, AFL-CIO. The Examiner also concluded that Respondent had not thereby also committed a prohibited practice within the meaning of Sec. 111.70(3)(a)2, Stats.

Respondent timely filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats. The parties thereafter filed briefs in support of and in opposition to the petition, the last of which was received November 18, 1999.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

## ORDER

A. Examiner Findings of Fact are affirmed.

B. Examiner Conclusion of Law 1 is affirmed.

C. A second Conclusion of Law is hereby made which reads:

> 2. The Respondent Trempealeau County, its officers and agents, by refusing to provide Complainant Local 382, AFSCME, AFL-CIO, with the preliminary information developed by David M. Griffith and Associates that pertained to the Respondent County's represented positions did not commit a prohibited practice within the meaning of Sec. 111.70(3)(a)2, Stats.

D. The Examiner's Order is affirmed as modified to add the following:

> 3. The complaint allegation alleging a violation of Sec. 111.70(3)(a)2 Stats., is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 13th day of January, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

**Trempealeau County**

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

## BACKGROUND

The complaint alleges that the Respondent County has committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2, and 4, Stats., by refusing to provide Complainant Union with a requested "preliminary initial report" from David M. Griffith and Associates regarding bargaining unit positions.

The Respondent admits that it refused to provide the requested information but argues it had no obligation to do so. Respondent asserts the information is neither relevant to nor reasonably necessary for the Complainant to fulfill its role in collective bargaining or contract administration. Respondent also argues the information need not be provided because the data is preliminary and may contain errors.

### The Examiner's Decision

The Examiner concluded the requested information related to the wages of employes represented by Complainant and thus was "presumptively" relevant to and reasonably necessary for Complainant to fulfill its role as the collective bargaining representative. He stated:

> The information requested in this case relates to the placement of bargaining unit positions in various pay grade groupings of County job classifications which was done at the time as a preliminary step in doing the compensation and classification study. The Respondent's Personnel Director testified (Tr. 42) and the Respondent's own bargaining proposals in the previous negotiations (Joint Ex. 8) establish, that at least part of the original bases for doing the classification and compensation study related to the number of reclassification requests being received from Complainant's members and a desire to develop a more equitable salary structure. The preliminary data in question placed County positions in pay range groups, albeit without specifying the salary ranges for the groups (Tr. 39). The relevance of such information to bargaining wages and the placement of positions in the salary structure is apparent. As such, the information relates directly to wages and is, therefore,

> presumptively relevant and necessary to Complainant's functions and responsibilities as the exclusive bargaining representative of the employes in those bargaining unit positions. That being the case, no proof of relevancy or necessity are needed, and the burden is on the Respondent to justify non-disclosure. MORAINE PARK, SUPRA. While examiner and the Commission have on occasion noted that the employer relied on the information to justify its position in bargaining in finding that the information sought was relevant and reasonably necessary to the union's fulfilling its responsibilities as bargaining agent, e.g., STATE OF WISCONSIN (DER), DEC. NO. 27708-A, SUPRA, and STATE OF WISCONSIN, DEC. NO. 17115-C, SUPRA, the Commission has not modified its standard or otherwise indicated it no longer would recognize the presumption of relevance and necessity with regard to wage-related information.

Given the presumptive relevance of the information requested, the Examiner determined the burden then shifted to Respondent County to establish a valid basis for the refusal to provide the information. He found that Respondent had not established such a basis and stated:

> In that regard, the Respondent asserts that the information provided by DMG in the early stages was too preliminary and unverified to be useable and was likely to confuse, and again, it did not rely on the information in bargaining. The HOFSTRA UNIVERSITY decision by the NLRB provides some guidance in this regard. In HOFSTRA, the union sought a copy of a draft report from a consultant evaluating clerical positions that the union represented in order to prepare for negotiations for a successor agreement. The employer refused the union's request on the bases that no final report was prepared, as it had terminated the project, and because it did not use the draft report to formulate any position it took in bargaining. In reversing the ALJ's determination that the draft report was not relevant for those reasons, the NLRB stated:
>
> > The questionnaire used by the consultant to prepare the draft report contained questions designed to determine "What you do, How and When you do it." The Respondent's director of human resources explained to the Union that the purpose of the questionnaire was to "find out what the responsibilities of the individuals are . . . and, also, what the job content was." The consultant analyzed the answers in the returned questionnaires and made proposal in the draft report submitted to the University. Given the above, we find that the draft report relates to job responsibilities and content and therefore encompasses mandatory subjects of bargaining and thus is presumptively relevant. WASHINGTON HOSPITAL CENTER, 270 NLRB 396, 400-401 [116

LRRM 1459] (1984). That the Respondent made no use of the draft report is irrelevant since the information contained in the report is presumptively relevant to the Union in fulfilling its obligations as statutory bargaining representative. 3/

Further, the Respondent's hiring of the consultant occurred shortly before bargaining for a successor agreement began between the Respondent and the Union. The Union made clear to the Respondent that it was requesting the information to prepare for bargaining. In testimony elaborating on its need for the information, the Union explained that it feared the University was displacing a certain unit employee classification with nonbargaining unit employees and that it was concerned about the possibility of subcontracting unit work – both concerns related to mandatory bargaining subjects. The president's statement about the purpose of the consultant's study and the information sought in the questionnaire the consultant used strongly suggest that the draft report might relate in some way to these bargaining subjects. 4/ Thus, rather than simply requesting information about which it was curious, the above shows that the Union's request was bottomed on specific concerns about mandatory bargaining subjects. 5/

It is true, as the Respondent argues, that in WASHINGTON HOSPITAL CENTER, SUPRA – a case involving presumptively relevant information – the employer used the information the union sought. We do not agree, however, that Washington Hospital Center or any other case the Respondent cites holds that information pertaining to bargaining unit matters must be relied on by the possessor for bargaining or other purposes for the information to be presumptively relevant. Such a rule would put into one party's hands the ability to decide unilaterally whether information pertaining to wages, hours and working conditions was relevant. The Respondent may not have utilized any of the information contained in the draft report and may have decided it was not relevant to bargaining, but because the requested information was presumptively relevant, the Union was entitled to examine the information and determine for itself whether it was relevant to bargaining.

We find that the Respondent, by refusing to furnish the draft report to the Union, violated Section 8(a)(5) and (1) of the Act.

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. . .

3/ Our dissenting colleague assumes arguendo that the draft report was presumptively relevant, but concludes that the Respondent rebutted the presumption by showing that the project was abandoned and that no bargaining proposals were based on the draft report. We disagree. In our view, the fact that the Respondent did not use the draft report establishes only that the Respondent decided the report was not relevant to its purposes. Under Sec. 8(a)(5) of the Act, however, the key inquiry is whether the information sought by the Union is relevant to *its* duties. NLRB v. LEONARD B. HERBERT, JR. & CO., 696 F.2D 1120, 1124 [112 LRRM 2672] (5th Cir.1983) (emphasis added)

Because employers and unions often have divergent interests, information that is not considered relevant by one party may be highly relevant to the other. Furthermore, the Supreme Court has adopted a discovery-type standard of what constitutes relevant information. ACME INDUSTRIAL, SUPRA. 385 U.S. at 437. Under that liberal standard, where, as here, the information requested pertains to employees' working conditions, "the information must be disclosed unless it plainly appears irrelevant." TELEPROMPTER CORP. V. NLRB, 570 F.2D. 4, 8 [97 LRRM 2455] (1st Cir. 1977). In sum, the Respondent's failure to take some action based on the draft report is not conclusive and does not "plainly" establish that the report would be of no use to the Union in carrying out its statutory duties and responsibilities.

. . .

> 5/ The dissent faults the Union for failing to show that the draft report was relevant to a proposal it wished to make in bargaining. However, because the draft report contained information pertaining to unit employees' working conditions, it is not required that the Union show the precise relevancy of the requested information to particular current bargaining issues. TELEPROMPTER CORP., SUPRA. 570 F.2D at 8. Further, we fail to see how the Union's request could be more specific when it did not know what the draft report contained beyond the obvious fact that it dealt with unit employees' working conditions.
>
> (156 LRRM 1199-1200, Emphasis added).

Similarly, in MADISON METROPOLITAN SCHOOL DISTRICT, SUPRA, the Commission held that the requested information was relevant and reasonably necessary to the union's responsibilities in bargaining and contract administration even though there was no current grievance or dispute pending involving the information. See, also, in that regard NLRB V. ITEM CO., 220 F.2d 956 (CA5), cert. denied, 350 U.S. 836 (1955).

While the preliminary information sought in this case may contain inaccuracies and may be in very rough form, that goes to its reliability, which the parties can debate in negotiations if the Complainant decides to utilize the data. The fact that the Respondent may have chosen not to utilize the data for those reasons does not affect its "relevance" to Complainant. As the NLRB stated in HOFSTRA, "because the requested information was presumptively relevant, the Union was entitled to examine the information and determine for itself whether it was relevant to bargaining." (156 LRRM at 1200).

For the foregoing reasons, the Respondent has been found to have violated its duty to bargain by refusing to provide the Complainant with DMG's preliminary data that included the bargaining unit positions, and has been directed to provide that information to Complainant's representatives immediately.

The Examiner concluded his decision by indicating that no evidence had been presented to support a violation of Sec. 111.70(3)(a)2, Stats., and that he was denying Complainant's request for attorney fees and costs.

## POSITIONS OF THE PARTIES ON REVIEW

### The Respondent

Respondent argues that the Examiner erred by concluding that it was obligated to provide the requested information.

Respondent asserts that the information in question is not sufficiently related to wages to be presumptively relevant. Respondent further argues that because there has been no showing that it relied on or considered the information as part of the collective bargaining process, the information is not relevant and reasonably necessary for Complainant to acquire in its role as the collective bargaining representative.

Respondent contends that the Examiner's decision is inconsistent with existing Commission precedent as expressed in SHEBOYGAN COUNTY, DEC. NO. 11990-A (SCHURKE, 10/74); STATE OF WISCONSIN, DEC. NO. 17115-B (LYNCH, 10/80), REVERSED, DEC. NO. 17115-C (WERC, 3/82); and STATE OF WISCONSIN, DEC. NO. 27708-A (MCLAUGHLIN, 1/95), AFFIRMED DEC. NO. 27708-B (WERC, 11/95). Absent evidence of employer use of or reliance upon information, Respondent contends these cases establish that it had no obligation to provide the information in question. Respondent argues that unlike the NLRB that only requires a probability or likelihood of relevance, the Commission has held that actual relevance is required. The Complainant has not established relevance in this case.

Respondent further argues that the Examiner's result is bad labor policy because:

> ". . . employers will be potentially saddled with massive requests for documentation designed not to refute employer proposals but to substantiate union proposals or simply provide background (or titillating) information.

Respondent asks that the Examiner be reversed.

### The Complainant

Complainant urges affirmance of the Examiner's decision.

Complainant contends the Examiner appropriately applied Commission law to the facts presented and argues the Commission should reject Respondent's attempt to modify existing law by requiring that an employer rely on information before it becomes relevant.



Complainant asserts Respondent has misread existing Commission case law. Complainant argues that it is only where the information requested is indirectly related to the wages that a union must demonstrate relevance by showing that the employer relied on the information in some fashion. Where, as here, the information is directly related to wages, Complainant asserts that there is no requirement that the information have been relied on by the employer before a union is entitled to same upon request.

Complainant alleges that adoption of the change urged by Respondent would also constitute bad labor policy. Complainant contends that although the survey information may not have proven to be useful to the Respondent (presumably because the content was adverse to the Respondent's interests), it may well be helpful to the Complainant in its efforts to formulate and justify bargaining proposals. Complainant argues that existing law provides adequate protection for Respondent against its policy concerns regarding "background (or titillating) information."

Complainant urges rejection of the petition for review and renews its request for attorney fees and costs.

## DISCUSSION

The Examiner has ably described an employer's duty to provide a union with requested information. The Examiner wrote:

> 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. Whether information is relevant is determined under a "discovery type" standard and not a "trial type standard." 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. 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 burden is on the employer to justify its non-disclosure. 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. 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. The employer is not required to furnish 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. MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NO. 28832-B (WERC, 9/98). pp. 7-8: citing MORAINE PARK VTAE, DEC. NO. 26859-B (WERC, 8/93).

The issue of this case is whether the information sought by the Complainant Union "relates to wages" and is thus presumptively relevant and necessary for the Complainant Union to carry out its collective bargaining responsibilities. If the information is found to be presumptively relevant, the Respondent County has the burden of justifying its non-disclosure.

The information in question is a consultant's preliminary recommendation as to how employes represented by the Complainant Union should be grouped for purposes of compensation. The Examiner concluded that the information is sufficiently related to wages as to establish presumptive relevance and necessity. We agree. In our opinion, the relationship of the information to wages is apparent, because of its potential use to the Complainant Union in determining what, if any, changes in the wage classifications should be proposed. 1/

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***1/ Joint Exhibit 1A confirms that the Complainant's interest in the information was in conjunction with "preparation for the negotiations for successor collective bargaining agreements." Thus, the requested information is not only presumptively relevant, but has a demonstrated actual relevance as well, whether or not the Respondent County chooses to utilize such information. As the Examiner noted in HOFSTRA UNIVERSITY 324 NLRB NO. 95 (1977) 156 LRRM 1198, the NLRB stated: "In our view, the fact that the Respondent did not use the draft report establishes only that the Respondent decided the report was not relevant to its purposes. Under Sec. 8(a)(5) of the Act, however, the key inquiry is whether the information sought by the Union is relevant to its duties." (Emphasis added)***

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Moreover, inasmuch as the Complainant Union's obligations as the statutory bargaining representative of the bargaining unit include negotiation of successor agreements and the Complainant Union specifically justified its information request as necessary in its "preparation for the negotiations for successor collective bargaining agreements," we find an additional basis for concluding the requested information is presumptively relevant, *whether or not the Respondent County chooses to utilize such information*. 2/

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***2/ Citing SAN DIEGO NEWSPAPER GUILD V. NLRB, 548 F.2D 863, 867 (94 LRRM 2923) (CA 9, 1977) the NLRB stated in HOFSTRA, SUPRA, "Information pertaining to the wages, hours, and working conditions of unit employes is 'so intrinsic to the core of the employer-employee relationship that such***

*information is presumptively relevant.'" The HOFSTRA opinion went on to state that: "Given the above, we find that the draft report relates to job responsibilities and content, and therefore encompasses mandatory subjects of bargaining and is thus presumptively relevant. WASHINGTON*



*HOSPITAL CENTER, 270 NLRB 396, 400-401 [116 LRRM 1459] (1984). That the Respondent made no use of the draft report is irrelevant since the information contained in the report is presumptively relevant to the Union in fulfilling its obligations as statutory bargaining representative."*

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Finally, it should be remembered that requests for information are evaluated under a lenient "discovery type" standard, not a trial type standard. 3/ Thus, to the extent that the Respondent County invites us to apply a stricter "trial type" standard in determining relevancy, it is asking us to change existing Commission law which is consistent with federal court and NLRB precedents of long standing. We decline to do so.

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*3/ MADISON METROPOLITAN SCHOOL DISTRICT, SUPRA, at 8; MORAINE PARK VTAE, SUPRA, Torosian concurrence citing PROCTOR & GAMBLE MFG. CO. V. NLRB, 603 F.2D 1310 (102 LRRM 2128) (CA 8, 1978) citing NLRB V. ACME INDUSTRIAL CO., 385 U.S. 432 (1967). As the Court stated in PROCTOR & GAMBLE, ". . . hence, a broad range of potentially useful information should be allowed to the union for the purpose of effectuating the bargaining process, unless it is clearly irrelevant." As the Court noted in PROVIDENCE AND MERCY HOSPITALS V. NLRB, 93 F.3D 1012, 153 LRRM 2047 (CA 1, 1996), "Stated in traditional terms, requested information is relevant if it seems probable that the information will be of legitimate use to the union in carrying out its duties and responsibilities qua bargaining agent. See NLRB V. ACME INDUS. CO., 385 U.S. 432, 437 (1967)."*

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Under established Commission law, once presumptive (or actual) relevance is established, the burden shifts to the employer to present a valid basis for non-disclosure. For instance, relevant information need not be disclosed where the employer can demonstrate good faith confidentiality concerns or privacy interests. MADISON METROPOLITAN SCHOOL DISTRICT, SUPRA.

Here no claim of confidentiality or invasion of employe privacy is made by the Respondent County. Instead, the Respondent County asserts that the Examiner's result is bad policy because it will produce burdensome requests and/or require that the employer provide the union with information the union can use to generate its own proposals.

But the facts of this case raise no such issues. First, it should be made clear that the issue of whether a request is "burdensome" focuses only on the form of the information to be provided and/or the timeframe within which it is to be produced. MADISON METROPOLITAN SCHOOL DISTRICT, SUPRA. In this case, we note that the subject of the information request is preliminary information that already existed at the time the request was made. Turning it over

cannot be reasonably deemed as "burdensome" to the responding party. Based on this circumstance, our result herein does *not* stand for the proposition that a party must develop analytical or interpretive conclusions from raw data requested by the other party.



Second, as to the question of assisting the Union, we believe existing law clearly provides that even where information is not requested in the context of a specific labor dispute or in response to an employer proposal or position, there are circumstances in which such information is nonetheless relevant – presumptively if the requested information has a sufficient relationship to wages, hours or conditions of employment. STATE OF WISCONSIN, SUPRA. We acknowledge that as a consequence of information provided pursuant to a request, a party may generate or modify a proposal. We believe this result furthers public policy by encouraging voluntary settlements resulting from informed bargaining. Thus we reject the County contention that the law applied by the Examiner constitutes poor public policy.

Contrary to the Respondent County, we are also satisfied that the Examiner's analysis is consistent with prior Commission or Commission Examiner cases cited by the County.

Respondent reads SHEBOYGAN SCHOOLS, DEC. NO. 11990-A (SCHURKE, 10/74) as requiring that relevancy and necessity be established by reference to issues raised in bargaining. We disagree. In our view, the Examiner's analysis only reflects that he was confronted with information requested in the context of an ongoing layoff dispute and thus was not presented with and did not need to consider a "presumptive" relevance approach. More importantly, we note that the Examiner was reversed on appeal on the merits of this issue by the Commission (DEC. NO. 11990-B, 1/76) and thus his decision has no precedential value.

The Respondent County next cites STATE OF WISCONSIN, DEC. NO. 17155-C (WERC, 3/82). As correctly stated by the Respondent County, the facts of that case led the Commission to conclude:

> 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 a 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 provide such information on request.

Clearly, when an employer acknowledges its actual reliance on certain data to support its position in collective bargaining and the labor organization requests the data on which the employer is relying, the bargaining linkage to the data is both direct and obvious and as such will receive Commission attention. But Commission commentary in this regard should not be read as a rejection of a "presumptive relevance" approach. In the same STATE OF WISCONSIN case cited by the Respondent County, referencing two federal court of appeals decisions, 4/ the Commission held:

> Further with respect to information relating to wages, it has been held that wage and related information is presumptively valid so that the Union need

not explain its need for such information. 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."

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***4/ SHELL OIL CO. V. NLRB, 77 LRRM 2043 (CA 9, 1971); BOSTON HERALD-TRAVELER CORP. V. NLRB, 36 LRRM 2220, (CA 1, 1955).***

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Continuing its examination of the same STATE OF WISCONSIN case, the Respondent County also directs our attention to that portion of the decision that noted an employer is not ". . . 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." The Respondent County interprets this as establishing ". . . a significant caveat to an employer's duty to release requested documents and information, even if the employer relied on it. . . ."

We do not agree. First, we note the passage quoted was mere dicta that did not refer to any disputed issue in the case. Second, the passage in question refers to an "overbroad" information request and should be regarded as simply a common-sense caveat within the factual context of that case. The requested data in the instant matter is simply not in the same category; far from being "overbroad," it is quite specific and narrow in scope.

Finally, the Respondent County cites STATE OF WISCONSIN, DEC. NO. 27708-A (MCLAUGHLIN, 1/95) and notes that the Examiner therein commented that requested background information as to the financial condition of the UW Hospital and the State did not meet the "relevant and reasonably necessary" standard. The Respondent County argues that if the employer's financial condition wasn't related to wages in Dec. 27708-A, neither can job classification lists that do not specify salary ranges be deemed related to wages. Because the employer in fact provided the information requested in STATE OF WISCONSIN, the Examiner's comments on the relevancy issue were dicta. Further, we note that this duty to supply information issue was not litigated on review before the Commission in Dec. No. 27708-B. However, we are satisfied that classification information is the threshold on which wage schedules are built and through which wage proposals flow. Thus any classification information has a direct relation to wages. On the other hand, the relationship to wages of the financial condition of a then public institution and the State itself, absent dire financial distress or other highly unusual circumstances, seems far more indirect.

Given the foregoing, we are satisfied that Examiner Shaw correctly applied appropriate

existing precedent in his decision. The concept of "presumptive relevance" has been explicitly present as a part of Commission analysis since the STATE OF WISCONSIN case (DEC. NO. 17115) was decided by the Commission in 1982. It is, moreover, a concept that has been



regularly recited in Commission decisions in more recent years as a part of the applicable "boiler-plate" duty to provide information statement of law.

It is to be expected that the result produced by the case-by-case application of this "boiler-plate" will vary depending on differing facts presented. But based on the facts and arguments presented in this case, we affirm the Examiner. We have modified his Conclusions of Law and Order only to reflect that no violation of Sec. 111.70(3)(a)2, Stats., was proven and therefore to dismiss this allegation.

In its brief, the Complainant Union renewed its request for attorney fees and costs. As we indicated in STATE OF WISCONSIN, DEC. NO. 29093-B (WERC, 11/98), fees and costs will be granted only where we are satisfied that an extraordinary remedy is warranted. We find no such remedy warranted here.

Dated at Madison, Wisconsin this 13th day of January, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

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