STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

THE WISCONSIN STATE EMPLOYEES UNION (WSEU), AFSCME, COUNCIL 24, AFL-CIO, Complainant,

vs.

STATE OF WISCONSIN DOA-OSER, Respondent.

Case 665
No. 64450
PP(S)-350

Decision No. 31271-A

Appearances:

Kurt C. Kobelt, Lawton & Cates, S.C., Attorneys at Law, Ten East Doty Street, Suite 400, P.O. Box 2965, Madison, Wisconsin 53701-2965, appearing on behalf of the Complainant.

David J. Vergeront, Chief Legal Counsel, Office of State Employment Relations, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On February 1, 2005, Complainant filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission alleging that Respondent had violated SELRA by failing and refusing to provide WSEU with the names and address of current bargaining unit members in violation of Sec. 111.84(1)(a) and (d), Stats. On March 11, 2005, the Commission appointed Coleen A. Burns, a member of its staff, to act as Examiner in this matter. The parties' waived hearing on the complaint and, by February 1, 2006, had submitted stipulations of fact and written argument.

Having considered the evidence and the arguments of the parties, the Examiner makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Wisconsin State Employees Union, AFSCME Council 24, AFL-CIO (WSEU), hereafter also Complainant or Union, is a labor organization maintaining a principal office at 8033 Excelsior Drive, Suite "C", Madison, Wisconsin 53717-1903 and is the exclusive collective bargaining representative of certain employees of the State of Wisconsin.

2. The Department of Administration-Office of State Employment Relations, hereafter Respondent or OSER, is an agency of the State of Wisconsin with responsibility for bargaining collectively with the Complainant and has a principle office at 101 E. Wilson Street, Madison, Wisconsin 53707-7855.

3. A letter dated November 18, 2004, sent from Sally A. Stix, attorney for the Wisconsin Law Enforcement Association (WLEA) to Peter G. Davis, General Counsel of the Wisconsin Employment Relations Commission (WERC), includes the following

. . .

> Finally, the WLEA requests the eligibility list used for the election include the addresses, phone numbers and classifications of the eligible voters. The WLEA believes the WERC has the authority to order the DOA-Office of State Employment Relations provide that information on the eligibility list. Since the incumbent union has access to that information already, there is a great concern that both organizations have equal access to the workers and a level playing field upon which to organize for the election.

. . .

A letter dated November 24, 2004, from OSER Chief Legal Counsel David Vergeront to Stix, includes the following

> Re: Casey Perry's November 18, 2004 Letter Requesting LE Bargaining Unit Data
>
> Dear Ms. Stix:
>
> On November 18, 2004, your client, Casey Perry, sent a letter to Director Timberlake requesting certain bargaining unit data. That letter has been referred to me for response. You have made a similar request of the WERC and we have been asked to respond to that. For the reasons set forth below, we advise you that we cannot provide Mr. Casey with the information requested and we oppose your request of the WERC.

> The Public Records law precludes the release of an employee's home address and home phone number unless the employee authorizes release. (Sec. 19.36(10)(a), Wis. Stats.) Thus, based on that law, we could only release the name and the classification of members of the Law Enforcement bargaining unit. However, the collective bargaining agreement in effect further limits what can be released. Pursuant to Art. 2/4/4, we are prohibited from releasing the names, home addresses, home phone numbers or classifications of employees unless ordered to do so by the WERC or a court. As you are aware, a Dane County judge has ruled that the contractual provision is a session law, constitutes an exception to the Public Records law and thus prohibits release of that information. I would note that should we provide the list to the WERC, it will have to determine what information can be released to you under the Public Records law.
>
> Additionally, and as you have acknowledged in your letter to the WERC, the WERC follows a specific process when an election petition is filed. At a certain point in that process, the WERC requests from our agency a list like the one you and Mr. Perry now seek. We provide the list to the WERC and it determines what will be released and to whom. We have not been asked by the WERC for such a list since the process has not reached that point; we thus find the request to be premature. We respectfully suggest that you should look to the WERC for guidance as to when such a list might be available. I note that you attempt to draw a distinction between an organizational and decertification election in justification for your request. In the former type of election, the union wants the list because the employer has the information and therefore has an advantage. In a decertification election, the petitioning union claims it needs the information since the incumbent union already has it and thus has the advantage. In the absence of any meaningful distinction, the same process/procedure regarding the list should be followed in decertification and organizational elections.
>
> Because we have denied your request, we advise you that this denial is subject to review in an action for mandamus under sec. 19.37(1), Wis. Stats., or by application to a District Attorney or the Attorney General (sec. 19.35(4)(b), Wis. Stats.)

A letter dated December 3, 2004, from WSEU Attorney Kurt C. Kobelt to Davis, includes the following

> The WSEU hereby opposes the WLEA's request for the names and addresses of Law Enforcement Bargaining Unit members in the above case.
>
> The Commission has declined to adopt the NLRB's EXCELSIOR list requirements from the private sector. See MILWAUKEE BOARD OF SCHOOL DIRECTORS, Case No. 13737-F (6/78).

> In addition, the WSEU maintains that releasing the names and addresses of the bargaining unit members would violate their privacy rights under the Open Records Act. See KRAEMER BROS. V. DANE COUNTY, 229 Wis. 2D 86 (Ct. App. 1999) (refusing to release names and addresses of employees under Open Records Act on privacy grounds.)
>
> Accordingly, the request should be denied.

This letter was cc'd to Stix, Vergeront and Karl Hacker, Assistant Director, AFSCME Council 24, WSEU.

4. An email dated January 3, 2005, from Vergeront to Davis, includes the following

> Subject: WLEA Petition for Election/List of eligible voters
> Importance: High
>
> Peter-
>
> As I have expressed to you before (the election for nonprofessional supervisors), I do not believe that we can release to you a list of the home addresses of state employees without their express authorization if you are going to release it to anyone. As you know, s. 19.36(10)(a), Wis. Stats., prohibits the release of the home addresses in the absence of authorization from any employees involved. I believe that applies to us giving the list to WERC if it will release it to someone. I also believe that it applies to the WERC as there are no exceptions listed. I am unaware of any law that allows our agency or the WERC for that matter to avoid the impact of that statute. If there is one, please advise me as well as any arguments that you believe allow for our agency to release the list to you and you I turn release it to someone.
>
> My concern is that this agency which will prepare the list could potentially become liable for the release to the WERC and then a release by the WERC to someone. We are dealing with about 1000 employees and not all of them would agree with releases. If the attorney general were to render an opinion that it could be released to the WERC and then by the WERC to someone without a violation of law, then I would rely on that in releasing the eligibility list. In the absence of such an opinion I do not believe I could release it unless there was a court order directing the release to you and an opinion that our agency can do so without liability. You might consult with DOJ as to whether such a court action is a possibility.
>
> I trust you understand that our agency is not trying to be uncooperative. As we see it, the law is the law and there is not apparent exception. I cannot allow our agency to take any action that could place it in a position to be sued.

I would appreciate hearing from you on this subject.

In an email to Vergeront, Stix, and Kobelt dated January 5, 2005, Davis states, *inter alia*, that "Because the election will be conducted by mail . . . WERC will need the addresses of the eligible voters whether or not WERC decides that the Association is entitled to the addresses." In an email from Davis to Vergeront, Kobelt and Stix, dated January 6, 2005, Davis states, in relevant part, as follows

> As to the matter of the addresses, the Commission has not yet concluded whether it wishes to change the WERC's long standing view that addresses are not required and, if so, whether Sec. 19.36(10), Stats., allows WERC to so require that addresses be provided. Nor is it clear that OSER will provide WERC with addresses even if ordered to do so. Under these circumstances, while WERC will do all it can expeditiously seek enforcement of any order that addresses be provided, there seems to be a real potential for litigation over the address issue to delay the election. Therefore, I ask whether access to employee work email addresses might not be a viable communication alternative. I should emphasize that my inquiry is strictly an effort look for alternatives that may avoid delay and should not be understood to indicate any particular Commission view on the question.

In the morning of January 7, 2005, Vergeront sent an email to Stix, Davis and Kobelt stating

> As I have indicated, OSER has no objection to providing you with the names and addresses for the **sole** purpose of mailing the ballots. The problem we have is if you also provide the list to any one/entity. As you know, s. 19.36(10)(a), Wis. Stats., prohibits the release of home addresses of employees unless they have authorized release. The only part of the statute that the WERC could point to in support of its position is "Unless access is **specifically authorized** or required by the statute. . ." I am unaware of any statute [rule or procedure by manual do not count] that specifically authorizes release of the home addresses by the WERC. I have invited you to direct me to such a statute but have not been provided with any as of the date of this e-mail.
>
> As you recall, I indicated that if the AG's office issued a formal or informal opinion that supports your position and provides my agency protection from release, I would release the list to you for further release in accordance with the opinion. The WERC is in a position to ask for such an opinion. If the AG's office agrees with you, you get the list. If it doesn't agree with you, you don't get the list. I am certain that if you explained the short timeframe the AG's office could render an opinion rather promptly. I have no problem leaving the decision in the hands of the AG's office and do not see why your agency would not feel the same. My suggestion seems to be a prudent approach under the circumstances and I strongly encourage your agency to use that approach.

> Our agency is not being obstructive or uncooperative. We are dealing with a recent statute that seems pretty clear on its face that our concern is legitimate and our position is correct. Using the AG's office to obtain an opinion seems the appropriate approach under the circumstances.
>
> As far as your suggestion of using e-mail addresses, we cannot agree for several reasons, only a few of which will be mentioned at this time. First, I don't believe that our agency has access to the e-mail addresses. While they can be obtained from the state's website, I don't believe our agency has access to a list that would line up with the names. I would have to do some checking as to how that could be done, even if it was possible and we were amenable to doing so. It is my recollection that such was our response when you raised this in the context of the election of nonprofessional supervisors last year. One of the parties had put together its own list by checking with the website and shared it with the other party. Second, even if such a list could be generated, it sets a bad precedent. The state has restrictions as to what state computers can and cannot be used for. What you are suggesting is not one of the approved items. Further, there would be no way to regulate the number of messages that would be sent to employees at work. Even if the parties agreed to a limited number of mailings, that would not prevent employees from mailing and re-mailing or sending their own messages. There is the potential that the e-mail system becomes clogged or overtaxed with multiple e-mails to and/or from 1,000 employees. Furthermore, it would be disruptive at work. I believe that is why such mailings go to the home – so the campaign does not cause problems at the work site. With two or three sides to the election [no representation being the third] e-mails received at the work site have the potential of creating problems. I note that Mr. Perry has already raised complaints about the improper use of state computers and the campaigning has not even achieved high gear.
>
> So the record is set – this agency remains neutral in this Petition process. This does not mean however that we will disregard the law or allow disruptions in the work place or the impairment of service to the taxpayers.

In the afternoon of January 7, 2005, Davis sent an email to Vergeront, Kobelt and Stix stating

> FYI, the Commission may direct me to conduct a hearing to take evidence on the extent of the Association's ability to communicate with eligible voters without home addresses and the extent to which the Association may be able to acquire home addresses through other means.

In the morning of January 10, 2005, Vergeront responded with the following email

> I am available, depending on what day is selected. Would it be expected that OSER testify or could I provide the information via a stipulation or what ever?

In the afternoon of January 10, 2005, Davis sent an email to Vergeront, Stix and Kobelt stating

> The Commission has directed me to conduct the hearing indicated below and to do so as soon as possible. The hearing would be conducted pursuant to and under the Commission's authority to resolve/decide legal issues in the context of an election case. I anticipate conducting the hearing sometime during the week of January 17. Please advise me as to your availability.

On January 11, 2005 at 7:37 a.m., Kobelt sent an email to Stix, Davis, and Vergeront stating

> My concern is that once the names are released, there may be other means of getting their addresses.

On January 11, 2005 at 9:26 a.m., Kobelt sent an email to Vergeront, Stix, and Davis stating

> I am in receipt of Ms. Stix' withdrawal of the request for names and addresses dated January 10. I believe her request for the list of names OSER provided the WERC to verify the showing of interest is simply another device to get the same information and should be denied. The WSEU has been denied its requests for any information relating to the showing of interest.

On January 11, 2005 at 9:31 a.m., in an email to Stix, Kobelt and Davis, Vergeront states: "Just for the record-the list we provided the WERC for verification of the 30% just had names; there were no home addresses." On January 11, 2005 at 9:28 a.m., Vergeront sent an email to Stix, Kobelt and Davis stating

> The list we are now preparing has names and addresses and it is our opinion that, pursuant to law, you can not release it to anyone.
>
> I continue to insist upon your representation that if we provide you with the list of names and addresses that you will not release the list to anyone else or any entity. In the absence of such a representation, or an opinion from the AG that says that you can release the list and OSER has no potential liability.

On January 11, 2005 at 9:53 a.m., Davis sent an email to Stix, Kobelt and Vergeront stating

> The employee name list used by the WERC to make the showing of interest determination (like the employee names on the eligibility list OSER is preparing) is a public record and has been provided to the Association.

On January 11, 2005 at 11:43 a.m., Davis sent an email to Stix, Kobelt and Vergeront, Davis stating

> You have my word that we will not release the addresses.

> Because both AFSCME and the Association should receive the eligibility list when we do, will it be possible to have a name only document prepared as well?

The WERC did not release the list of names and home addresses of employees in the LE bargaining unit to the WSEU or the WLEA in Case 658 No. 64124 SE-107.

5. On January 21, 2005, Hacker sent an email to OSER employee Leean White stating

> This is an official request for a mailing list with names, addresses and classifications of the law enforcement bargaining unit that we represent. Please e-mail the list, in alphabetical order by last name, as soon as possible.
>
> If you have any questions, please let me know.
>
> Thank you for your attention to this matter.

On that same day, White sent a responsive email stating

> I will pass this request on to OSER's Labor Relations staff and ask them to respond.

On January 24, 2005, Vergeront responded to Hacker's email of January 21, 2005 with an email stating

> Mr. Hacker –
>
> Your January 21 e-mail to Leean White which makes a requests under SELRA for a list of names and home addresses of members of the LE bargaining unit has been referred to me for response.
>
> On Friday you also asked me via Mark Wild for such a list. I responded that such a list would not be provided. You indicated that you were entitled to such a list under the contract. You make the same claim in your request of Leean White.
>
> There is an election pending based on a petition filed by the WLEA. OSER is remaining neutral. The WERC has made available to WSEU and WLEA a list on the names and classifications of the members of the unit that are eligible to vote. We turned down the WERC's request for a list of the names and addresses because sec. 19.36(10)(a), Wis. Stats., precludes the release of the home addresses of employees unless the employee has authorized release.

> It is our understanding that your request is related to the pending election. As such, there is no collective bargaining or contract administration basis for your request. We have checked the contract in effect and find no provision that requires us to provide WSEU with such a list at this time. Art. 2/2/1 requires a list for purposes of dues deductions but only names are required. Art. 2/4/2 requires us to provide information to the local Treasurers that includes the names and home addresses for employees who had a personnel transaction since the end of the last pay period. Such a list is provided on a bi-weekly basis and we will continue to comply with the contract in that regard. Under Art. 5/2/1 we are obligated to send to WSEU two lists on a semi-annual basis. Those lists include mailing addresses. We will continue to comply with that provision in that regard and will provide those lists in due course. Additionally, we point out that sec. 19.36(10)(a), Wis. Stats., prohibits our agency from releasing the home addresses unless the employee has so authorized it. That statute makes it clear that the only exceptions are those created by statute or those required to fulfill a duty to bargain or pursuant to a collective bargaining contract. We are unaware of any statute that authorizes a release. We have no authorizations on file for employees in the LE bargaining unit. The request is not made to fulfill a duty to bargain. And, there is no additional requirement to release the home addresses for the purpose you seek and/or at this time. As noted above, we will continue to honor the contract as those obligations arise.
>
> If you have any questions, please contact me.

At the time of the January 21, 2005 request for the mailing list, Hacker was acting on behalf of WSEU, which was then the bargaining representative of the LE bargaining unit. At the time that Vergeront denied Hacker's January 21, 2005 request for the mailing list, Vergeront was acting on behalf of the State of Wisconsin DOA-OSER.

6. WSEU intended to use the list requested on January 21, 2005 in order to communicate with its members to defeat an effort to decertify WSEU as the certified bargaining representative for the LE bargaining unit in an election being conducted by the WERC in Case 658 No. 64124 SE-107. A list that included the names and addresses of the members of the employees in the LE bargaining unit, as well as lists with the same information for employees in the other bargaining units represented by WSEU, was furnished to WSEU on January 27, 2005 pursuant to Art. 5/2/1 of the labor agreement, which article required such information to be furnished on a semi-annual basis. The WSEU was not aware on January 21, 2005, when it requested the list of the names and addresses of the members of the LE bargaining unit, that the State was going to furnish the list of names and addresses required by the contract on January 27, 2005. The prior list required by Article 5/2/1 of the contract containing the names and addresses of the members of the LE bargaining unit was provided to WSEU in July of 2004. In August 2001, the WERC directed OSER to provide WSEU with a list of the names and addresses of members employed in the Administrative Support Unit for purposes of promoting maintenance of membership referendum conducted pursuant to Wis.

Stat. Sec. 111.85. The WERC did not release the list of names and home addresses of employees in the LE bargaining unit to the WSEU or the WLEA in Case 658 No. 64124 SE-107. On March 10, 2005, in Case 658 No. 64124 SE-107, Dec. No. 31195-A, the WERC certified the Wisconsin Law Enforcement Association as the representative of a bargaining unit "consisting of all law enforcement employees employed by the State of Wisconsin, excluding limited term employees, sessional employees, project employees, supervisors, management employees and confidential employees."

7. The collective bargaining agreement between Complainant and the State of Wisconsin that was in effect at all times material hereto includes

. . .

SECTION 2: Dues Deduction

2/2/1 Upon receipt of a voluntary written individual order from any of its employees covered by this Agreement on forms presently being provided by the Union, the Employer will deduct from the pay due such employee those dues required as the employee's membership in the Union. A list of all employees from whose pay dues have been deducted shall be sent to the appropriate local with that local's dues deduction check. At the same time, a copy of said list of employees shall also be sent to Council 24.

The listing of the home address and home telephone is at the employee's option.

. . .

2/4/2 The Employer will furnish the Treasurers of the local unions a list of dues check off information, seniority information and personnel transactions affecting employees in the units covered by this Agreement. This information will be included with the dues checks received from the payroll department on a biweekly basis including "C" payroll periods and will include the following information:

A. bargaining unit;
B. employee name;
C. social security number;
D. classification (old, new);
E. work telephone number;
F. home and work address;
G. seniority date and tie-breaker information;
H. ethnic group;
I. sex;

J. amount of dues deducted;
K. effective date of the dues deduction;
L. personnel transaction and effective date;
M. "add" if new employee;
N. "C" to indicate a change in employee information.

. . .

ARTICLE V
SENIORITY

. . .

SECTION 2: Seniority Information

5/2/1 The Employer agrees to provide all local unions with two seniority lists. One list shall be by local union, employing unit, classification, and employee name by seniority with date of birth and mailing address. The second list shall be by local union, employing unit, classification, and employee name by alphabetical listing with date of birth and mailing address. These lists shall be provided on a semi-annual basis. Employees shall have thirty (30) calendar days from the date the list is provided to the local Union officer to correct errors except that in cases of layoff the time available for correction of errors shall be the life of the list.

. . .

ARTICLE XV
GENERAL

SECTION 1: Obligation to Bargain

15/1/1 This Agreement represents the entire Agreement of the parties and shall supersede all previous agreements, written or verbal. The parties agree that the provisions of this Agreement shall supersede any provisions of the rules of the Administrator and the Personnel Board relating to any of the subjects of collective bargaining contained herein when the provisions of such rules differ with this Agreement. The parties acknowledge that, during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that all of the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement and any extension, each

> voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

Based upon the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. Complainant Wisconsin State Employees Union, AFSCME Council 24, AFL-CIO (WSEU) is a labor organization within the meaning of Sec. 111.81(12), Stats.

2. DOA-OSER is a subdivision of Respondent State of Wisconsin, which is an employer within the meaning of Sec. 111.81(8), Stats.

3. Respondent State of Wisconsin DOA-OSER did not violate its statutory duty to bargain when it failed and refused to provide Complainant Wisconsin State Employees Union, AFSCME Council 24, AFL-CIO (WSEU) with the mailing list that had been requested by Complainant Wisconsin State Employees Union, AFSCME Council 24, AFL-CIO (WSEU) on January 21, 2005.

4. Respondent State of Wisconsin DOA-OSER did not violate Sec. 111.84(1)(a) and (d), Stats., by failing and refusing to provide Complainant Wisconsin State Employees Union, AFSCME Council 24, AFL-CIO (WSEU) with the mailing list requested by Complainant Wisconsin State Employees Union, AFSCME Council 24, AFL-CIO (WSEU) on January 21, 2005.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

The complaint of Complainant Wisconsin State Employees Union, AFSCME Council 24, AFL-CIO (WSEU) is dismissed in its entirety.

Dated at Madison, Wisconsin, this 31st day of March, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/
Coleen A. Burns, Examiner

STATE OF WISCONSIN (DOA-OSER)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On February 1, 2005, Complainant filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission alleging that Respondent had violated Sec. 111.84(1)(a) and (d) of SELRA by failing and refusing to provide WSEU with the names and addresses of current bargaining unit members in violation of Sec. 111.84(1)(a) and (d), Stats. Respondent denies that it has violated SELRA, as alleged by Complainant.

POSITIONS OF THE PARTIES

Complainant

On or about October 28, 2004, the Wisconsin Law Enforcement Association (WLEA), a labor organization, filed a petition with the WERC to represent the bargaining unit of law enforcement employees (LE unit), then represented by the WSEU, pursuant to Sec. 111.83(6), Stats. The WSEU requested the names and addresses of the members of the LE unit on January 21, 2005 for use in its organizing campaign to preserve the unit from a challenge from the WLEA. The legal question presented in this case is whether WSEU's request for a list of name and addresses of its own members, outside of the contractually designated times and for use in an organizing campaign, relieved OSER of its legal duty to provide such information.

The Complainant is unaware of any WERC cases directly addressing the circumstances in which the employer must provide employee names and addresses. Thus, this is a case of first impression.

The Commission summarized its legal standards regarding providing information in MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 27807-A (Crowley, 1/94). The Commission's use of a broad "discovery type" standard and its classification of certain types of information as "presumptively relevant" are derived from private sector case law developed by the NLRB. With respect to information that falls within the presumption, "no proofs of relevancy or necessity are needed." The WSEU is not aware of any case in which the WERC has not adopted NLRB requirements for responding to union information requests.

There is abundant NLRB case law holding that the information requested by WSEU is presumptively relevant and expressly rejecting each of the OSER defenses set forth in its January 24th letter. The NLRB has recognized that it is vital for a union to have the names and addresses of its members in order to effectively communicate with them for whatever purpose it deems necessary. Under NLRB law, information that is presumptively relevant must be provided without regard to a union's justification for its purposes. (cites omitted)

The NLRB examines the reasons for a request only if the union seeks information regarding employees or data outside of the bargaining unit. Information regarding employees within the bargaining unit is presumptively relevant; meaning that the union need not establish a specific need for the information. (cites omitted) Allowing the employer the right to decide the circumstances under which a union gains access to a current list of its own member's addresses invites manipulation if the employer does not like the reason for the request; forcing the union to file charges and litigate.

EXCELSIOR requires an employer to provide a petitioner in a representational election with a list of employee names and addresses 30 days before an election. The Commission's decision to not adopt this case into procedures for conducting representation elections has nothing to do with the adjudication of unfair labor practice claims under Sec. 111.84 regarding the employer's obligation to provide information as part of its statutory duty to bargain.

OSER fails to cite any authority to support it position that the union needs to make a showing of a "stand alone" need and relevance for information not directly related to a specific "collective bargaining and contract administration" need. OSER's position is at odds with NLRB case law and is untenable.

At the time of WSEU's request, the last list that WSEU had received from the State had been provided in July and, thus, was outdated. There is no indication that WSEU was notified that the State intended to provide such a list on January 27th. If WSEU had waited until OSER provided the contractual list (no specific date was required, only that it be done semi-annually), it may have been too late to ensure its mailings would get to the proper addresses before the votes were cast and counted on February 25.

OSER attempts to cast aspersions upon the legitimacy of the WSEU's request based upon the results of an election. How can the legal test for providing information be based upon the results of a subsequent election?

Under well-established law, waivers of statutory rights must be "clear and unmistakable," and cannot be inferred or implied. WSEU has not waived its right to this information by agreeing to Articles 2/4/2 or 5/2/1 of the labor contract. The express language of the labor contract does not state that WSEU is waiving its right to request employee names and addresses more than twice a year. Absent such language, it cannot be inferred that WSEU has waived this fundamental right.

Sec. 19.36(10)(a) does not prohibit the State from providing the requested list of names and addresses. Cases cited by the WSEU establish that these laws cannot be used to limit a union's statutory rights to obtain information.

Inasmuch as names and addresses of bargaining unit members are considered presumptively relevant, they must by definition, be considered necessary to fulfill a duty to bargain and, thus, such information falls within the Public Records Law exception with respect

to the provision of employee names and addresses. To hold otherwise, would be contrary to the Commission's duty to harmonize SELRA with other state laws.

The updated list requested by WSEU on January 21, 2005 is presumptively relevant. Respondent's refusal to provide the requested list should be found to be in violation of Sec. 111.84(1)(a) and (d), Stats. Respondent should be ordered to provide the list of names and addresses of bargaining unit members upon request of the WSEU.

Respondent

Complainant sought the list of employee names and addresses in order to communicate with members of the bargaining unit for the purpose of advocating a vote for Complainant in a decertification election being conducted by the WERC. Respondent responded that it would provide any documents required under the parties' contract. On January 27, 2005, the Respondent provided Complainant with the requested list, along with lists of other bargaining units, as required by the contract. Respondent denied Complainant's extra-contractual request for a list to use to defend against the decertification campaign. The WERC has a long-standing position that a union is not entitled to a list of names and addresses when needed for an election/campaigning.

Under SELRA, a union is entitled, upon request, to information to assist it with its obligations for collective bargaining and contract administration. Collective bargaining information is that which will enable the union to understand and discuss issues raised in bargaining. Contract administration is that which will enable the union to police and administer the contract.

In Wisconsin, the presumption applies to information "relative to wages and fringe benefits." If the information does not fall under the presumption, then Complainant must "demonstrate the relevancy and necessity of said information to its duty to represent unit members."

Communications to members as to why they should vote to retain Complainant as bargaining representative has nothing to do with carrying out or fulfilling a function that relates to any duty to Complainant's members under SELRA. The absence of any case on point leaves no doubt that the WERC does not deem a list of names and addresses that has, as its only purpose/reason, use in an election as falling within the type of information that is presumptively for "collective bargaining or contract administration."

Whether or not a presumption exists, the employer can avoid providing the information if it can demonstrate good faith confidentiality or privacy concerns. Wisconsin Public Records law prohibits the release of the home addresses of employees, except under specified circumstances. None of these exceptions apply herein.

The Public Records Law prohibition against the release of home addresses is founded on the privacy interests of employees. Under WERC case law, confidentiality or privacy interests can justify an employer's withholding of certain information. Complainant has recognized this privacy interest when, in opposing WLEA's request for the names and addresses, it stated:

> In addition, the WSEU maintains that releasing the names and addresses of the bargaining unit members would violate their privacy rights under the Open Records Act. See KRAEMER BROS. V. DANE COUNTY, 229 Wis. 2D 86 (Ct. App. 1999) (refusing to release names and addresses of employees under Open Records Act on privacy grounds.)

The fact that the WERC directed an election establishes that at least 30% of the eligible voters favored representation other than by WSEU. A majority of those voting did not want Complainant to represent them. Complainant's interest in requesting the list was different from a majority of the employees in the unit and, as such, was not relevant or necessary to any of Complainant's statutory obligations.

Under the provisions of the contract, Complainant, the incumbent union, already had ways of securing the requested information. At the time of the request, the Complainant had a list that was updated sometime between early and mid-January 2005 and knew that, under Article 5/2/1, it would shortly be receiving an updated list of name and addresses. This list was, in fact, provided to Complainants on January 27, 2005.

Regardless of whether or not the requested list is subject to the presumption, the right to that information may be waived. In the present case, there has been a clear and unmistakable waiver by contract. If the Complainant wants the ability to update the lists contractually required to be provided to the Complainant, it should have negotiated that ability. Any claim that Complainant needed a current list was clearly a subterfuge for an attempt to avoid contractual limitations.

Realizing that Wisconsin law does not support its position and/or is silent on this specific application of the law, Complainant argues that the Examiner should adopt the federal position. The WERC is not obligated to follow NLRB law. The cases that are outside of the WERC's jurisdiction are not inconsistent with WERC precedents and each has relevant distinguishing facts that render them inapplicable.

The burden is on Complainant to demonstrate that it is entitled to the information on the basis that it is relevant to its duty to represent employees. Complainant has not met this burden. Even if it has met its burden, the record indicates defenses to the release of the information, including waiver, employee privacy and a statutory prohibition.

Respondent's refusal to provide the requested list was lawful. The complaint should be dismissed on its merits.

DISCUSSION

In a letter dated January 21, 2005, Complainant requested that Respondent provide a mailing list with the names, home addresses and classifications of the employees in the law enforcement bargaining unit then represented by Complainant. On January 27, 2005, Respondent provided Complainant with a list of the names and home addresses of the employees in the law enforcement bargaining unit. The list was provided to Complainant under the terms of the parties' labor contract.

Complainant, contrary to Respondent, argues that, in addition to its contractual duty, the Respondent has a statutory duty to bargain obligation to provide Complainant with a list that includes the names and addresses of the employees in the law enforcement bargaining unit. Complainant asserts, therefore, that Respondent's refusal to provide the requested list of names and addresses, except as required by the parties' labor contract, violates Sec. 111.84(1)(a) and (d), Stats.

Sec. 111.84(1)(a), Stats., makes it an unfair labor practice for the State to "interfere with, restrain or coerce employees in the exercise of their rights guaranteed in s. 111.82." Sec. 111.82 states:

> **111.82 Rights of employees.** Employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing under this subchapter, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Employees shall also have the right to refrain from any or all of such activities.

Section 111.84(1)(d), Stats., makes it an unfair labor practice for Respondents "to refuse to bargain collectively on matters set forth in s. 111.91(1) with a representative of a majority of its employees in an appropriate bargaining unit. . . ." This duty to bargain is broad and the standards which define it are fact-driven. This makes it impossible to state a standard before examining a specific allegation. STATE OF WISCONSIN, DEC. NO. 28104-A (Shaw, 1/97); AFF'D BY OPERATION OF LAW, DEC. NO. 28104-B (WERC, 3/97); STATE OF WISCONSIN, DEC. NO. 27708-A (McLaughlin,1/95), AFF'D IN RELEVANT PART, DEC. NO. 27708-B (WERC, 11/96). Section 111.07(3), Stats., made applicable to SELRA by Sec. 111.84(4), Stats., states that ". . . the party on whom the burden of proof rests shall be required to sustain such burden by a clear and satisfactory preponderance of the evidence."

With respect to the specific allegation, the Commission has long recognized that, under SELRA, Respondent's statutory duty to bargain includes an obligation to supply a labor organization representing its employees, upon request, with certain information. STATE OF WISCONSIN, DEC. NO. 25369-B (Shaw, 3/89); AFF'D BY OPERATION OF LAW, DEC. NO. 25369-C (WERC, 4/89); STATE OF WISCONSIN, DEC. NO. 17115-C (WERC, 3/82) Inasmuch as Respondent's duty to supply information flows from the duty to bargain, Complainant's

Sec. 111.84(1)(a), Stats., claim is derivative to its duty to bargain claim. STATE OF WISCONSIN, DEC. NO. 27708-A,B, *supra*.

In STATE OF WISCONSIN, DEC. NO. 17115-C, *supra*, the Commission, citing SHEBOYGAN SCHOOLS, DEC. NO. 11990-A (Schurke, 10/74); AFF'D IN PART, DEC. NO. 11990-B (WERC,1/76), stated that the applicable law is as follows:

> Intertwined with the duty to bargain in good faith is a duty on the part of an Employer to supply a labor organization representing employes, upon request, with sufficient information to enable the labor organization to understand and intelligently discuss issues raised in bargaining . . . Information requested by a labor organization must be relevant and reasonably necessary to its dealings in its capacity as the representative of the employes.

This standard was reaffirmed in STATE OF WISCONSIN, DEC. NO. 25369-B,C AND DEC. NO. 27708-A, B, *supra*.

In STATE OF WISCONSIN, DEC. NO. 17115-C , *supra*, the Commission went on to state:

> Further, with respect to information relating to wages, it has been held that wage and related information is presumptively relevant so that the Union need not explain its specific need for such information. 2/ . . . (cites omitted)

In STATE OF WISCONSIN, DEC. NO. 25369-B,C, *supra*, the Examiner, also found that:

> Besides the duty to provide information in the context of collective bargaining, it has also been held that the duty extends to providing information that is "relevant to the representative's policing of the administration of an existing agreement" 3/ and that the information requested need not relate to a pending dispute with the employer. 4/

3/ Ibid., MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 24279-A at 10, citing MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 15825-B *aff'd by operation of law*, DEC. NO. 15825-C (WERC, 7/79).

4/ Ibid., Citing, J.I. CASE CO. V. NLRB, 253 F.2D 149 (7th Cir., 1958),

STATE OF WISCONSIN, DEC. NO. 27708-A, B, *supra*, also recognized that the employer's statutory duty to supply information is triggered by a good faith request.

As a review of the above reveals, the Commission has applied the law developed under MERA when determining the SELRA duty to supply information. More recently, the

Commission has addressed the statutory duty to bargain under MERA in TREMPEALEAU COUNTY, DEC. NO. 29598-B (WERC, 1/00). In this case, the Commission states

> 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 Commission then went on to state

> 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/

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."

. . .

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.

. . .

Commission statements in this decision would seem to extend the long-standing and well-established presumption of relevance from information related to wages and fringe benefits to information related to the wages, hours and working conditions of bargaining unit employees.

Given that more than one State of Wisconsin case is cited previously, the "STATE OF WISCONSIN, *supra*," cite is ambiguous. With respect to the cited State of Wisconsin decisions, however, the Examiner finds no case which creates a presumption of relevance "if the requested information has a sufficient relationship to wages, hours or conditions of employment." Rather, in the cited cases, the presumption is applied to "wages and related information" STATE OF WISCONSIN, DEC. NO. 17115-B, C, *supra*; STATE OF WISCONSIN, DEC. NO. 27708-A,B, *supra*.

The Examiner also notes that, in TREMPEALEAU COUNTY, the Commission's introductory statements are as follows

> 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/

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)

Upon consideration of the decision as a whole, the Examiner is persuaded that the Commission decided TREMPEALEAU COUNTY by applying the well-established and long-standing principle that information relating to wages and fringe benefits is presumptively relevant and that Commission statements appearing to extend this presumption to other types of information are dicta. The conclusion that statements that appear to extend the presumption of relevance to other types of information are dicta is also supported by the fact that the Commission has not subsequently relied upon this case for any purpose other than to confirm when attorney's fees are not available. WONEWOC-UNION CENTER SCHOOL DISTRICT, DEC. NO. 29813-B (WERC, 12/00); TAYLOR COUNTY, DEC. NO. 29647-C (WERC, 7/00).

In a more recent case, NORTHEAST WISCONSIN TECHNICAL COLLEGE, DEC. NO. 29955-B (WERC, 7/01), AFF'D (CIR. CT., GREEN BAY, 4/02), the Commission states:

> In MORAINE PARK VTAE, DEC. NO. 26859-B (WERC, 8/93) and MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NO. 28832-B (WERC, 9/98), the Commission set forth the following general statement of the law applicable to the duty to furnish information:

> 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. 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 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. (footnote omitted)

Included in the above language, is the following statement

> Where information relates to wages and 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.

This statement would seem to extend the presumption of relevance to information other than that related to wages and fringe benefits. Any inference that the Commission is intending to broaden the presumption of relevance is weakened by the fact that this decision does not expressly address the issue of presumptive relevance. Moreover, the Commission states that it is applying MORAINE PARK VTAE and MADISON SCHOOL DISTRICT.

In MORAINE PARK VTAE, *supra*, the Commission reviewed Examiner Nielsen's decision (MORAINE PARK VTAE, DEC. NO. 26859-A (10/92)); resulting in an Order Affirming and Modifying Examiner's Findings of Fact, and Affirming Examiner's Conclusion of Law and Order. The Commission did not take issue with Examiner Nielsen's statement of the applicable law. Examiner Nielsen expressly recognized that, under the applicable statutory duty to bargain law

> . . . 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 cases by case by determination of the relevancy of such requests. However this presumption has not been applied to other information sought, and the burden falls

> initially upon the bargaining agent to demonstrate the relevancy of said information to its duty to represent unit employees.

Moreover, in MORAINE PARK, DEC. NO. 26859-B, the majority of the Commission states

> 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.

The statement of law supported by "footnotes 3-9 inclusive" is

> 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 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 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/ (footnotes omitted)
>
> In MADISON SCHOOL DISTRICT, *supra*, the Commission states:
>
> In MORAINE PARK VTAE, DEC. NO. 26859-B (WERC, 8/93), the Commission set forth the following general statement of the law applicable to the duty to supply information:
>
> > 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. 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. (footnotes omitted)

Upon consideration of the decision, as a whole, the Examiner is not persuaded that, in NORTHEAST WISCONSIN TECHNICAL COLLEGE, *supra*, the Commission is applying the presumption of relevance to any information other than that which is related to wages and fringe benefits.

As set forth above, the Complainant requested a mailing list containing the names, classifications and addresses of all of its bargaining unit employees. The list requested by the Complainant is information other than that relating to wages and fringe benefits. Thus, under well-established and long-standing Commission law, the information requested by the Complainant is not presumptively relevant and the Complainant has the burden to demonstrate the relevance and necessity of said information to its duty to represent unit employees in negotiations with the employer or the administration of an existing agreement.

As set forth in the parties' Stipulation, Complainant intended to use the list requested on January 21, 2005 in order to communicate with its members to defeat an effort to decertify WSEU as the certified bargaining representative for the LE bargaining unit. (STATE OF WISCONSIN, (Case 658 No. 64124 SE-107). As the Respondent argues, the requested list was relevant to the protection of Complainant's interest in continuing as the bargaining representative, rather than to Complainant's duty to represent unit employees in negotiations or contract administration. Under well-established and long-standing Commission law, Respondent does not have a statutory duty to bargain obligation to provide the list requested by the Complainant.

As the Complainant argues, the Commission has applied NLRB law when developing its law with respect to an employer's duty to furnish information. As the Complainant further argues, the NLRB and Federal Courts have applied a presumption of relevance to include a list of employee names and addresses; with the presumption flowing from the NLRB and Federal courts recognition that it is vital for a union to have the names and addresses of its members in order to effectively communicate with its members. ETHAN ENTERPRISES, INC., 342 NLRB No. 15 (2004); PRUDENTIAL INSURANCE CO. V. NLRB, 412 F. 2D 77 (2nd Cir. 1969).

The Commission, however, does not always apply NLRB law. For example, the Commission has not adopted the "Excelsior Rule" that was first adopted by the NLRB in EXCELSIOR UNDERWEAR, INC., 156 NLRB 1236 (1966). WEST SIDE COMMUNITY CENTER, INC., DEC. NO. 19211-A (Shaw, 4/83); CLINTONVILLE COMMUNITY HOSPITAL, DEC. NO. 10281-A (WERC, 10/71). Under the "Excelsior Rule," the Board requires an employer to supply a list of names and addresses of all employees eligible to vote; reasoning, in relevant part, that the rule was needed to permit the affected employees to become more fully informed regarding election issues by all participating parties.

In GATEWAY TECHNICAL INSTITUTE, DEC. NO. 14381-B (WERC, 6/76), the Commission, in discussing eligibility lists in an election, states

> The purpose of furnishing the eligibility list to the unions involved in an election is to provide a reasonable time prior to the election for examination of such list in order to properly challenge the eligibility of any of the individuals listed thereon. /b The Commission does not require that the list contain the addresses of the employees thereon, c/ and therefore the Commission does not view the eligibility list as a vehicle for organization purposes. . . .

---

b/ STOUGHTON HOSPITAL ASSOCIATION (10436), 8/71.

c/ *Ibid*.

The Commission's failure to adopt the "Excelsior Rule" persuades the Examiner that she is not obligated to follow all NLRB law. The Commission's failure to adopt the "Excelsior Rule" also indicates that, under Commission law, a distinction is made between communications related to organizing and communications related to a bargaining representative's negotiations with the employer or the administration of an existing agreement. The Examiner does not consider the NLRB law and Federal law relied upon by Complainant to present a compelling argument for extending the presumption of relevance to Complainant's requested list of bargaining unit employee names and addresses.

In summary, Respondent did not violate its statutory duty to bargain when it refused to provide Complainant with the requested list of bargaining unit employee names and addresses.

Having reached this conclusion, the Examiner finds no need to address Respondent's arguments that the Complainant has waived/contractually limited its right to the information sought; that the Public Records Law prohibits the release of the information sought; or that there are other privacy/confidentiality interests that justify the withholding of the information sought.

Conclusion

Respondent has not violated Sec. 111.84(1)(a) and (d), Stats., as claimed by the Complainant. Accordingly, the complaint has been dismissed in its entirety.

Dated at Madison, Wisconsin, this 31st day of March, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/
Coleen A. Burns, Examiner

CAB/gjc
31271-A