

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

**AFSCME, MILWAUKEE DISTRICT COUNCIL 48,  
AND ITS AFFILIATED LOCAL 567, Complainant,**

vs.

**MILWAUKEE COUNTY (SHERIFF'S OFFICE), Respondent.**

Case 683  
No. 68771  
MP-4492

**Decision No. 32728-B**

---

**Appearances:**

**Teresa C. Mambu-Rasch**, Law Offices of Mark Sweet, LLC, 705 East Silver Spring Drive, Milwaukee, Wisconsin 53217, appearing on behalf of AFSCME, Milwaukee District Council 48, and its Affiliated Local 567.

**Timothy R. Schoewe**, Assistant Corporation Counsel, 901 North Ninth Street, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County (Sheriff's Office).

**ORDER ON REVIEW OF EXAMINER'S DECISION**

On September 17, 2009, Examiner Stuart D. Levitan issued Findings of Fact, Conclusion of Law, and Order in the above-referenced matter, holding that the Respondent Milwaukee County (County) refused to bargain in good faith with the Complainant AFSCME, Milwaukee District Council 48 and its Affiliated Local 567 (Union), by refusing to provide to the Union the disciplinary files of a bargaining unit member in connection with another member's arbitration of a similar disciplinary incident.

On October 6, 2009, the County filed a timely petition with the Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats. Both parties submitted written argument in support of their respective positions. The record was closed on December 14, 2009, when the time expired for submission of a reply brief by the County.

No. 32728-B

For the reasons set forth in the Memorandum that accompanies this Order, the Commission affirms the Examiner's Findings of Fact and Conclusion of Law, and affirms the substance of his Order, while amending its form in certain respects.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

**ORDER**

- A. The Examiner's Findings of Fact 1 to 15 and Conclusion of Law are affirmed.
- B. The Examiner's Order is modified to substitute the phrase "Municipal Employment Relations Act" in Paragraph 1 for the phrase "State Employment Labor Relations Act," and to substitute the Notice set forth on Appendix A of this Order for the Notice in the Examiner's decision.

Given under our hands and seal at the City of Madison, Wisconsin, this 28<sup>th</sup> day of January, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

---

Judith Neumann, Chair

Paul Gordon /s/

---

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

---

Susan J. M. Bauman, Commissioner

APPENDIX A

NOTICE TO ALL EMPLOYEES IN BARGAINING UNITS REPRESENTED BY  
LOCAL 567, MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO

Pursuant to an order of the Wisconsin Employment Relations Commission, and in order to effectuate the purposes of the Municipal Employment Relations Act, we hereby notify our employees that:

WE WILL NOT refuse to bargain in good faith with Local 567 by refusing to provide information that is relevant and reasonably necessary for Local 567 to fulfill its duty to administer the collective bargaining agreement between it and Milwaukee County.

Dated this \_\_\_ day of \_\_\_\_\_, 2010.

By: \_\_\_\_\_  
Milwaukee County Sheriff (or designee)

**THIS NOTICE MUST REMAIN POSTED FOR THIRTY(30) DAYS FROM THE DATE  
HEREOF AND MUST NOT BE ALTERED OR COVERED BY ANY OTHER  
MATERIAL.**

**MILWAUKEE COUNTY (SHERIFF'S OFFICE)**

**MEMORANDUM ACCOMPANYING ORDER**

We have affirmed the Examiner's Findings of Fact and legal conclusion, and we also largely concur in his analysis.

This case arose out of an incident on August 27, 2008, involving a corrections officer/bargaining unit member "DM", who was escorting an inmate to a medical clinic when the inmate escaped. After an investigation and hearing, the County imposed a 10-day unpaid suspension upon the officer and also removed his authority to carry a weapon on duty. Pursuant to the applicable collective bargaining agreement, such suspensions are not subject to the initial steps of the grievance procedure but are subject to the contractual arbitration procedure. On March 13, 2009, the Union notified the County that DM's suspension was being submitted to arbitration. In a previous incident, another inmate had escaped during a clinic run while in the custody of another corrections officer and bargaining unit member, "MN." The County had imposed a three-day unpaid suspension upon MN in that incident.

On March 20, 2009, for purposes of representing DM in arbitrating his 10-day suspension, the Union conveyed written requests to the County for its records regarding the discipline history of MN and DM, including Internal Affairs documents and materials as to the investigations relating to those disciplines. The County supplied the requested information regarding DM. However, citing Section 4.04 of the collective bargaining agreement, the County demanded a written authorization from MN before releasing the requested records. MN would not submit the written authorization and the County refused to comply with the Union's request as to her records.

As the Examiner recognized, the instant case is governed by longstanding principles articulated in Commission case law. In order to facilitate the Union's ability to represent its bargaining unit members in negotiations and in administering the contract, a municipal employer must provide information upon union request that is "relevant and reasonably necessary" to the Union's carrying out its duties. *MORaine PARK VTAE, DEC. No. 26859-B (WERC, 8/93)* (Torosian, Commissioner, concurring and dissenting). Relevance and necessity are determined according to a liberal "discovery-type" standard, *ID.* The duty to furnish information can be limited where the employer can establish specific confidentiality concerns that outweigh the Union's need for the information. *MADISON METROPOLITAN SCHOOL DISTRICT, DEC. No. 28832-B (WERC, 9/98)*.

The relevance and necessity of the information requested is well within established and commonplace understandings of a union's role in representing disciplined employees. The Union wants to explore the possibility of a disparate treatment argument on behalf of DM, a standard line of argument for an employee challenging discipline. As to confidentiality, the Examiner correctly pointed out that specific and demonstrable confidentiality concerns may allow an employer to limit or condition disclosure as necessary. *SEE STATE OF WISCONSIN,*

DEC. NO. 32239-B (WERC, 8/09). Here, however, the County has simply advanced a general disinclination to providing Union access to an employee's file against the employee's wishes. If this were sufficient, unions might routinely find themselves stymied in their efforts to pursue disparate treatment arguments. "Confidentiality" vis-à-vis the Union cannot reasonably be construed to require the assent of other employees, especially those who are also members of the Union's bargaining unit.

As noted above, the County has cited Section 4.04 of the contract, entitled "Personnel Files," as justification for withholding MN's personnel files from the Union. That provision is set forth in full in the Examiner's decision at pages 3-4. The provision sets forth the protocols for "employees or their designee" to access the employee's personnel file. The provision does not refer to the Union or contain language that appears on its face to apply to or limit the County's duty to furnish information to the Union as part of the County's duty to bargain in good faith pursuant to the Municipal Employment Relations Act. We agree with the Examiner that, while the Union has sometimes submitted authorizations from employees when seeking to review their personnel files, the record lacks any bargaining history or other clear indications that Section 4.04, which appears on its face to apply to employees seeking their own files, should be construed as a mutually understood limitation upon the Union's statutory rights under MERA to receive information pertinent to carrying out its duties as collective bargaining representative. Although Section 4.04 refers to employees or their "designees," a term that could include Union representatives, the provision is still addressed to requests initiated by employees for their own files. The Union has an interest and corresponding right to information that is not merely derivative of whatever right an employee may have to information, but "transcends that interest. Consonant with its legal duty to represent the interests of the entire bargaining unit, the [Union] has an interest in the overall fairness and equity of the [County's] investigatory and disciplinary procedures." STATE OF WISCONSIN, SUPRA, at 11. The Commission has long refused to construe contract language as a waiver of important statutory rights without "clear and unmistakable evidence" compelling that construction. See, e.g., CITY OF APPLETON, DEC. NO. 14615-C (WERC, 1/78). By that standard, the record falls far short of establishing that Section 4.04 has limited the Union's statutory right to information about employee disciplinary records.

For the foregoing reasons, the County violated its duty to bargain in good faith with Union by refusing to allow the Union access to MN's disciplinary records, and the Examiner properly ordered the County to release those records and to post a notice accordingly.

Dated at Madison, Wisconsin, this 28th day of January, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

---

Judith Neumann, Chair

Paul Gordon /s/

---

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

---

Susan J. M. Bauman, Commissioner