

Nos. A07-1388 and A07-1418

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State of Minnesota  
 In Supreme Court

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International Brotherhood of Electrical Workers,  
 Local No. 292,

*Appellant,*

v.

City of St. Cloud,

and

Design Electric, Inc.,

*Respondents.*

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**BRIEF OF APPELLANT INTERNATIONAL BROTHERHOOD OF  
 ELECTRICAL WORKERS, LOCAL NO. 292**

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## STATEMENT OF ISSUES

1. *Does the Government Data Practices Act Entitle A Labor Union To Payroll Information On A Publicly-Funded Project Under The Prevailing Wage Law In The Same Manner As Such Data Would Be Available To Anyone Else in Minnesota?*

The Court of Appeals held in the affirmative, reasoning that Minn. Stat. § 13.43, subd. 6 does not bar access by a labor union to “public” payroll data under the statute.

### APPOSITE AUTHORITIES:

*Prairie Island Indian Cmty. v. Minn. Dept. of Public Safety*, 658 N.W.2d 876 (Minn. Ct. App. 2003);

*Demers v. City of Minneapolis*, 468 N.W.2d 71, 73 (Minn. 1991);

*Wiegel v. City of St. Paul*, 639 N.W.2d 378 (Minn. 2002);

Minn. Stat. §§ 13.01, subd. 3; 13.02, subd. 10; 13.03, subd. 1.

2. *Are The Addresses Of Employees Listed On Payroll Records Of A Contractor Performing Work On A Publicly-Funded Project Under The Prevailing Wage Law “Public Data” Under The Data Practices Act?*

The Court of Appeals ruled in the negative, holding that home addresses are not “public” under the Act.

### APPOSITE AUTHORITIES:

*Prairie Island Indian Cmty. v. Minn. Dept. of Public Safety*, 658 N.W.2d 876 (Minn. Ct. App. 2003);

*Demers v. City of Minneapolis*, 468 N.W.2d 71, 73 (Minn. 1991);

*Wiegel v. City of St. Paul*, 639 N.W.2d 378 (Minn. 2002);

Minn. Stat. §§ 13.01, subd. 3; 13.03, subd. 1.

## STATEMENT OF THE CASE

This litigation arises under the Minnesota Government Data Practices Act, Minn. Stat. § 13.01 (2006) *et seq.* The case was brought by the International Brotherhood of Electrical Workers, Local 292 ("IBEW") in Stearns County District Court in February 2007, seeking records maintained by the City of St. Cloud, reflecting wages paid on a publicly-funded project to employees of Design Electric, Inc. ("Design Electric"), a contractor hired by the City to perform work on a utility improvement project in downtown St. Cloud financed by state funds. The City requested and received the names, addresses, and wages from Design Electric of its employees in compliance with the state "Prevailing Wage" law, Minn. Stat. § 177.41 (2006), which requires government contractors to pay salaries consistent with compensation paid in the surrounding area.

This lawsuit was brought against the City after IBEW made three written requests in 2006 for access to the prevailing wage records maintained by the City, all of which were denied. Design Electric then sought, and was granted, intervention as a named Defendant. The City and Design Electric jointly argued that the documents were not "public" under Minn. Stat. § 13.43, subd. 6 (2006), a special statutory provision granting enhanced access by labor unions to information used for collective bargaining purposes.

The Trial Court granted Summary Judgment for IBEW, holding that the "Prevailing Wage" payroll information, including names, wages and addresses of Design Electric employees, is "public" data and must be produced, subject to redaction of Social Security numbers and child support withholding, which are explicitly classified as private, or non-public, under the Act. The Court of Appeals affirmed the ruling that the documents must be produced to IBEW, except for the home addresses of employees of Design Electric, which it deemed non-public under the Act.

IBEW appealed the portion of the Appellate Court decision barring release of the home addresses of Design Electric's employees. Design Electric appealed the main part of the ruling allowing access to the payroll data, claiming that Minn. Stat. § 13.43, subd. 6 bars all of the data from being provided to the labor union. This Court granted review on these two issues.<sup>1</sup>

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<sup>1</sup> IBEW sought attorney's fees below, and the trial court ordered the City to pay \$500 to IBEW for its attorney's fees. IBEW appealed that award as insufficient. The Court of Appeals affirmed the trial court's decision on attorney's fees, and this court denied review of this issue.

## STATEMENT OF THE FACTS

### A. The Prevailing Wage Records Maintained By The City

IBEW is a labor union representing skilled electrical workers in various portions of Minnesota. (A-7.)<sup>2</sup> It has a vital concern in ensuring that government entities pay workers the "prevailing wages," for work performed on taxpayer-funded projects, as required by the Prevailing Wage law, Minn. Stat. §§ 177.41-177.44 (2006).

The Prevailing Wage law requires contractors and subcontractors working on a project in which state funds are used to pay compensation to employees at a minimum level of the most frequently occurring wage based on a statewide survey and set forth in a schedule certified by the Department of Labor and Industry. *See* (A-97, 101) (as applicable in Stearns County).

Prevailing wage laws, which date back more than a century, are intended to prevent the undercutting of wage rates and the economies in local communities. A similar law, known as the Davis-Bacon Act, exists at the Federal level. 40 U.S.C. § 3141 (2006) *et seq.* The Minnesota law, enacted in 1973, applies to work in which state funds are used, including the St. Cloud project. To ensure compliance with the prevailing wage law, municipalities and other government bodies may require contractors to furnish certified payroll records of their employees reflecting

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<sup>2</sup>References to IBEW's Appendix are designated "(A-\_\_.)" References to the transcript are designated (Tr. \_\_\_\_.)

salaries paid with public funds which are maintained by the government entities and the contractors must supply the requested data to the governing board, as occurred in this case. Minn. Stat. § 177.43, subd. 6. (A-97.)

### **B. The Similar 2001 Data Practices Litigation**

A similar case in 2001 involved the same parties. The City of St. Cloud required Design Electric to submit regular certified payroll records for payments made to its employees in order to ensure compliance with the "Prevailing Wage" law. (A-78.)

IBEW requested copies of the wage records maintained by the City of St. Cloud. After the City furnished the records, Design Electric sued, challenging the production by the City of the documents on grounds that they constituted non-public "trade secrets." The Stearns County District Court ruled against Design Electric, holding that the documents were public under Minn. Stat. § 13.01, subd. 3; were not "trade secrets" under Minn. Stat. § 13.37, subd. 1(b); were not private under the common law; and that the issue was moot because the documents already had been released. (A-81-85.)

Design Electric's appeal was dismissed by the Court of Appeals on grounds of mootness because the documents already had been produced. *Design Electric, Inc. v. City of St. Cloud*, No. C1-01-734, 2001 WL 1402763 (Minn. Ct. App. Nov. 13, 2001) (unpublished). (A-88-89.)

## C. The Current Data Practices Request

### 1. *The Three Refusals*

The City entered into another contract with Design Electric in 2006 for utility improvement work in downtown St. Cloud, known as the "East St. Germain Utility Project." IBEW made three separate written demands, two by its officers and one by its counsel, for copies of the certified payroll records that the City had requested from Design Electric of the employees who worked on the project, including wages, benefits, and employee addresses. (A-90, 92-93.)

The City twice declined, apparently fearing that Design Electric which had stamped the documents "confidential, private and trade secret information – do not disclose," might claim the documents to be non-public. (A-74, 91.) But the City was dubious about that position. Its attorney wrote to Design Electric on January 3, 2007, *before* this lawsuit began, noting "no distinction" from the 2001 case and expressing doubts about Design Electric's position. The City's Attorney told Design Electric:

I question the basis of your claims.... If your company insists on its position and this results in further litigation to which the City is a party [sic] *I would expect all of the City's costs to be reimbursed.*

(A-94, emphasis supplied.)

Notwithstanding this concern, the City did Design Electric's bidding, refusing to produce the requested documentation, even though it had furnished similar items in 2001.

## 2. *The "Trade Secret" Defense*

IBEW began this lawsuit in February 2007, claiming that the documents are "public" under the Data Practices Act, Minn. Stat. § 13.01, *et seq.*, as previously decided in the 2001 litigation. (A-45-46.) It asserted that the payroll records are covered by the catch-all provision of the statute, Minn. Stat. § 13.03, subd. 1 (2006), which states that all data maintained by public entities, like the City of St. Cloud, "shall be public," unless classified otherwise under the law.

The City resisted, asserting that it would not produce the documents because Design Electric claimed they were private "trade secrets" under the Act. (A-49.) This was the same unsuccessful position Design Electric had taken in 2001, which the City then considered to be facetious. (A-94.)

While the dubious City refused to produce the documents, Design Electric was allowed to intervene in the lawsuit as a named Defendant. (A-43.)

In sworn Answers to Interrogatories, the City admitted that the documents sought by IBEW were "public." The City stated:

Interrogatory No. 2: Identify and describe in detail the definition Defendant assigns to "Certified Payroll Records" with respect to the Minnesota Government Data Practices Act.

*Answer: Data falling within the statutory provisions identified above are classified as public.*

(A-56, emphasis supplied.)

3. *The New "Labor Organization" Defense*

Despite acknowledging under oath that the payroll data is "public," the City continued to collaborate with Design Electric in resisting production.

The two jointly abandoned the "trade secret" exception underlying their initial resistance and advanced a new theory of resistance, that a special provision under the statute allowing broadened access to non-public data by labor organizations for collective bargaining purposes, such as conducting elections or collecting dues, Minn. Stat. § 13.43, subd. 6, forbids disclosure of the "public" prevailing wage records to IBEW because it is a labor union. (A-31-32, 66-67, 134-35; Tr. 24-25, 32.)

4. *Summary Judgment Below*

IBEW brought a Motion for Summary Judgment, asserting the same position it consistently espoused since 2001, that the certified payroll records of taxpayer-funded projects are "public" and should be produced, subject to redaction of Social Security numbers and certain child support obligations, which are expressly deemed non-public under Minn. Stat. §§ 13.355, subd. 1 (2006) and 518A.47, subd. 1(c) (2006), respectively. (A-31.)

The City and Design Electric opposed the Motion, even though the City had already stated in its Interrogatory response that the payroll data sought by IBEW is "classified as public." (A-31-32, 56.) Design Electric and the City then argued that subdivision 6 is the sole and exclusive way for all labor organizations to obtain any documents under the Act; that labor unions are not entitled to any "public" data under any other provisions of the law; and, because the documents were not sought for collective bargaining purposes, subdivision 6 barred production of any payroll data, even the "public" portions. (A-32, 133-35; Tr. 24-25, 32.)

After IBEW moved for Summary Judgment, both the City and Design Electric flip-flopped, taking yet another position. They now agreed with IBEW that the names of employees and all their wages are "public" and accessible to IBEW, and contested, only as a fall-back position, whether their addresses must be produced as well. (A-31-32; Tr. 28-29, 33-34.) At the Summary Judgment hearing, counsel for both the City and Design Electric unequivocally agreed with IBEW that the payroll records are "public" and should be furnished to IBEW.

The City's attorney stated:

[W]e do *concede* that *payroll data* as we read the statute typically is *public data* . . . .<sup>3</sup>

(Tr. 32, emphasis supplied.)

Design Electric's attorney concurred:

[T]he *rate of pay, the names, we don't have an issue with that*, and we have suggested that *we would be willing to turn that over*. What we do have issue with is the additional information such as the home address . . . .

(Tr. 28, emphasis supplied.)

Thus, the City, which earlier admitted that the data was "public," and Design Electric now took the mid-litigation position that even if the "labor organization" provision, subdivision 6, applies, it does not bar release to IBEW of the names and wage records of Design Electric's employees, the primary data sought by IBEW, and only prevents access to their addresses. Despite conceding that the names and payroll records are "public" and accessible, both the City and Design Electric refused to produce them and have, to this very day, continued to conceal the very

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<sup>3</sup> While the City's attorney questioned whether addresses were public or private, she also acknowledged that the City could have released a redacted version of the document. (Tr. 33.) Indeed, such a segregation is required under the Act. See Minn. Stat. § 13.03, subd. 3(c) (the responsible authority "may not charge for separating public from not public data"). If "public" and "nonpublic" data are contained in the same document, a government entity must produce the former while deleting the latter. See *City Pages v. State*, 655 N.W.2d 839, 844 (Minn. Ct. App. 2003), *review den'd* (Minn. April 15, 2003).

data – names and wages – that they both agreed are "public" and "we would be willing to turn that over."

Faced with this inconsistent position by the City and Design Electric, Judge Knapp ruled in favor of IBEW, granting its Motion, and requiring all of the data to be produced. (A-38.) He reviewed the labor union provision of the Data Practices Act and concluded that it was not intended to restrict documents that are otherwise "public," but simply gave additional rights and remedies to unions to obtain additional information that may be needed for collective bargaining purposes. He also reasoned that all of the information sought by IBEW, including the names and wage data, which the City and Design Electric concurred, as well as addresses, which they opposed, constitute "public" data and must be produced. (A-32-35.)

Judge Knapp noted that the Data Practices Act is broad and applies to "any person," which includes labor unions. (A-32-33.) He pointed out that the labor union provision does not bar access because, if it did, anyone could make a request for "public" documents, receive them, and turn them over to a labor union. He decried the position espoused by Design Electric and the City as "unreasonable" and would "produce an absurd result." (A-34-35.)

In addition to deeming the position espoused by both the City and Design Electric to be meritless, terming it "absurd" and "unreasonable," the Trial Court also found that IBEW suffered "damages" from the statutory "violation,"

consisting of the costs and attorney's fees of having "to commence litigation" and pursue it through Summary Judgment and awarded \$500 against the City. (A-35-36.)<sup>4</sup>

### 5. *The Appellate Court Ruling*

Design Electric was ordered to produce the documents within five days. (A-38.) An hour before the documents were to be produced, it brought a Motion for a stay pending appeal, which the Trial Court granted, conditioned upon posting a \$20,000 bond, which it did. (A-27.)

The Court of Appeals affirmed in part and reversed in part. *Int'l Bhd. of Elec. Workers, Local No. 292 v. City of St. Cloud*, 750 N.W.2d 307 (Minn. Ct. App. 2008), *review granted* (Aug. 19, 2008). (A-3.) It upheld the decision of the trial court that Minn. Stat. § 13.43, subd. 6, does not prevent a labor union from accessing data that is otherwise public and held that the wage data sought by IBEW was "public" and must be produced, but overturned the part of the ruling

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<sup>4</sup> Judge Knapp ordered, *sua sponte*, the City to pay \$500 to IBEW as reasonable attorney's fees and costs incurred since April 20, 2007, the date of the hearing on Design Electric's Motion to Intervene, (A-36, 38), which the City has since paid. The fee award was made even though IBEW had not made a request for any specific fees, expressly reserving its right to do so until *after* the case was resolved. (A-70-71.)

regarding the home addresses of Design Electric employees, holding that such data was non-public and need not be produced.<sup>5</sup> *Id.* at 315-16. (A-12.)

The Appellate Court agreed with the trial judge that the restrictions asserted by Design Electric and the City lack merit because § 13.43, subd. 6 is not a limitation on a labor union's ability to have access to personnel data, including "the payroll information." *Id.* at 315. (A-12.) Review of the legislative history reflected that the measure was intended to be "an expansion of a labor union's ability to access personnel data, not a limitation," as asserted by Design Electric and the City. It was enacted, the appellate court explained, to avoid a union from being "barred from acquiring information it needed to effectuate" its role to protect the rights and interests of its members. To achieve this, the measure enlarged the access rights of unions to both "public" and "non-public data" when needed for collective bargaining purposes, without impairing the normal rights of unions to access "public" data for any other purpose.

Because the prevailing wage data are "public" personnel data, the union is entitled to the information under § 13.43, subd. 2, and is not "barred" by subdivision 6. But the home addresses, the court below concluded, are "not public personnel data" under subdivision 2. Because the data was not sought for

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<sup>5</sup> IBEW did not seek the social security numbers or child support information of Design Electric employees, because these are specifically designated as non-public under the Act. Minn. Stat. §§ 13.355, subd. 1, and 518A.47, subd. 1(c).

collective bargaining purposes, the Appellate Court held that such information is not accessible at all. *Id.* at 314-16. (A-11-12.) The Court also affirmed the \$500 fee award to IBEW, rejecting the union's claim that it was insufficient. *Id.* at 316-17. (A-12-13.)

Both Local 292 and Design Electric brought Petitions for Review, while the City did not. (A-160-69.) This Court granted review on two issues:

1. Whether § 13.43, subd. 6, bars the union's right of access to data, as Design Electric claims; and
2. Whether the home addresses of Design Electric's employees are accessible under the Act, as IBEW asserts.

(A-1.)

IBEW maintains that the Court of Appeals correctly held that Minn. Stat. § 13.43, subdivision 6 does not restrict its right of access under the Act and that the prevailing wage information is "public," and should be produced. It also asserts that the appellate court erred in holding the home addresses to be off-limits under the Act. Thus, it seeks affirmance of the main issue—its right of access to the prevailing wage data consisting of names, wages, and benefits of Design Electric employees submitted to the City—and reversal of that subsidiary portion of the ruling barring release of the addresses.

## THE LEGAL STANDARD

The issues in this case are legal ones: (1) whether Local 292 is entitled to the prevailing wage data under the Data Practices Act, and (2) whether the names and addresses are non-public. Legal questions are to be reviewed *de novo*. *Hibbing Educ. Ass'n v. Public Employment Relations Bd.*, 369 N.W.2d 527, 529 (Minn. 1985).

## ARGUMENT

### **1. THE "LABOR ORGANIZATION" PROVISION IN MINN. STAT. § 13.43 SUBDIVISION 6 DOES NOT RESTRICT ACCESS TO "PUBLIC" DOCUMENTS**

#### **A. The Broad "Presumption" of Access Applies**

The Government Data Practices Act is intended to provide access to the public about the way government works, including the expenditure of public funds by government bodies. The Act reflects "a fundamental commitment to making the operations of our public institutions open to the public." *Prairie Island Indian Cmty. v. Minn. Dept. of Public Safety*, 658 N.W.2d 876, 884 (Minn. Ct. App. 2003). In light of this policy, the Data Practices law is construed "in favor of public access." *Id.* (citing *Demers v. City of Minneapolis*, 468 N.W.2d 71, 73 (Minn. 1991)).

The Act, by its terms, "establishes a presumption that government data are public and are accessible by the public for both inspection and copying," unless

there is a specific law "that provides certain data are not public." Minn. Stat. § 13.01, subd. 3. Indeed, it is more than a presumption, it is a statutory mandate that all data maintained by a government body "shall be public," unless specifically classified otherwise. *See also* Minn. Stat. § 13.03, subd. 1.

Those entitled to use the Act are equally broad. The statute inures to the benefit of any "person," which is defined as "any individual, partnership, corporation, *association*, business trust, or legal representative of an *organization*." Minn. Stat. § 13.02, subd. 10 (2006) (emphasis supplied). The statutory definition of a "person" extends to labor organizations, which constitute an "association" and "organization" within the meaning of the statute. *See Wiegel v. City of St. Paul*, 639 N.W.2d 378 (Minn. 2002) (police federation, firefighters union, and individual members brought successful data practices act claim against City to obtain interview notes of promotional exam); *Minneapolis Fed'n of Teachers, AFL-CIO, Local 59 v. Minneapolis Public Schs., Special Sch. Dist. No. 1*, 512 N.W.2d 107 (Minn. App. 1994), *review den'd* (Mar. 13, 1994) (union sought to prevent release of data on its members to newspaper under Data Practices Act).

Both the City and Design Electric agreed below that the bulk of the documentation sought in this case was "public." The City stated that the certified payroll records are the type of data that "fall[s] within the statutory provision . . .

classified as public." (A-56.) Design Electric, as Intervenor, concurred, conceding that "*wage information itself* and possibly names of the employees . . . *falls within the definitions of 'public data'* under the Data Practices Act," objecting only to providing the addresses of its employees. (A-61, emphasis supplied) The attorneys for both the City and Design Electric concurred at the Summary Judgment hearing that the payroll data is "public" and they magnanimously announced that they "would be willing to turn that over," which they still have not done. (Tr. 28, 32.)

#### **B. The Payroll Data is "Public"**

The prevailing wage data sought by IBEW is "public data" under the Act. Both the City and Design Electric correctly conceded so below. (A-56, 61, 94; Tr. 28, 32.)

This case was initiated under the catch all provision of the Minnesota Data Practices Act which mandates that all documents of political subdivisions "shall be public," unless classified differently under the law. Minn. Stat § 13.03, subd 1. *See also* Minn. Stat. § 13.01, subd. 3. There is no law that classifies the prevailing wage data as non-public.<sup>6</sup>

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<sup>6</sup> Several other government entities received similar Data Practices inquiries for Design Electric's payroll data for different projects. Unlike St. Cloud, they all voluntarily produced the data without quarrel. (A-111-12, 138-39.)

The personnel data section, § 13.43, does not apply here. That provision pertains to "data on **individuals** collected because the **individual** is or was an employee of or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a government entity." Minn. Stat. § 13.43, subd. 1 (emphasis supplied). In other words, § 13.43 applies only to "individuals," which is defined under the Data Practices Act as "a natural person" who is engaged, volunteers, or contracts with a government entity and not as a business or corporation. Minn. Stat. § 13.02, subd. 8.

Because Design Electric contracted with the City as a corporation, not an individual, § 13.43 does not apply to it. Since Design Electric's employees did not, act as an "employee," volunteer, or "independent contractor" for the City, § 13.43 does not cover them as individuals. Minn. Stat. § 13.43, subd. 1. Thus, Design Electric's reliance on the "personal data" section of the Data Practices Act, § 13.43, is misplaced. That section is inapplicable here and does not change the "public" status of the prevailing wage data from public to some other classification. Minn. Stat. § 13.03, subd 1.<sup>7</sup>

The Minnesota Department of Administration, which is statutorily authorized to issue opinions concerning the application of the Data Practices Act,

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<sup>7</sup> There are some specific provisions of the Act that classify particular data as "non-public," such as Social Security numbers, § 13.355, subd. 1, or child support withholding figures, § 518A.47, subd. 1(c). But IBEW has not sought this data, which can – and should – be redacted from the payroll records.

likewise did not consider Minn. Stat. § 13.43 when opining that prevailing wage data was public under the Data Practices Act. *See* Op. Minn. Dept. Admin. No. 98-028 (1998); Op. Minn. Dept. Admin. No. 96-057 (1996). (A-107, 170.)

In *Opinion No. 96-057*, an IBEW official sought prevailing wage data from the Minnesota Department of Labor and Industry. The Department of Labor and Industry responded that the data was confidential, investigative data under Minn. Stat. § 13.39, subd. 2, and that after the investigation into whether the company had complied with the Prevailing Wage Act, the documents had been returned to the company. The Department of Administration held that the documents should have been maintained under the Department's record retention policy and, because the investigation was no longer active, the documents were public and should have been released. (A-175-76.)

Similarly, *Opinion No. 98-028* involved a request for the names, addresses, classification, and hourly wages of workers on a project funded with taxpayer money in St. Cloud. (A-107.) The Department of Administration held that the denial of the prevailing wage records by the City of St. Cloud violated the Data Practices Act, reasoning that data is public unless specifically classified otherwise under Minn. Stat. § 13.03, subd. 1. (A-108-09.)

The Appellate Court below reached the same conclusion, but on different grounds. It reasoned that the prevailing wage data is "public personnel data" under

§ 13.43, subd. 2, because it constitutes "salary range, [or] contract fees" which are explicitly deemed "public" under that provision. *IBEW, Local No. 292*, 750 N.W.2d at 312-13. (A-9-10.) Both the City and Design Electric agreed below with this analysis, concurring that most of the prevailing wage data is "public" and would be produced, but still has not done so despite two Court Orders.

Thus, under either analysis, the prevailing wage data is "public." Because it is not explicitly classified as non-public by the statute, it must be produced. Alternatively, if the personnel data provision, § 13.43, applies, the data is "actual gross salary, salary range, [or] contract fees," which is "public" under that section of the Act.

### **C. Subdivision 6 Does Not Limit Access**

The argument asserted by Design Electric, after abandoning its discredited "trade secret" position, is that the portion of the personnel data section, Minn. Stat. § 13.43, subd. 6, regarding access to data by "labor organizations" restricts IBEW from obtaining "public" data, including the prevailing wage records it concedes it "would be willing to turn . . . over." It mistakenly maintains that subdivision 6 constitutes an overriding limitation on the right of IBEW — and all labor organizations for that matter — to obtain access to any "public" data, unless specifically needed for collective bargaining purposes.

Subdivision 6 states that "[p]ersonnel data may be disseminated to labor organizations to the extent that the responsible authority determines that the dissemination is necessary to conduct elections, notify employees of fair share assessments, and implement the provisions of chapters 179 and 179A [Minnesota Labor Relations and Public Employment Relations Acts]." Minn. Stat. § 13.43. It further provides that certain personal data may be given to labor organizations and to the Bureau of Mediation Services "to the extent the dissemination is ordered or authorized by the commissioner of the Bureau of Mediation Services." *Id.* Clearly, the statute refers to information needed for collective bargaining purposes.

The statute does not apply because the prevailing wage data is not "personnel data" under § 13.43. Even if the prevailing wage data is personnel data, Design Electric's argument lacks merit. Under its contorted view of this statute, Design Electric would treat labor unions differently than *all* other Minnesota citizens, businesses, associations, and organizations, relegating them to second-class citizens under the Act by barring them from obtaining any data, even public data, under the statute unless it was needed for collective bargaining purposes. It would do so in the face of legislative history to the contrary; the strong language of the statute mandating access; and no supporting case law whatsoever.

Both the Trial Court and the Appellate Court recognized this argument for what it is: sheer sophistry. The trial judge labeled Design Electric's argument as

"unreasonable" and one that produces "an absurd result." (A-34). The Appellate Court concurred, pointing out that Design Electric's argument, restricting access by unions under the Act, not only conflicts with the broad language of the Act and its "presumption" of access, but also is antithetical to the legislative purpose of subdivision 6 to enlarge, rather than constrict, the access rights of labor organizations. As the Court of Appeals explained, the measure was intended "as an expansion" of the rights of labor unions to access personnel data that would otherwise be non-public "not a limitation." *IBEW, Local No. 292*, 750 N.W.2d at 315. (A-11-12.)

Under the Act, a labor organization has all the rights of any "person" seeking access to "public" data. Because a labor organization is a "person," within the meaning of § 13.02, subd. 10, if the requested data is "public," it must be produced.

Minn. Stat. § 13.43, subd. 2, subdivision 6 "enlarges" that right to access non-public data when sought for collective bargaining purposes. The "labor organization" provision does not impose any "limitations" on the availability of "public" documents. It does not state that this provision is the exclusive way for a union to seek or obtain data maintained by governmental agencies or political subdivisions. The access of a labor organization to public documents is governed by § 13.02, subd. 10, which defines a labor organization as a "person" entitled to

access under the statute. Subdivision 6 only relates to non-public data, which unions may obtain for collective bargaining purposes.

The position espoused by Design Electric – that unions can only obtain data for collective bargaining purposes – would emasculate the rights of labor organizations. It would revise the statutory definition of "person" entitled to public data, which explicitly includes labor organizations, and perversely give them fewer rights than anyone else in Minnesota, even though the purpose of Subdivision 6 is to give them more rights. Under this argument, labor organizations and their personnel would not be entitled to any "public" data that is accessible to anyone else, unless needed specifically for collective bargaining purposes.

There is nothing in § 13.43, subd. 6 that indicates, expressly or implicitly, that it is intended to restrict access to government data by labor organizations. Rather, subdivision 6 gives labor organizations, under certain circumstances, enhanced access to data that would not otherwise be considered "public," for purposes of carrying out their collective bargaining obligations. For example, labor organizations may need access to data under the Act when dealing with internal disciplinary issues. Ordinarily, disciplinary data, including the reasons for the disciplinary action, does not constitute "public" data until the final disposition of the disciplinary action. Minn. Stat. § 13.43, subs. 2(a)(5), (b). But a labor

union, in order to effectively represent its members in a disciplinary process, may need access to documents and data relating to the proposed discipline.

Or, a labor union may want information about employees within a bargaining unit that is otherwise "public." Therefore, subdivision 6 exists to broaden the authority of labor organizations to obtain this data, even if non-public, in order to carry out their collective bargaining duties in representing their members.

In short, IBEW is entitled to the prevailing wage data because it is "public data." Minn. Stat. § 13.43, subd. 6 allows it and other labor unions *more* access to public data in order to carry out duties in the collective bargaining process. There is no indication that it is intended to restrict, or limit, the access that labor unions would otherwise have to documents that are "public."<sup>8</sup>

If subdivision 6 were construed to restrict labor unions from obtaining documents which are otherwise available to the public, any member of the public could obtain such documents and turn them over to a labor union. This would, as

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<sup>8</sup> Crafting a dichotomy that would limit labor organizations from receiving "public" documents that are available to anyone else would create significant Equal Protection and Due Process issues. See U.S. CONST. Amend. XIV; Minn. CONST. Art. 1, § 2; *Mitchell v. Steffen*, 504 N.W.2d 198, 203 (Minn. 1993); *Thompson v. Petroff's Estate*, 319 N.W.2d 400, 406 (Minn. 1982). Those concerns, however, need not be addressed here because § 13.43, subd. 6 does not restrict labor unions from seeking "public" documents but merely adds additional rights to labor organizations for access to documents that otherwise would not be available in order to be used for collective bargaining purposes.

the Trial Court noted: "produce an absurd result because an employee of a labor union, or any other person, could simply request the documents in his or her name as an individual in order to obtain the documents, and then provide them to the labor union." (A-34.) The absurdity of construing the statute in this way, as Design Electric argues, conflicts with presumption under Minn. Stat. § 645.17(1) (2006), that legislation should not be construed in a manner that is "unreasonable" or "produces an absurd result." (A-35.)

The reasoning of the Court below is fortified by another provision of the statute, Minn. Stat. § 13.05, subd. 12 (2006), which provides that government bodies may not require those requesting data to "state a reason for, or justify the request" for public data. If labor unions are prohibited from obtaining public data which is accessible to anyone else, how would the governmental entity know whether the information was sought by a labor union without asking, which it is expressly prohibited from doing?

Now, nearly two years after the Data Practices requests were made — and more than a year after the data was ordered to be produced — the "public" prevailing wage data still remains hidden from public scrutiny. That continuing concealment is an affront to the Act and its goal of facilitating public access to governmental data. Imposing this kind of yoke on IBEW makes the Data Practices Act a joke. But it's no laughing matter. It is time for the prevailing wage data that

IBEW, the City, and Design Electric, the Trial Court, and the Appellate Court all agree is "public," to be produced.

It is time for the sun to shine on the prevailing wage data, not for the public funds to be hidden in the clouds of concealment.

**2. THE ADDRESSES OF THE GOVERNMENT PAYEES ARE "PUBLIC"**

The Trial Court correctly held that the home addresses of Design Electric's employees, embedded in the certified payroll records submitted to the City by Design Electric are "public" and should be produced. (A-35.)

The Appellate Court disagreed, holding that the addresses of the payees of the government funds are non-public, or private, because "home addresses are not listed" as "public" in the personnel data portion of the statute, § 13.43, subd. 2 and are "private" under subdivision 4. It relied upon a portion of subdivision 5a, which states that payroll timesheets or comparable data that would otherwise be public is "private data" to the extent that the data may disclose "home addresses or telephone numbers."

This conclusion was erroneous. Even if § 13.43 applied to employees of Design Electric, who are neither employees, volunteers, or independent contractors of a government entity, the Trial Court's analysis that the addresses are "public" was right and should be adopted here. The Trial Court correctly reasoned that home addresses are not considered "public" data only with respect to employees

working in jails, prisons, or other correctional facilities," under Minn. Stat. § 13.43, subd. 5a. This provision is understandable because of potential safety or security concerns of those employees. That limitation, however, only extends to employees of those particular facilities and does not apply to others who are employees of contractors like Design Electric who perform contracting work paid for with public funds under the Prevailing Wage law.

The Appellate Court's view that the address of Design Electric's employees are not accessible because they are not specifically enumerated as "public" under the personnel data provision of § 13.43, subd. 2 does not resolve this conundrum. That provision only applies to "employees," "volunt[eers]," and "independent contractors" of the City. *See* p. 18, *supra*. The individuals working for Design Electric did not work for the City, volunteer for the City, or serve as independent contractors of the City. That Design Electric chose to include the addresses of its employees on the materials submitted to the City fortifies the "public" status of that data.<sup>9</sup>

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<sup>9</sup> Other government entities have no problem releasing complete Prevailing Wage payroll records to requesting parties. (A-111-129, 138-153.) Benton County has furnished payroll records of employees of a private contractor working on a prevailing wage project, including the names, wage rate, ethnicity, gender and job title of employees, as well as the *addresses* of employees. (A-111-12, 129.) Similarly, the City of Brainerd provided payroll records of the employees of a private contractor including names, *addresses*, wages and fringe benefit information. (A-138-39, 151-53.)

Certain data about individuals is expressly made non-public, such as Social Security numbers and child support data. *See* Minn. Stat. §§ 13.43, subds. 2(1), 4; 518A.47, subd. 1(c). Home addresses are not. Addresses of individuals are often available to the public if contained in documents in the public domain. For example, court documents frequently contain addresses of litigants, and are public. Addresses of persons arrested are public. Minn. Stat. § 13.82, subd. 2(j) (2006).

Expanding the shroud of secrecy is contrary to the spirit and structure of the Act. Because so much work is out-sourced by government entities, private companies essentially act as public entities in performing government-funded work. Those who do that work are paid, indirectly, by public funds and should be identifiable to the public.

In sum, the Trial Court correctly ruled that the provision of the Data Practices Act that all government data "shall be public" applies in this case to *all* of the materials submitted by Design Electric to the City. The special provision in § 13.43, subd. 6, providing enhanced access for labor organizations to carry out collective bargaining duties does not restrict access to "public" data. The "public" data includes the names, wage and benefit information, and addresses. Once that information is provided to the City, it falls into the "public" domain that is accessible to any and all individuals, associations, and organizations alike, including labor unions.

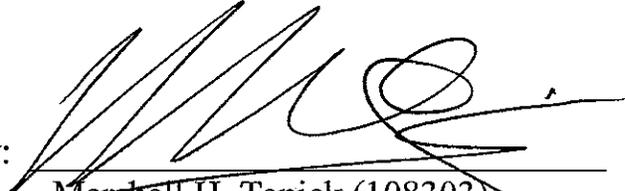
**CONCLUSION**

For the above reasons, the decision of the Court of Appeals ordering the Prevailing Wage data to be produced should be affirmed and the portion of the decision restricting access to addresses should be reversed.

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