NO. A07-1388

State of Minnesota
In Court of Appeals

Design Electric, Inc.,

Appellant,

vs.

International Brotherhood of Electrical Workers,
Local No. 292,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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TABLE OF CONTENTS

Page

STATEMENT OF LEGAL ISSUES 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 4

A. Prevailing Wage Records Maintained By City 4

B. The Prior Litigation 5

C. The Current Data Practices Request 6

1. The Three Data Practices Refusals 6

2. The "Trade Secret" Defense 7

3. The New "Labor Union" Reference 8

4. Summary Judgment Below 8

5. Post Summary Judgment Proceedings 12

THE LEGAL STANDARD 13

ARGUMENT 14

I. THE "LABOR ORGANIZATION" PROVISION OF THE DATA PRACTICES ACT DOES NOT RESTRICT ACCESS TO "PUBLIC" DOCUMENTS 14

A. The Broad "Presumption" of Access Applies 14

B. The "Personnel Data" Provision Does Not Apply 15

C. The "Labor Organization" Provision Does Not Ban Access 18

II. THE ADDRESSES OF GOVERNMENT PAYEES ARE "PUBLIC" 23

CONCLUSION 27

TABLE OF AUTHORITIES

Page

CASES

City Pages v. State,
655 N.W.2d 839 (Minn. Ct. App. 2003),
rev. den'd, (Apr. 15, 2003) 11

Cowles Media Co. v. County of Itasca,
Nos. 31-CO-91-854 and 31-CO-91-868,
1992 WL 430242 (Itasca Cty. Dist. Ct. 1992) 26

Demers v. City of Minneapolis,
468 N.W.2d 71 (Minn. 1991) 14

Design Electric, Inc. v. City of St. Cloud,
No. C1-01-734, 2001 WL 1402763
(Minn. Ct. App. Nov. 13, 2001) (unpublished) 6

Hibbing Education Ass'n v.
Public Employment Relations Board,
369 N.W.2d 527 (Minn. 1985) 13

In Re Expulsion of E.J.W. from
Ind. Sch. Dist. No. 500,
632 N.W.2d 775 (Minn. Ct. App. 2001) 22

Mitchell v. Steffen,
504 N.W.2d 198 (Minn. 1993) 23

Prairie Island Indian Community v.
Minnesota Department of Public Safety,
658 N.W.2d 876 (Minn. Ct. App. 2003) 14

State by Cooper v. French,
460 N.W.2d 2 (Minn. 1990) 13

Thompson v. Petroff's Estate,
319 N.W.2d 400 (Minn. 1982) 23

STATUTES

United States Constitution, Amendment XIV 23

40 U.S.C. § 3141, *et seq.* 4

Minnesota Constitution, Article 1, § 2 23

Minn. Stat. § 13.01 ..... 2, 5, 7, 14, 17, 22

Minn. Stat. § 13.02 ..... 14, 16, 17, 23

Minn. Stat. § 13.03 ..... 7, 10, 11, 14, 17, 18, 22, 23, 26

Minn. Stat. § 13.05 ..... 20, 21

Minn. Stat. § 13.08 ..... 3, 13

Minn. Stat. § 13.32 22

Minn. Stat. § 13.355 ..... 8, 18

Minn. Stat. § 13.37 5

Minn. Stat. § 13.43 ..... 2, 8, 9, 15-20, 22-25

Minn. Stat. § 13.82 ..... 22, 26

Minn. Stat. § 177.41 ..... 2, 4

Minn. Stat. § 177.43 5

Minn. Stat. § 518A.47 ..... 8, 18

Minn. Stat. § 179 and 179A 18

Minn. Stat. § 645.16 25

Minn. Stat. § 645.17 20

Minn. Stat. § 645.19 25

OTHER AUTHORITIES

Minn. Gen. R. of Practice, Rule 119 13

STATEMENT OF LEGAL ISSUES

1. *Did the Trial Court correctly hold that a labor organization is entitled under the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq., to "public" payroll records for a publicly-funded construction project in St. Cloud?*

The Trial Court held that Minn. Stat. § 13.43, subd. 6 does not bar access by a labor organization to "public" payroll data under the statute.

APPOSITE AUTHORITIES:

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

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

Minn. Stat. § 13.01, subd. 3;

Minn. Stat. § 13.02, subd. 10;

Minn. Stat. § 13.03, subd. 1.

2. *Are addresses of employees listed on payroll records for a publicly-funded project "public data" under the Data Practices Act?*

The Trial Court held that the addresses are "public data," along with the names and wages paid to the employees working on the publicly-funded project.

APPOSITE AUTHORITIES:

In re Expulsion of E.J.W., 632 N.W.2d 775 (Minn. Ct. App. 2001);

Minn. Stat. § 13.01, subd. 3;

Minn. Stat. § 13.03, subd. 1;

Minn. Stat. § 13.43, subds. 2 and 6.

STATEMENT OF THE CASE

This litigation arises under the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, *et seq*. A lawsuit was brought by the International Brotherhood of Electrical Workers, Local 292 ("IBEW"), in Stearns County District Court in February 2007. It sought access to prevailing wage records maintained by the City of St. Cloud, reflecting wages paid 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 which was financed by state funds. The City had received the prevailing wage records from Design Electric in order to assure that the contractor was complying with the state "prevailing wage" law, Minn. Stat. § 177.41, which requires government contractors to pay salaries consistent with wages paid in the surrounding area.

The 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, and Design Electric then sought, and then was granted, the right to intervene as a named Defendant. The City and Design Electric jointly argued that the documents were not "public" under Minn. Stat. § 13.43, subd. 6, a special statutory provision granting enhanced access by labor unions to information used for collective bargaining purposes.

The Trial Court, the Honorable Thomas Knapp, granted Summary Judgment for IBEW. He held that the "prevailing wage" records, including names, wages and addresses of Design Electric employees working on a public project, are "public" and must be produced, subject to a redaction of Social Security numbers and child support withholding. The ruling was stayed, pending an appeal by Design Electric.

The Trial Court, *sua sponte*, ordered that the City pay $500 to IBEW for its attorney's fees, which preceded a formal Motion by IBEW for an award of reasonable attorney's fees and costs under Minn. Stat. § 13.08, subd. 4, in the amount of $35,042.10 against both the City and Design Electric. The Trial Court denied the Motion, reiterating its *sua sponte* ruling that the City should only pay $500 in attorney's fees and Design Electric need not pay any attorney's fees or costs. Design Electric appealed the determination that the prevailing wage records are "public" and must be produced.

The Trial Court stayed its ruling pending the appeal. IBEW appealed the denial of attorney's fees. The City did not appeal either of the decisions. This Court consolidated the appeals by Design Electric and by IBEW for argument and decision.

STATEMENT OF THE FACTS

A. Prevailing Wage Records Maintained By City

IBEW is a labor union representing skilled electrical workers in various portions of Minnesota. (APP-00002.)[1] 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 Minn. Stat. §§ 177.41-177.44.

The Minnesota 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 established based on a statewide survey and set forth in a schedule certified by the Department of Labor and Industry. (Resp. App. 20.) The current prevailing wage rates for Stearns County are attached. (Resp. App. 23-28.)

Prevailing wage laws, which date back more than a century, are intended to prevent the undercutting of wage rates in local communities by bringing in workers from other areas. E.g., 40 U.S.C. § 3141, *et seq.* (Davis-Bacon Act.) The Minnesota law, enacted in 1973, applies to work in which state funds are used, including the St. Cloud project. (Resp. App. 19.) To ensure compliance with the prevailing wage law, municipalities and other government bodies may require

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[1] All references to Design Electric's Appendix are designated as "APP-____." References to the Transcript of the Summary Judgment hearing are designed as "Tr. _____." References to IBEW's Appendix are designated "Resp. App.____."

contractors to furnish certified payroll records of their employees reflecting salaries paid with public funds which are maintained by the government entities and the contractors must supply the requested data, as occurred in this case. *See* Minn. Stat. § 177.43, subd. 6.

B. The Prior 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. (Resp. App. 9.)

IBEW requested copies of the prevailing 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. (APP-00070-71, 00076-79.)

Design Electric appealed to this Court, which affirmed the ruling of Judge Ahles 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). (Resp. App. 8-11.)

C. The Current Data Practices Request

1. The Three Data Practices 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 requests for copies of the certified payroll records that the City had received from Design Electric of the employees who worked on the project. (Resp. App. 12, 14-15.)

The City declined, apparently fearing that Design Electric might resurrect a "trade secret" position. (Resp. App. 6, 13.) But the City was dubious about that position. Its attorney wrote to Design Electric on January 3, 2007, ***before*** this lawsuit began, expressing doubts about Design Electric's claim. Because there was "no distinction" between the material produced in the earlier litigation, the City 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, *I would expect all of the City's costs to be reimbursed.*

(Resp. App. 16, emphasis supplied.)

Notwithstanding this concern, the City did Design Electric's bidding. It continued to refuse to produce the requested documentation, the same type of data it had furnished 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. (APP-00002.) It asserted that the payroll records are covered by the catch-all provision of the statute, Minn. Stat. § 13.03, subd. 1, which states that all data maintained by public entities, like the City of St. Cloud, "shall be public," unless otherwise classified 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, the same position Design Electric had taken in 2001, and what the City considered to be facetious. (APP-00006.)

While the City refused to produce the documents, Design Electric was allowed to intervene in the lawsuit as a named Defendant. (APP-00042-47.) Then, the City, in response to Interrogatories, acknowledged that the documents sought by IBEW were "public." The City stated:

> Interrogatory No. 2: Identify and describe 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.***

(Resp. App. 2, emphasis supplied.)

3. The New "Labor Union" Reference

Despite declaring the payroll data to be "public," the City continued to collaborate with Design Electric in resisting production. The two of them abandoned the "trade secret" exception underlying their initial resistance and conjured up a new one, that a special provision under the statute allowing broadened access by labor organizations for collective bargaining data, Minn. Stat. § 13.43, subd. 6, somehow forbids disclosure of the "public" prevailing wage records to IBEW because it is a labor union. (APP-00119-20, 0037-38, 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 and 518A.47, subd. 1(c), respectively. (APP-00057-58.)

The City and Design Electric opposed the Motion, even though the City had already stated in Interrogatory Response No. 2 that the payroll data sought by IBEW "are classified as public." (Resp. App. 2.) Design Electric, which earlier claimed that the documents were confidential "trade secrets," now claimed that the documents were non-public under Minn. Stat. § 13.43, subd. 6, a statutory provision that allows labor organizations access to data that would otherwise be private or "non-public" for purposes of conducting union elections, collecting dues, or other collective bargaining purposes. (APP-00115, 00089-91, Tr. 24-25, 32.)

Design Electric and the City argued that subdivision 6 is the sole and exclusive way for labor organizations to obtain any documents under the Act; that labor unions are not entitled to any governmental data under any other provisions of the law; and, because the documents were not sought for collective bargaining purposes, subdivision 6 barred production of documents. (APP-00115, 00089-91, Tr. 24-25, 32.) However, both the City and Design Electric, in a bizarre retreat, agreed with IBEW that the names of employees and all their wages are "public" and accessible to IBEW, contesting only as a fall-back position whether their addresses must be produced as well. (APP-00114-15, Tr. 28-29, 33-34.)

At the Summary Judgment hearing, counsel for both the City and Design Electric agreed 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....*[2]

(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 averred that the data was "public," and Design Electric now took the weird position that the "labor organization" provision might apply, but 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. (APP-00114-15.) Despite conceding that the names and payroll records are "public" and accessible, both the City and Design Electric have refused to produce them and have, to this day, continued to conceal the very data – names and wages – that they both have agreed is "public." In doing so, they dispute their acknowledgements that "we would be willing to turn that over,"

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[2] While the City's attorney questioned whether addresses were public or private, she also acknowledged she could have released a redacted version of the document. (Tr. 33.) Indeed, such a suggestion is required under the Act. Minn. Stat. § 13.03, subd. 3(c). If "public" and "nonpublic" data are contained in the same document, a government entity must produce the former without the latter.

(Tr. 28), and the requirement to disclose "public data" in any document that also contains some "nonpublic" items. *See* § 13.03, subd. 3(c), and *City Pages v. State*, 655 N.W.2d 839, 844 (Minn. Ct. App. 2003), *rev. den'd,* (Apr. 15, 2003).

Faced with this rather strange position by the City and Design Electric, Judge Knapp ruled in favor of IBEW, granting its Motion, and requiring the data to be produced. (APP-00121.) 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 other 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. (APP-00117-18.)[3]

The Judge noted that the Data Practices Act is broad and applies to "any person," which includes labor unions. He pointed out that the labor union

[3] Judge Knapp also 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. By abandoning the "trade secret" defense at that time, Judge Knapp felt the City divested itself of any "legitimate reason" to withhold disclosure of the requested documents. (APP-00107-8.) 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. (APP-00056, 00065.)

provision did 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 concluded that the position espoused by Design Electric, and acquiesced in by the City, was "absurd," terming their joint stance as one that is "unreasonable" and "produce[s] an absurd result." (APP-00117-18.)

Knapp also noted that failing to produce the requested data constituted a "violation of the statute by the City ... [which] caused Plaintiff [IBEW] to sustain damages in terms of attorney's fees...." (APP-00119.) The "damages" sustained as a direct result of the violation consisted of attorney's fees and costs incurred by Plaintiff to commence and proceed with litigation in order to obtain the requested public documents. (APP-00119.)

In short, the Trial Court found the position espoused by both the City and Design Electric to be meritless, twice terming it "absurd" and once "unreasonable." It 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 *sua sponte* awarded $500 against the City.

5. *Post Summary Judgment Proceedings*

Design Electric was ordered to produce the documents within five days. (APP-00121.) An hour before the documents were to be produced, Design Electric

brought a Motion for a stay pending appeal, which the Trial Court granted, conditioned upon posting a $20,000 bond, which it did. (APP-00133.)

IBEW then sought its reasonable attorney's fees and costs. A Motion was brought against the City and Design Electric under Minn. Stat. § 13.08, subd. 4, which authorizes an award of attorney's fees and costs to a prevailing party, and pursuant to Rule 119 of the General Rules of Practice, which regulates requests for attorney's fees. The Trial Court adhered to its prior *sua sponte* ruling of a $500 fee award only against the City, which is the subject of the consolidated appeal, No. A07-1418. The City has not appealed either decision.

THE LEGAL STANDARD

The standard for review on a Motion for Summary Judgment is "(1) whether there are any general issues of material fact and (2) whether the lower courts erred in their application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

The only issue in this appeal is a legal one: whether the prevailing wage data is "public" only under the Data Practices Act. This is a legal determination that is reviewed *de novo*. *Hibbing Education Ass'n v. Public Employment Relations Board*, 369 N.W.2d 527, 529 (Minn. 1985).

ARGUMENT

I. THE "LABOR ORGANIZATION" PROVISION OF THE DATA PRACTICES ACT 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 Community v. Minnesota Department 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 heard. It covers 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.

The statutory definition of a "person" extends to labor organizations, which constitute an "association" and "organization" within the meaning of the statute.

Both the City and Design Electric agreed that 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." (Resp. App. 2.) Design Electric, the 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," and raised an objection only to providing the addresses of its employees. (APP-00010.) The attorneys for both the City and Design Electric concurred at the Summary Judgment hearing that the payroll data is "public" and they "would be willing to turn that over" which they have not done. (Tr. 28, 32.)

B. The "Personnel Data" Provision Does Not Apply

The argument now asserted by Design Electric, after abandoning its "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 any "public" data, including the prevailing wage records sought in this case. Design Electric mistakenly maintains that the provision contains "*specific, concrete limitations*" on the right of labor organizations and severely

restricts their access to any "public" data, unless needed for collective bargaining purposes. *Design Electric's Brief*, p. 10. That is not so.

The "labor organization" provision, Minn. Stat. § 13.43, subd. 6, does not impose any "limitations" on the availability of "public" documents. It does not state that it 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.

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

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 includes labor organizations, and perversely give them fewer rights than anyone else in Minnesota. Under its argument, labor organizations and their personnel would not be entitled to most "public" data that is accessible to anyone else.

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.

Design Electric's contention that the personnel data provision of the Act, § 13.43, removes the payroll records from "public" purview is wrong. The personnel data section of the law does not apply to this issue. 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 ... political subdivision...." Minn. Stat. § 13.43, subd. 1. In other words, § 13.43 applies only to "individuals," which is defined under the Data Practices Act as "a natural person" 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, on an individual basis, act as an "employee" 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. Design Electric cites no other provisions of the Data

Practices Act that would change the classification of the payroll data from public to some other class. Minn. Stat. § 13.03, subd 1.[4]

C. The "Labor Organization" Provision Does Not Ban Access

Because the personnel data section is inapplicable, subdivision 6, the "labor organization" provision is not pertinent. But even if it were, **which it is not**, it does not prevent IBEW from obtaining access to the prevailing wage records.

The Trial Court correctly rebuffed the claim by Design Electric that the access by a labor union to any information is more restrictive than that of other members of the general public under Minn. Stat. § 13.43, subd. 6. That provision states that "[p]ersonal 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 fee assessments, and implement the provisions of chapters 179 and 179A" (the Public Employees Labor Relations Act). It further provides that certain personal data may be disseminated 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

[4] 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.

mediation services." Clearly, the statute refers to information needed for collective bargaining purposes.

But the measure does not, in any way, indicate it is the sole or exclusive way a labor organization may seek data under the statute. Instead, the provision enhances, rather than detracts, from the documentation to which a labor organization may have access under the Act.

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. Although there is no available legislative history, the statute indicates that labor organizations are, under certain circumstances, entitled to 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, subd. 2(a)(5) and (b). But a labor union, in order to effectively represent its members in a disciplinary process, may need the access to documents and data relating to the proposed discipline. Or, a labor union may want to know other 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, subdivision 6 is aimed at allowing labor unions *more* access in order to carry out their 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."

As the Trial Court pointed out, if § 13.43, subd. 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 "produce an absurd result because an employee of a labor union, or any other person, could simply request the documents in his/her name as an individual in order to obtain the documents, and then provide them to the labor union." (APP-00117.)

The absurdity of construing the statute in this way, as Design Electric argues, conflicts with presumption under Minn. Stat. § 645.17(1), that legislation should not be construed in a manner that is unreasonable and produces an absurd result. (APP-00118.)

The Trial Court's interpretation is fortified by another provision of the statute, Minn. Stat. § 13.05, subd. 12, which provides that government bodies may not require those requesting data to "state a reason for, or justify the request."

Under this provision, one requesting the "public" data does not have to say why it is sought. If the data is "public," any requesting party is entitled to the document, regardless of the reason for seeking the documentation. Therefore, a labor union, or anyone else, is entitled to the certified payroll records of Design Electric, regardless of why it wants them.

The exception in Minn. Stat. § 13.05, subd. 12, that allows government entities to require persons to identify a reason for requesting the data, only applies if such a request is "specifically authorized by statute." There is no statute that "specifically" authorizes a municipality to require a labor union to state its reasons for the data. If IBEW was seeking documentation that is "non-public," it might be entitled to that documentation under subdivision 6 in order to carry out its collective bargaining activities. But, in this case, the documentation sought does not relate to collective bargaining activities, but is simply documentation regarding public expenditure of funds which is available to anyone, labor unions or otherwise. There is no need to specifically identify a reason for the request or justify its disclosure to the public. Anyone in the State of Minnesota, labor union or not, is entitled to the documentation because is reflects how public funds are expended, which all parties in this case, including the City and Design Electric, have conceded are "public" data. Thus, the payroll records, absent of specific

classification to the contrary, are "public" under § 13.03, subd. 1. *See also* Minn. Stat. § 13.01, subd. 3.

The "labor organization" provision under § 13.43, subd. 6, does not conflict with any other provision of the law. Even if it did, ***which it does not***, the "presumption" of openness applies. In *In Re Expulsion of E.J.W. from Ind. Sch. Dist. No. 500*, 632 N.W.2d 775, 779 (Minn. Ct. App. 2001), this Court held that the names of students who witnessed an alleged bomb threat and spoke to a law enforcement official constituted "public" data under the Act, despite the argument that the data was considered private, educational data under a more specific provision of the statute. This Court rejected that argument, holding that the broader law enforcement provision under § 13.82, subd. 7, which made the data "public," trumped the more restrictive educational data provision that would have made the data off limits under Minn. Stat. § 13.32, subd. 1(a).

Even if there were a conflict between subdivision 6 and the broader provisions of the statute, ***which there is not***, the reasoning of *In Re E.J.W.* should apply. If two provisions of the Data Practices Act conflict, the broader provision, ensuring access to "public" data is controlling. In this case, the mandate of § 13.03, subd. 1, that all data "shall be public" unless specifically classified otherwise, is controlling. But no such reconciliation is really necessary here because the broad provision of "public data" under § 13.43, subd. 2, does not

conflict with the right of a labor organization to obtain additional "non-public" data for collective bargaining purposes under § 13.43, subd. 6. The latter is broader, allowing labor unions specific information for collective bargaining purposes that may not otherwise be "public."

Simply put, the prevailing wage data, showing how taxpayer funds are spent, is "public." There is no measure in the Data Practices Act which classifies this data in any other way. Nor is there any provision suggesting or implying that such data, which is available to everyone, is not available to labor unions. To the contrary, a labor union is specifically defined as a "person" that is entitled to "public" data. *See* Minn. Stat. § 13.03, subd. 1; § 13.02, subds. 10 and 15.[5]

II. THE ADDRESSES OF GOVERNMENT PAYEES ARE "PUBLIC"

The purpose of the Data Practices Requests, thrice made by IBEW and rejected by the City, were to obtain prevailing wage documents submitted to the City by Design Electric. IBEW primarily sought access to the names and wage-

[5] Indeed, 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. Minnesota Constitution, Article 1, § 2; Fourteenth Amendment to United States Constitution; *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.

related information. The Trial Court correctly held, as the City and Design Electric agreed, that the names and wages paid to the employees are "public" and ordered that information to be produced, which they have refused to do. The Court below also ordered production of the home addresses of the employees, which are imbedded in the certified payroll records submitted to the City by Design Electric. (APP-00118.)[6]

Design Electric's challenge to providing the addresses of employees, which are contained in the payroll records it submitted to the City, is meritless.

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. 5(a). This provision is understandable because of potential safety or security concerns of those employees. That provision, however, only extends to employees of those particular facilities, and does not apply to others who are employees of contractors

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[6] Other government entities have no problem releasing the "prevailing wage" payroll records to requesting parties. (Resp. App. 29-63.) Benton County has furnished payroll records of employees of a private contractor working on a prevailing wage project. The records included the name, wage rate, ethnicity, gender and job title of employees, as well as the *address* of some employees. (Resp. App. 29-30, 41.) Similarly, the City of Brainerd provided payroll records of the employees of a private contractor including names, *addresses*, wage and benefit information. (Resp. App. 48-49, 61-63.) Incidentally, the Brainerd employees are members of the same Christian Labor Association as the employees of Design Electric.

like Design Electric who perform contracting work under the prevailing wage act and are paid with public funds.

Design Electric's argument that the address of its employees are not public because they are not specifically enumerated as "public" under the personnel data provision of § 13.43, subd. 2 does not solve this conundrum. As indicated, that provision only applies to employees and independent contractors of the City. *See* p. 16, *supra.* The individual employees of Design Electric are neither. That Design Electric chose to include the addresses of its employees on the materials submitted to the City does not change that provision.

Design Electric's argument that "[e]xceptions expressed in a law shall be construed to exclude all others" has no application here because "[w]hen the word of a law in their application of an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." *See* Minn. Stat. §§ 645.16 and 645.19. Therefore because Minn. Stat. §13.43 is not applicable to Design Electric or its employees, its wording has no relevance to whether the addresses contained on the documents submitted to the City by Design Electric are public.

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. The addresses of persons arrested are public.

Minn. Stat. § 13.82, subd. 2 (j). *See also Cowles Media Co. v. County of Itasca*, Nos. 31-CO-91-854 and 31-CO-91-868, 1992 WL 430242, *4 (Itasca Cty. Dist. Ct. 1992). (Resp. App. 65, 67.) In keeping with the broad provision of the Act and its "presumption" of access, home addresses should be public because there is no specific statute making them non-public.[7]

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, providing enhanced access for labor organizations to carry out their collective bargaining duties, does restrict access to "public" data. The "public" data includes the names, wage and benefit information, and addresses. If Design Electric wishes, in the future, to keep the addresses of its employees non-public, it can do so by not furnishing them to the City. But, once that information is furnished, it falls into the "public" domain that is accessible to anyone, labor unions and others.

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[7] The accessibility of the addresses of Design Electric's employees is a tempest in a teapot. Even if that information is not public, ***which it is***, the balance of the documentation, the names and wage information, must be made public. *See* Minn. Stat. § 13.03, subd. 3(c), which provides that, if a document contains both public and non-public data, the government agency must produce the "public" data, which both the City and Design Electric concede includes the names and wages of the employees, irrespective of their addresses.

CONCLUSION

For the above reasons, the decision of the Trial Court ordering the records to be produced should be affirmed.

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