

Nos. A07-1388 and A07-1418

State of Minnesota
In Supreme Court

International Brotherhood of Electrical Workers,
Local No. 292,

Appellant,

vs.

City of St. Cloud,

Respondent,

Design Electric, Inc.,

Respondent.

**RESPONDENT DESIGN ELECTRIC, INC.'S
BRIEF AND APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF ISSUES

(1) Does Minn. Stat. § 13.43, subd. 6 (2006), restrict a labor organization's access to personnel data under the Minnesota Government Data Practices Act ("MGDPA"), Minn. Stat. § 13.01, *et seq*?

The Court of Appeals ruled in the negative, affirming the Trial Court.

APPOSITE AUTHORITIES

Star Tribune v. City of St. Paul, 660 N.W.2d 821, 825 (Minn. Ct. App. 2003);

Anker v. Little, 541 N.W.2d 333, 336 (Minn. Ct. App. 1995);

Minn. Stat. § 13.43, subd. 6;

Minn. Stat. § 645.26, subd. 1.

(2) Is information not specifically listed as "public" under Minn. Stat. § 13.43, subd. 2, such as employees' addresses, considered "private" personnel data under the MGDPA?

The Court of Appeals ruled in the positive, reversing the Trial Court.

APPOSITE AUTHORITIES:

Star Tribune v. City of St. Paul, 660 N.W.2d 821, 825 (Minn. Ct. App. 2003);

Minn. Stat. § 13.43, subd. 2, 4, 6.

STATEMENT OF THE CASE

On February 8, 2008, International Brotherhood of Electrical Workers, Local 292 (“IBEW”) filed a lawsuit against the City of St. Cloud (“the City”). In its Complaint, IBEW asserted that the City violated the Minnesota Government Data Practice Act (“MGDPA”) when it refused to release certified payroll records. IBEW filed a Motion for Summary Judgment on April 6, 2007. On the same day, Design Electric, Inc. (“Design Electric”) filed a Motion to Intervene. The Court granted Design Electric’s Motion to Intervene on April 24, 2007. On May 21, 2007, the Court granted IBEW’s Summary Judgment Motion determining that all payroll information was public information. The Court ordered the City to release the data to IBEW. On May 28, 2007, Appellant filed a Motion to Stay the Court’s order to release the data. The Court granted the Motion on June 5, 2007, ordering that the release of the data was stayed pending the filing and disposition of appeal.

Design Electric appealed the Order granting summary judgment in favor of IBEW. On June 10, 2008, the Minnesota Court of Appeals partially affirmed and partially reversed the District Court’s grant of summary judgment against Design Electric allowing IBEW access to the majority of personnel data, but denying access to employees’ home addresses under Minn. Stat. § 13.43, subd. 2. The Court of Appeals affirmed the District Court’s limited award of \$500 in attorney fees finding no abuse of discretion in the refusal to award additional fees.

Design Electric and IBEW separately petitioned the Minnesota Supreme Court for review of the Appellate Court’s ruling. Design Electric petitioned for review as to the

portion of the Appellate Court ruling that allowed IBEW access to any personnel data. IBEW cross-petitioned as to the portion of the Appellate Court's ruling that restricted its access to private personnel data of Design Electric's Employees.¹ This Court has granted both Design Electric's petition for review and IBEW's petition for review to determine the extent to which labor organizations should have access to personnel records under the MGDPA.

¹ IBEW also appealed the Court of Appeal's decision to refuse to award additional attorney fees. The Minnesota Supreme Court denied this portion of IBEW's appeal.

STATEMENT OF THE FACTS

A. The Relationship Between IBEW And Design Electric

IBEW and Design Electric have had a tumultuous relationship for more than a decade. (App-2.)² Design Electric is a commercial electrical contractor with its primary place of business located in Stearns County, Minnesota. (A-6.) IBEW is a labor organization within the meaning of the National Labor Relations Act, 29 U.S.C. § 141 *et seq.* (A-7.)

For the past thirty-seven years, Design Electric's employees have been represented by the Christian Labor Association ("CLA"), a union "competitor" of IBEW. For more than 16 of those years IBEW has resorted to every strategy in an effort to replace CLA as the representative for Design Electric's employees. (App-2.)

IBEW has made countless attempts to recruit Design Electric's employees by using their private contact information. Upon acquiring any such information, IBEW representatives stalk Design Electric's employees at their homes and inundate them with unsolicited phone calls. IBEW has successfully used this tactic to pressure a number of Design Electric's employees into resigning from Design Electric in exchange for allegedly higher paying jobs with IBEW signatory competitors. Throughout the years, Design Electric's employees have lodged numerous complaints with Design Electric protesting IBEW's "strong arm" tactics. (App-2.)

² References to Design Electric's Supplemental Appendix are designated "(App-__.)" References to the transcript are designated as "(Tr-__.)" Reference to IBEW's Appendix will be referenced as "(A-__.)"

IBEW has also abused the National Labor Relations Board's ("NLRB") process to harass Design Electric. To date, IBEW has filed four frivolous unfair labor practice charges against Design Electric. Ultimately, every one of these charges was withdrawn by IBEW or dismissed by the NLRB. (App-2.)

Most recently, IBEW has resorted to using the MGDPA to acquire the confidential employee information that Design Electric is required to submit to municipalities in accordance with the Minnesota Prevailing Wage Act. (A-7.) The Minnesota Prevailing Wage Act requires that contractors on certain public jobs pay the "prevailing wage" for the area of the state in which the project is located. Minn. Stat. § 177.41. The Department of Labor and Industry ("the Department") sets the various prevailing wages for use in different sections of the state. Minn. Stat. § 177.43, subd. 4. The Act grants the Department (and other governmental bodies) the right to request review of certified payrolls of contractors on public projects. Minn. Stat. § 177.44, subd. 4. The contracting governmental body typically invokes the right to review the payroll records of the contractor.

On two separate occasions the City has requested that Design Electric submit its payroll records in accordance with the Minnesota Prevailing Wage Act. (A-7, A-78.) Once Design Electric has submitted the requisite data to the City, IBEW has demanded that the City surrender Design Electric's employees' payroll records, which contain personal identifying information, such as home addresses and home telephone numbers, to IBEW under the MGDPA. (A-7, A-78.) Historically, IBEW has used this type of personnel data to harass employees.

Prior Litigation History

In the 2001 case involving the same parties- Design Electric, IBEW, and City of St. Cloud-Design Electric was required to submit regular certified payroll records for payments made to its employees to ensure compliance with Minnesota Prevailing Wage law. *Design Elec. v. City of St. Cloud*, No. C1-01-734, 2001 WL 1402763 (Minn. App. Nov. 13, 2001). IBEW submitted a data practices request to the City of St. Cloud for copies of the payroll records. (A-78.) Design Electric sued the City seeking a temporary restraining order to prevent release of these records, or, in the alternative, damages. The City of St. Cloud released these records to IBEW prior to the inception of the litigation. (A-79.) Consequently, the Honorable Richard J. Ahles, Judge of the District Court for Stearns County, held the issue to be moot. (A-34-35.)

Design Electric appealed the District Court's decision to the Court of Appeals, which agreed with the District Court's ruling. (A-84.) The Court of Appeals reasoned that the case was moot because the records had already been released and accordingly, declined to address the substance of the MGDPA argument. (A-89.)

B. Design Electric Performed Contract Work For The City Of St. Cloud

The present case involves a similar fact scenario, but is not moot. In 2006, the City hired Design Electric as a subcontractor to work on the reconstruction of the East St. Germain Utility Project, Project No. 100570774. (A-6.)

Upon completion of the Project and in response to a request from the City, Design Electric submitted to the City its certified payroll records from the East St. Germain Project. These records contained confidential personnel information including, but not

limited to, home addresses, home telephone numbers, social security numbers, marital status, tax exemptions, tax withholdings, hours and days worked, garnishment information, and identifying information of gender, race, age and national origin. (A-7.) The wage information contained in these records apparently satisfied the requirements under the Minnesota Prevailing Wage Act, and there has been no allegation in this matter, or any other, that Design did not properly compensate its employees. As these records included personnel data, Design Electric marked its payroll record “confidential, private and trade secret information.” (A-7.)

C. IBEW’s Request For Personnel Data

Once again, IBEW submitted a request to the City demanding copies of the payroll records. The City refused to produce the documents as they were marked “confidential, private and trade secret information.” (A-7.) In an effort to shield the confidential information and to avoid litigation, IBEW was offered access to a pertinent part of the payroll records containing information about the amount of wages paid. Revealing the impetus behind its request, IBEW refused and filed the present lawsuit. (A-135.)

D. The Present Lawsuit

IBEW filed this lawsuit on February 8, 2007, claiming that the materials in question were “public” within the meaning of the MGDPA, Minn. Stat. § 13.01–.99. (A-46.) The City refused to produce the documents, serving and filing an Answer denying the Plaintiff’s allegations. (A-48-50.)

From the outset, Design Electric sought to intervene in this lawsuit. On February 22, 2007, one of Design Electric’s attorneys, Douglas Seaton, spoke with IBEW’S

counsel, Marshall Tanick, regarding Design Electric's interest in intervening in the current litigation. Mr. Tanick stated that he would speak to his client about agreeing to Design Electric's intervention and "get back" to Mr. Seaton, which he never did. Design Electric's attorneys received no further response to their request, in spite of two follow-up phone calls. (App-5.) Although Mr. Tanick did leave two messages on Design Electric's attorneys' voicemail, he merely left a phone number and did not reply to Design Electric's question regarding intervention. (App-5-6.) In April 2007, Design filed a motion to intervene. The District Court granted Design Electric's motion to intervene, holding that Design Electric could intervene as a matter of right. (A-41.)

Contrary to IBEW's assertions, at no time during the course of this lawsuit, from its original motion to intervene onward, has Design contended that these records constitute a trade secret. (App-3.) When Design originally submitted the certified payroll records to the City, it did stamp the records as "confidential, private and trade secret information." The City appears to have originally relied upon that stamp as the basis for denying IBEW's request for the records.

From the beginning, Design Electric has maintained that the payroll records that were provided to the City for purposes of complying with Minnesota Prevailing Wage laws constitute personnel data in accordance with MGDPA. Design Electric has repeatedly stated Minn. Stat. § 13.43, subd. 6, places "definite limitations" on information that may be assessed by labor organizations. (A-133.) Section 13.43, subd. 6 states that "[p]ersonnel data may be disseminated to labor organizations to the extent that... the dissemination is necessary to conduct elections, notify employees of fair share

fee assessments, and implement the provisions of chapters 179 and 179A” supports this assertion. (Emphasis added.) Design Electric has repeatedly contended that unless IBEW proves that it intends to utilize the data for an acceptable enumerated purpose, the legislature expressly chose to restrict labor organizations from obtaining all personnel data and to read otherwise would be to undermine the exclusive drafting power of the legislature. As IBEW has not requested this information to conduct elections, notify employees of fee assessments or (since it is not employee’s bargaining representatives) to implement Chapter 179 and 179A (the private and public labor relations statutes), Design Electric maintains that IBEW should not be entitled to receive any personnel information. (A-134-35.)

Throughout this litigation Design Electric has also argued that, even if the Court were to assume legislative authority by redrafting the clear meaning of the statutory terms, under the present fact scenario, IBEW should not have access rights that are more generous than those given to the general public. (Tr-28.) The general public is allowed to access public records, but is restricted from accessing private personnel records. Minn. Stat. § 13.43, subd. 2 (8) provides that the portions of the payroll records containing non-public information should be shielded from the general public. All types of data not specifically cited in Minn. Stat. § 13.43 subd. 2, are considered private personnel data. *Id.* § 13.43, subd. 4. As the payroll records sought by IBEW contain private personnel information including, but not limited to: home addresses, home telephone numbers, social security numbers, marital status, tax information, days and hours worked, race and

gender information, and information regarding child support garnishment, these records, in whole or in part, do not qualify as public. (A-131.)

Although Design Electric has offered to turn over the names and the wages of the employees in order to resolve this dispute, Design Electric has never maintained that this is what the law requires. Exposing its motives, IBEW has repeatedly rejected these offers of settlement. (A-135.) Design Electric has refrained from producing or agreeing to production of this information unilaterally in order to prevent repetition of the same mootness outcome in this litigation as in the prior litigation.

The District Court Ruling

IBEW brought a motion for Summary Judgment claiming that the payroll documents submitted to municipalities for purposes of complying with Prevailing Wage requirements are “public” personnel data, and should be produced. (A-71.) Design Electric opposed IBEW’s Motion, maintaining that the statutory language specifically restricts labor organizations’ access to personnel data and, even if it did not, much of the information requested is private personnel data, which is not accessible by the general public. (A-133-36.)

The District Court granted IBEW’s motion for Summary Judgment, determining that section 13.43 did not limit labor organizations access to private data and that personnel data, such as home addresses, should not be classified as private data. (A-37.) In so deciding, the District Court ignored the language of the statute and concluded that implementing the statute as written by the legislature would lead to “absurd results.” The District Court reasoned that IBEW could choose to disobey the order of the court by

having individuals unaffiliated with IBEW obtain these records and release them to IBEW. (A-34.)

The District Court determined that a labor organization is a “person” as defined by the MGDPA and, as such, should have access to all public personnel data contained within the payroll records. (A-33-35.) The Court deduced that because the statute does not specifically state that home addresses are private, then they must be considered public. (A-35.)

To avoid any possibility that this issue may be determined to be moot before an ultimate decision was rendered, Design Electric brought a Motion to Stay pending Appeal. The District Court granted Design’s Motion. (A-24-27.) Design Appealed the District Court’s ruling to the Court of Appeals.

The Appellate Court Ruling

The Court of Appeals did not give full force to the legislature’s specific language, which limits the circumstances under which a labor organization may access personnel data. Instead, the Court of Appeals upheld the portion of the District Court’s determination holding that a labor organization should have access to public personnel data. (A-14.)

The Court of Appeals did, however, determine that the District Court “misconstrue[d] the statute” by expanding the categories of data that could be considered public. (A-10-11.) The Court of Appeals cited to Minn. Stat. § 13.43, subd. 4, which provides that “all other personnel data” not expressly enumerated under Minn. Stat. § 13.43, subd. 2 “is private data on individuals.” The Court of Appeals deduced that

categories of data, such as home addresses, not specifically enumerated as public personnel data, should be considered to be private personnel data. (A-11.) The Court of Appeals ruled that the payroll records should be released to IBEW with the home addresses redacted. (A-14.)

Petition to the Minnesota Supreme Court

Design Electric and IBEW petitioned the Minnesota Supreme Court for review of the Appellate Court decision. (A-160, 165.) Design Electric filed a Petition for Review on the basis that the District Court and Court of Appeals had disregarded the express language of the legislature contained in Minn. Stat. § 13.43, subd. 6, by concluding that labor organizations should have access to public personnel data. (A-167-68.) Design Electric also acknowledged that if Minn. Stat. § 13.43, subd. 6, was not read to limit the access of labor organizations, then the Court of Appeals correctly determined that IBEW's access should be limited to public personnel data. (A- 168.) Applying this reasoning, however, Design Electric maintains that the application of the Court of Appeals decision should be broadened to encompass all private personnel information included in the payroll records. (A-168-69.) This Court granted review on both of those issues. (A-1.)

STANDARD OF REVIEW

The interpretation of a statute presents a question of law, which the appellate court reviews *de novo*. *Hibbing Educ. Ass'n v. Pub. Employ. Relations Bd.*, 369 N.W.2d 527, 529 (Minn. 1985). The construction of a statute is a question of law and courts must adhere to the statute's clear language, unless doing so would be inconsistent with the legislature's manifest intent. *Kugling v. Williamson*, 231 Minn. 135, 139, 42 N.W.2d 534, 538 (1950).

ARGUMENT

I. The Minnesota Data Practices Act Specifically Limits IBEW's Access To All Personnel Information

A. The Presumption Of Broad Access Does Not Apply To Personnel Data

Minn. Stat. § 13.03, subd. 1 provides that “all government data collected, created, received, maintained or disseminated by a government entity shall be public *unless* classified by statute or temporary classification pursuant to section, or federal law, ...with respect to data on individuals, as private or confidential.” (emphasis added.) Although the MGDPA establishes a presumption “in favor of public access,” personnel data is expressly excluded from this general presumption. *Prairie Island Indian Cmty. v. Minn. Dept. of Pub. Safety*, 658 N.W.2d 876, 884 (Minn. Ct. App. 2003) (noting a general presumption in favor of access); Minn. Stat. § 13.43 (personnel data exempted from general access); *see also Id.* § 13.02, subds. 9 and 12 (defining non-public and private data.) “Personnel data” is defined as “data on individuals collected because the individual...acts as an independent contractor with a government entity.” *Id.* § 13.43,

subd. 2 provides a list of “personnel data on current or former...independent contractors of a governmental entity [that] is [considered] public.” Particularly relevant to the present matter, Section § 13.43, subd. 2(8) includes as public: “payroll time sheets or other comparable data that are used to account for employee’s work time for payroll purposes, *except to the extent that release of time sheet data would reveal...other not public data*” (emphasis added.) The following items constitute relevant “personnel data” that is contained in payroll records and considered “public:” name; gross salary; value and nature of employer paid fringe benefits; job title; date of first and last employment; work location; work telephone number. (A-7.) Every item not specifically included in the list is broadly presumed to be “private data on individuals.” *Id.* § 13.43, subd. 4.

B. Employees Of Design Electric Are Contractors For Purposes Of Minn. Stat. § 13.43

Minn. Stat. § 13.43 applies 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.” *Id.* § 13.43, subd. 1. The individuals in this instance are employees of an independent contractor, Design Electric. The purpose of the MGDPA is “to balance the rights of the individuals to protect personal information from indiscriminate disclosure with the right of the public to know what the government is doing.” *Star Tribune v. City of St. Paul*, 660 N.W.2d 821, 825 (Minn. Ct. App. 2003) (quoting *Dembers v. City of Minneapolis*, 468 N.W.2d 71, 72 (Minn. 1991)). IBEW did not assert this argument at the District

Court Level, but reserved this argument for the Court of Appeals. The Court of Appeals apparently did not consider this argument. (A-3-14.)

IBEW first claims that data on employees of Design Electric is not “data on individuals” for purposes of the MGDPA. Brief of Appellant at 18, *Int’l Bro. of Elect. Workers, Local No. 292 v. City of St. Cloud and Design Electric, Inc.*, Nos. A07-1388, A07-1418 (Minn. Sept. 16, 2008). IBEW goes on to define individuals as “a natural person... who is engaged... with a government entity....” *Id.* (citing Minn. Stat. §13.02, subd. 8). Although the Statute does provide that an individual is a “natural person,” IBEW has created the remainder of the definition. Even accepting the definition concocted by IBEW, it would be counterintuitive to claim that the information contained in these payroll records does not constitute information on individuals. Design’s employees, as *individuals*, performed work on the project. The information sought by IBEW includes the names of *individuals*, the wages of *individuals*, and the home addresses of *individuals*. Therefore, the information sought by IBEW is information about *individuals*, not information about Design Electric as a corporation.

Next, IBEW argues that the employees of Design Electric would not be considered “personnel” for purposes of this statute because they are employees of an independent contractor. To argue that Design Electric’s independent contractor status as it relates to its contract with the City is only applicable to Design Electric as a corporation, and not Design Electric’s workers, is ridiculous. For example, it is well settled in Minnesota that an employer is liable for harm caused to a third party because of the negligence of its independent contractor. *Zimmer v. Carlton County Co-op. Power Ass’n*, 483 N.W.2d

511, 513 (Minn. App. 1992) (citing *Conover v. Northern State Power, Co.*, 313 N.W.2d 397, 404 (Minn.1981)). IBEW's argument in this case is akin to suggesting that in such cases involving the negligence of an independent contractor, an employer could avoid responsibility for harm to a third-party because that harm was inflicted by an *employee* of an independent contractor, not the "company" itself. To suggest that defies logic, as a company itself is inherently non-corporeal and cannot "act" or "inflect harm" for itself. A company's actions, therefore, must *always* be the actions of an employee of the company. IBEW cannot therefore argue that Design, as a corporate entity, serves as an independent contractor for purposes of Minn. Stat. § 13.43, but that its employees do not. That status as an independent contractor must also, logically, pass to its employees. Accordingly, Design Electric's certified payroll records, which are the payroll records of an independent contractor's employees, must fall under the purview of Section 13.43.

Further, IBEW did not challenge at the District Court level Design Electric's claims that the certified payroll records were maintained by the City as a function of Design Electric's and its employees' work as an independent contractor for the City. In fact, IBEW's attorney clearly stated at the summary judgment hearing that

[t]he payroll data which is at the heart of this case is specifically made public.[.] Not only is there no statute that makes them nonpublic, but there's a specific provision of the Data Practices Act that says that that kind of information is public. Minn. Stat. § 13.43, that's the personnel data provision of the act, states that for employees as well as independent contractors, independent contractors who contract with a governmental entity are covered by the Data Practices Act, so what the statute says is the name, the actual gross salary, the fees that are paid . . . that's specifically set forth[.]

(Tr. at 9-10.) At no time during its initial motion did IBEW's attorney, either in oral argument or in IBEW's written motion for summary judgment, ever raise the issue that Section 13.43 could not apply because only Design Electric, not Design Electric's employees, are independent contractors for purposes of Minn. Stat. § 13.43. Accordingly, IBEW may not now raise that issue on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that an appellate court generally will not consider matters that were not argued and considered in the district court).

C. The Specific Language Of Minn. Stat. § 13.43, Subd. 6, Restricts IBEW's Access To Personnel Records

While Minn. Stat. § 13.43, subd. 2, provides that certain personnel data is public, Minn. Stat. § 13.43, subd. 6, places *specific, concrete limitations* on the circumstances under which that personnel data may be accessed by a labor organization. Specifically, Minn. Stat. § 13.43, subd. 6 provides that:

Personnel 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. Personnel data shall 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 Mediation Services.

Here, Design Electric supplied the certified payroll records to the City in its capacity as an independent contractor. The records Design Electric has supplied to the City, therefore, qualify as personnel data as defined by Section 13.43. Portions of these records, which contain information defined as public data under section 13.43, subd. 2, would *normally* be public, a fact that Design has previously conceded. As a labor

organization, however, the IBEW is not entitled to any personnel data whether public or private, unless the request is for one of the purposes enumerated in Section 13.43, subd. 6.

A cursory review of Section 13.43 supports this interpretation. In this statute, the legislature has specified the type of data-public, private, personnel data, or all data-accessible to certain individuals, groups or entities. See Minn. Stat. § 13.43, subds. 6, 8, 11, 12, 13, 15. For instance, the statute specifically states that certain individuals, groups, or entities are allowed to obtain private personnel data. Minn. Stat. § 13.43, subd. 13 (“*Private personnel data* must be disclosed to the Department of Employment and Economic Development...”); subd. 15 (“*Private personnel data*...may be disseminated to a law enforcement agency...”); subd. 16 (“The superintendent must release to requesting school district or charter school *private personnel data*...”) Conversely, in other provisions of this statute the legislature carefully crafted the language to apply to the release of all *personnel data*, both private and public. *Id.* § 13.43, subd 6 (“*Personnel data* may be disseminated to labor organizations...”), subd. 11 (“If the responsible authority...reasonably determines that the release of *personnel data* is necessary...”) Finally, in other sections, the legislature refers to all *data* (not specifically limited to personnel data.) Minn. Stat. § 13.43, subd. 8 (“When allegations of ...harassment are made against an employee, the employee does not have access to *data* that would identify the complainant...”); subd.12 (“A law enforcement agency shall share *data* from a background investigation...”) IBEW has provided no proof that the legislature used these terms haphazardly; rather, the clear presumption must be that the legislature

intended to use those terms to effectuate its purpose. Therefore, without proof otherwise, it must be assumed that the legislature clearly intended to restrict labor organizations' access to all personnel data, not just private data. *Id.* § 13.43, subd. 6.

The District Court and the Court of Appeals chose to disregard this specific language, claiming that a literal reading of “subdivision 6 would conflict with the broad presumption of public access throughout the MGDPA.” (A-11.) Even though there is a broad presumption that every “person” is entitled to obtain public data, multiple sections limit certain individuals or entities from accessing public data. (A-10); *see also* Minn. Stat. § 13.43, subds. 6, 8. For example, subd. 8 restricts the circumstances under which an employee may be allowed able to obtain data that would threaten the personal safety of the complainant or witness or subject the complainant or witness to harm. Under this section, even though an employee is a “person” and would otherwise be entitled to public personnel information, the legislature specifically limited the employee’s broad access. *Id.* § 13.43, subd. 8. Similarly, subd. 6 expressly limits a labor organizations broad access. *Id.* § 13.43, subd. 6. In addition, the Court of Appeals has previously accepted the definition of personnel data as “data on individuals because the individual is or was [a state employee]”. *Manson v. Minnesota*, 613 N.W.2d 778, 780 n. 2 (Minn. Ct. App. 2000); *see also Star Tribune v. City of St. Paul*, 660 N.W.2d 821, 828 (Minn. Ct. App. 2003) (holding that “data...classified as personnel data...is not publicly accessible under the Minnesota Government Data Practices Act”).

A court may look beyond the exact language to determine legislative intent only if application of the literal meaning of a statute would lead to an “absurd result that departs

from the legislature's purpose". *Anker v. Little*, 541 N.W.2d 333, 336 (Minn. Ct. App. 1995), *review denied* (Feb. 9, 1996) (*citing Wegener v. Comm. of Rev.*, 505 N.W.2d 612, 617 (Minn. 1993)). The District Court rationalized that because "an employee of a labor organization, or any other person, could simply request the documents in his or her name. . . and then provide them to the labor union". (A-34.) In this situation, no absurd result is necessary if the governmental body in possession of this information were to simply provide a disclaimer following any request for personnel data, which notified individuals that labor organizations are not permitted to receive any personnel information under the MGDPA, except for the purposes permitted by Minn. Stat. § 13.43, subd. 6. Although enforcing the letter of the law of this statute may require additional administrative precautions, Courts may not disregard the letter of the law simply because it would be more difficult to administer. *See Anker* 541 N.W.2d at 338 (*citing R.B. Thompson, Jr. Lumber Co. v. Windsor Dev't Co.*, 383 N.W.2d 362, 367 (Minn. Ct. App. 1986)(finding that the court must follow the unambiguous language of the legislature despite troubling results)).

The Court of Appeals similarly chose not to enforce this provision on the basis that ignoring the specific language that limits access would allow coherence when read with the general presumption allowing broad access. Ordinarily, when a general provision of one statute conflicts with a specific provision of another statute, courts should construe the two statutes to give effect to both when possible. Minn. Stat. § 645.26, subd. 1. However, when two statutes irreconcilably conflict, the more specific provision should prevail over the more general provision unless the legislature intended

the general provision to control. *Id.*; *State v. Kalvig*, 296 Minn. 395, 398-99, 209 N.W.2d 678, 680 (1973); *see also State v. Williams*, 396 N.W.2d 840, 845-46 (Minn. Ct. App. 1986.) Here, subdivisions 2 and 6 of Section 13.43 *are* clearly in conflict. However, the Court of Appeals erred in concluding that the statutes could be reconciled and that the more general of the two statutes, Subdivision 2, controls. While Subdivision 2 generally states that certain personnel data is considered public, Subdivision 6 specifically carves out and limits the circumstances under which a labor organization may access personnel data. Because these two statutes irreconcilably conflict, the more specific provision, Subdivision 6, should control.

The Court of Appeals also ignored the letter of the law and evaluated “legislative history” to support its conclusion. (A-8-9.) The Court, however, never determined that implementing the statute as drafted would lead to an “absurd result that departs from the legislature’s purpose.” *See Anker v. Little*, 541 N.W.2d at 336 (holding that a court may look beyond the exact language to determine legislative intent only if application of the literal meaning of a statute would lead to an “absurd result...”). The Court of Appeals relied upon the legislative history, as outlined in a 1982 William Mitchell Law review article, to support its contention that Section 13.43, subd. 6, “acts as an expansion of a labor union’s ability to access personnel data...” (A-12) (citing Donald A. Gemberling & Gary A. Weissman, *Data Privacy: Everything You Wanted to Know About the Minnesota Government Data Practices Act—from “A” to “Z”*, 8 Wm. Mitchell L. Rev. 573, 645 (1982)). This explanation ignores the clear language set forth by the legislature. Moreover, although this article recognizes that the purpose of this provision was to

clarify the rights of a labor organization under the MGDPA, nowhere does this article state that the purpose of Minn. Stat. § 13.43, subd. 6, was to expand the rights of the labor organization. Although courts may inquire beyond a statute's plain language, they must "exercise this authority sparingly and only when a party demonstrates the statute's plain language violates a *clearly* expressed goal of the legislature." *Anker v. Little*, 541 N.W.2d at 337. Both Design Electric and IBEW conceded that there "is no case law or legislative history on this provision." (A-32.) As the parties agree that no pertinent legislative history exists and neither the District Court nor the Court of Appeals has cited to any "clearly expressed" legislative goal, the unambiguous statute must be applied as drafted.

D. Plaintiff's Reason For Its Request Is Not For An Enumerated Purpose

Minn. Stat. § 13.43, subd. 6, states that personnel data may be disseminated to labor organizations only "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." Here, IBEW, a labor organization, has just now stated that it seeks these records because of its "vital concern" in ensuring that the government paid workers the prevailing wage. Brief of Appellant at 4, *Int'l Bro. of Elect. Workers, Local No. 292 v. City of St. Cloud and Design Electric, Inc.*, Nos. A07-1388, A07-1418 (Minn. Sept. 16, 2008). Regardless of this claim, however, it is clear that IBEW's request does not fall under one of the statutory categories authorizing the request. IBEW does not represent Design's employees, so the request is clearly not for the purpose of notifying employees of fair share fee assessments. And, there is no evidence whatsoever that this evidence is for the purpose

of elections, or to implement any of the provisions authorized by chapters 179 or 179A of the Minnesota Statutes. The District Court and Court of Appeals erred, therefore, in ordering the City to release the payroll data to IBEW as IBEW has not shown that its request is for any of the purposes authorized under Minn. Stat. § 13.43, subd. 6.

II. Labor Organizations Access To Private Personnel Data Should Be Limited

A. Payroll Records Contain Public And Non-Public Data On Individuals

Minn. Stat. § 13.43, subd. 1, defines “‘personnel data’ as data on individuals collected because the individual... acts as an independent contractor with a government entity” Personnel data is divided into “public data” and “private data”. Minn. Stat. § 13.43, subd. 2, expressly lists the personnel data that is considered to be public:

Except for employees described in subdivision 5 and subject to the limitations described in subdivision 5a . . . the following personnel data on current and former employees, volunteers, and independent contractors of a government entity is public:

(1) name; employee identification number, which must not be the employee's Social Security number; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;

(2) job title and bargaining unit; job description; education and training background; and previous work experience;

(3) date of first and last employment;

(4) the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;

(5) the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action,

excluding data that would identify confidential sources who are employees of the public body;

(6) the terms of any agreement settling any dispute arising out of an employment relationship, including a buyout agreement as defined in section 123B.143, subdivision 2, paragraph (a); except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money;

(7) work location; a work telephone number; badge number; and honors and awards received; and

(8) payroll time sheets or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.

Minn. Stat. 13.43, subd. 4 further broadly states that “[a]ll other personnel data [not listed under subd.2] is private data on individuals....” Private data on individuals is defined as “data that is not public.” *Id.* § 13.02, subd. 12.

The Court of Appeals correctly concluded that home addresses are not public personnel data. The Court of Appeals acknowledged that “[b]y language of Minn. Stat. § 13.43, any personnel data that is not classified public *and* listed explicitly within subdivision 2 is presumed to be private.” (A-9-10)(emphasis added.) The Court of Appeals, however, idiosyncratically applied its own interpretation of Minn. Stat. § 13.43, subd. 2, by limiting the protection from disclosure of “private” personnel data to employee addresses only.

Social security numbers and child support information are expressly recognized as non-public. Minn. Stat. § 13.43, subd. 2. As such, these types of information certainly would not be available. The extensive list of presumptively public documents contained

in Section 13.43, subd. 2, does not include the following items, all of which are contained in Design Electric's payroll records: home addresses, home telephone numbers, marital status, tax exemptions, tax withholdings, hours and days worked, and identifying information of gender, race, age and national origin. Therefore, in order to correctly execute and complete the Court of Appeals holding, this Court should protect other "private" data contained in Design's payroll records and allow Design to redact this information.

B. Court Decisions From Other Jurisdiction Support Sheltering This Type Of Information

The purpose for implementing the MGDPA supports redacting the information that is released to IBEW. The purpose of the MGDPA is "to balance the rights of the individuals to protect personal information from indiscriminate disclosure with the right of the public to know what the government is doing." *Star Tribune*, 660 N.W.2d at 825. The Freedom of Information Act ("FOIA") serves the very same purpose and requires the courts to balance the privacy rights of individuals against the public's right to know. *See John Does and PKF-MARK III, Inc. v. City of Trenton Public Works*, 565 F. Supp.2d 560, 567 (N.D.N.J. 2008) (analyzing state claim under the New Jersey Open Public Records Law with cases decided in accordance with the FOIA because the "concerns" were the same). The majority of courts that have examined this issue under the FOIA or

the state law version of the FOIA have determined that redacting portions of individuals' payroll records is necessary, on balance, to secure their privacy.³

IBEW has finally acknowledged that the purpose of seeking these records is to ease its "vital concern" that the City was paying workers the prevailing wage. The only information necessary to accomplish this goal is a list of job titles and the corresponding

³ See *U.S. Dept. of Labor, et al v. Fed. Labor Relations Auth.*, 510 U.S. 487, 502, 114 S. Ct. 1006, 1016, 127 L. Ed. 2d 325, 339 (1994) (holding that agencies were not required to reveal home addresses because "employees' privacy interest substantially outweighed the public interest in disclosure"); *Hopkins v. U.S. Dept. of Hous. and Urban Dev't*, 929 F.2d 81, 88 (2d Cir. 1991) (finding that disclosure of names and addresses would "shed no light on [governments] performance in enforcing the prevailing wage laws"); *Sheet Metal Workers Int'l Assoc., Local Union No. 19 v. U.S. Dept. of Vet. Affairs*, 135 F.3d 891, 905 (3rd Cir. 1998) (holding that where a union requested payroll records under the Davis Bacon Act privacy requirement prevented disclosure of names and addresses); *Fed. Labor Relations Auth. v. U.S. Dept. of the Navy, et al*, 975 F.2d 348 (7th Cir. 1992) (holding that employees' privacy interest in name and home address outweighs the public's interest); *Painting Indus. Of Hawaii Mkt. Recovery Fund. v. U.S. Dept. of the Air Force, et al*, 26 F.3d 1479, 1484 (9th Cir. 1994) (finding that workers privacy right in their names and addresses outweighs the public's right to access that information, explaining that "neither the hours worked by a particular individual, that individual's job classification, nor even the fact that an individual is working on a project is rendered public by the Davis-Bacon Act"); *Fed. Labor Relations Auth. V. US Dept. of Def., et al*, 984 F.2d 370, 375 (10th Cir. 1993) (holding that "disclosure of ...home addresses has nothing to do with public scrutiny of government activities."); *Mich. Fed. of Teachers v. Univ. of Mich.*, 753 N.W.2d 28, 28 (Mich. 2008) (holding that employees' home addresses and telephone numbers should be excluded from publication because disclosure would be an "unwarranted invasion of an individual's personal privacy"); *John Does*, 565 F. Supp.2d at 571 (holding that under New Jersey's Open Public Records Act the privacy interest in names, addresses and other personal identifying information outweighed the public interest); *New Group Boston, Inc. v. Nat'l Railroad Passenger Corp.*, 799 F. Supp. 1264, 1272 (D. Mass. 1992) (holding disclosure of names and addresses would be an unwarranted invasion of privacy); *Hougan & Denton v. U.S. Dept. of Labor*, 1991 U.S. Dist. LEXIS (D.D.C. July 3, 1991) (holding that the attenuated public interest in disclosure does not outweigh significant privacy interest in the identities of individuals in enrolled in training programs).

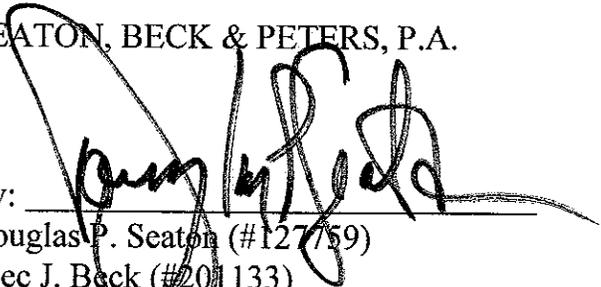
wages paid. Despite being offered this information on numerous occasions, Design continues to request private personnel information, such as employee addresses.

CONCLUSION

For the above reasons, this Court should reverse the decision by the Court of Appeals requiring Prevailing Wage data to be produced to IBEW and should affirm and expand upon that portion of the decision restricting IBEW's access to employees' home addresses to all personnel information.

Dated: October 16, 2008

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