

CASE NO. A07-1388/A07-1418

**STATE OF MINNESOTA
IN SUPREME COURT**

International Brotherhood of Electrical
Workers, Local No. 292,

Appellant,

v.

City of St. Cloud, and
Design Electric, Inc.

Respondents.

RESPONDENT CITY OF ST. CLOUD'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 THE LEGAL ISSUES

- I. Are the home addresses of Respondent Design Electric's employees protected as private personnel data under Minn. Stat. § 13.43 (2008)?

The Court of Appeals held in the affirmative.

Apposite Authority:

Minn. Stat. § 13.43, subd. 1; Minn. Stat. § 13.43, subd. 2; Minn. Stat. § 13.43, subd. 4

- II. Does Minn. Stat. § 13.43, subd. 6 (2008) limit Appellant IBEW's right of access to public personnel data maintained by Respondent City of St. Cloud?

The Court of Appeals held in the negative.

Apposite Authority:

Minn. Stat. § 13.43, subd. 1; Minn. Stat. § 13.43, subd. 6.

STATEMENT OF THE CASE

Appellant International Brotherhood of Electrical Workers (hereinafter "IBEW") brought a civil action against Respondent City of St. Cloud (hereinafter "City") for alleged violations of the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. § 13.01, *et seq* claiming that the City failed to disclose payroll records it had been maintaining on employees of Respondent Design Electric, Inc. (hereinafter "Design") for prevailing wage purposes. Design was under contract with the City to complete utility improvements to a downtown St. Cloud project. IBEW, a union purportedly interested in Design's employees, made a data request to the City for Design's certified payroll records asserting that these documents constituted public data under the MGDPA and therefore the City was required to release them. The City did not release the documents based on Design's representations that the payroll documents included confidential trade secret information and thus were private data pursuant to Minn. Stat. § 13.37, subd. 1(b) (2008). IBEW sued the City.

On April 9, 2007, Design moved to intervene in the civil action IBEW brought against the City. Design's request to intervene was granted on April 23, 2007. On May 7, 2007, IBEW moved for summary judgment. On May 21, 2007, the Honorable Thomas Knapp granted IBEW's motion for summary judgment finding the payroll documents constituted public data. Judge Knapp ordered the City to provide IBEW with copies of Design's certified payroll records, redacting only social security numbers and child support information.

Design made a motion to stay enforcement of the district court's order. Judge Knapp held a telephone conference with the parties on May 31, 2007 and on June 1, 2007 stayed his May 21, 2007 order. Design appealed the district court's order granting IBEW summary judgment.

On June 10, 2008, the court of appeals partially affirmed and partially reversed the district court, holding that the name and wage information of Design employees was public personnel data releasable to IBEW; but the employees' home addresses were private personnel data and not subject to release.

IBEW appealed the portion of the appellate court decision barring release of the home addresses of Design employees. Design appealed the appellate court ruling allowing IBEW access to the payroll data and rejecting Design's argument that Minn. Stat. § 13.43, subd. 6 (2008) restricts IBEW access because of IBEW's status as a labor union. This Court granted review on these issues.

STATEMENT OF THE FACTS

A. IBEW's Data Requests

In 2006, the City of St. Cloud ("City") contracted with Design Electric, Inc. ("Design"), a commercial electrical contractor, for certain work on a downtown public utility improvement project known as the "East St. Germain Utility Project" (hereinafter "Project"). Pursuant to requirements under Minnesota's Prevailing Wage Act, Minn. Stat. § 177.41, Design was required to provide the City with certified payroll records on its employees involved in the Project. *See* Minn. Stat. § 177.43, subd. 3 (2008).

On or about November 21, 2006, IBEW made a written request to the City, pursuant to the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §13.01 et seq, for copies of "the certified payroll for Design Electric" pertaining to the Project. (AA-90).¹ In a letter dated December 14, 2006, the city attorney responded to this request and indicated that the City had requested the payroll data from Design when IBEW's data request was received. However, when the data was eventually supplied to the City, Design marked all of the documents with a stamp indicating that the information is "Confidential, Private and Trade Secret Information – Do Not Disclose!" (AA-91). The city attorney thus informed IBEW that because the MGDPA classifies trade secret information as nonpublic, it could not disclose the payroll records. *Id.*

¹ "AA" references Appellant IBEW's Appendix.

On or about December 28, 2006, IBEW reasserted its request for Design's certified payroll records and referenced an earlier litigation in which IBEW challenged Design's trade secret assertions. (AA-92). This prior litigation resulted in a district court finding Design's payroll records to be public data and not "trade secrets" under the MGDPA. (AA-82-83). However, the district court also found the issue moot because the City had already released the payroll records to IBEW. (AA- 84-85). Design appealed the district court order and the court of appeals affirmed on the issue of mootness but did not address the merits of Design's trade secret argument. (AA-86-89).

The city attorney, also being aware of this prior litigation, took steps in 2006 to notify Design of IBEW's data request, and to seek input and/or additional information to assist the City in classifying these payroll records. (AA-94). The district court's prior rejection of Design's trade secret argument with respect to similar records put a question in the mind of the city attorney as to the proper classification of these records, and thus the requirement for release. The city attorney was in a difficult spot, however, realizing that no matter his decision, the City was facing litigation – from Design if the records were disclosed; and from IBEW if they continued to be withheld. (AA-93). Indeed, the City was sued when, in February, 2007, IBEW brought a lawsuit claiming the City had violated the MGDPA by not releasing Design's payroll records.

B. IBEW'S Data Practices Lawsuit

On or about February 20, 2007, IBEW served the City with its Summons and Complaint. (RA-1).² IBEW alleged the City violated the MGDPA by refusing to furnish the certified payroll data produced by Design and maintained by the City. IBEW did not sue Design and refused to stipulate to Design's intervention in the case. Thus, on April 20, 2007, the district court heard Design's motion to intervene. (AA-39). The district court granted Design's motion stating that because Design had an interest in protecting the confidentiality of its payroll records, Design's intervention in this case was appropriate since the civil action may "as a practical matter impair or impede Design Electric's ability to protect that interest. . . ." (AA-42). The district court recognized that the previous litigation failed to definitively answer the question as to the proper status to be given Design's payroll records and stated, "there is reason to believe that the City is not the best surrogate representative for Design Electric when [the City and Design's] interests have not been aligned and continue not to be aligned." *Id.*

At the motion hearing on April 20, 2007, Design *for the first time*, abandoned its previous argument regarding the confidentiality of the payroll records based on trade secrets status and instead argued that the information was not accessible to IBEW under Minn. Stat. § 13.43, subd. 6, because, according to Design, that provision of the MGDPA limited a labor union's access to personnel data. (AA-42). Contrary to IBEW's assertions, the City did not join in this argument. *Id.*

² "RA" references Respondent City of St. Cloud's Appendix.

The City's position has been consistent throughout this matter: if the payroll records are not protected trade secrets, they are to be classified as personnel data pursuant to Minn. Stat. § 13.43. Any information on Design's payroll records falling within the provision for public personnel data, Minn. Stat. § 13.43, subd. 2, is subject to disclosure to any person upon request. Information on the payroll records not classified as public is to be treated as private personnel data. Indeed, the City's responses to IBEW's discovery requests, and its representations at the motion hearings before the district court, reflect the City's consistent position that non-trade secret payroll data are properly classified as personnel data under Minn. Stat. § 13.43. (AA-55-60).

At the May 7, 2007 hearing on IBEW's summary judgment motion, the parties disagreed as to the proper application of the MGDPA to the disputed data. The City acknowledged that Design's payroll information (excluding social security numbers, child support information and home addresses) fit into the category of public personnel data. (TR-32-33).³ Design argued that all personnel data on its employees, whether public or private, was off limits to IBEW because of IBEW's status as a labor union. (TR-23-25). Design referenced Minn. Stat. § 13.43, subd. 6, to support its position. (TR-25). IBEW did not object to the City's classification of the payroll records as personnel data but argued that the home addresses are public because Design employees were not employees of a jail or correctional facility. (TR-9-10, 18-20). IBEW referenced Minn. Stat. § 13.43, subd. 5a, to support its position. (TR-19).

³ "TR" references the district court transcript.

Counsel for the City suggested the district court review the disputed data in camera and/or provide clarification as to what was public and not public. (TR-31-34). Since Design and IBEW were threatening to continue litigation should the City release or withhold the data, the City hoped the district court could provide guidance and finality as to the City's legal obligations under the MGDPA with respect to this dispute. The district court did not deem an in camera review necessary, indicating an understanding of the kinds of information contained in the payroll records, and promised a quick decision. (TR-38-40). The City did not release the payroll records pending the district court's decision.

C. The District Court Decision

The district court granted IBEW's motion for summary judgment and ordered the City to release copies of Design's certified payroll records to IBEW, with the exception of social security numbers and child support information. (AA-35). The district court rejected the City's argument that home addresses are private personnel data and instead agreed with IBEW that the MGDPA only prohibits the release of home addresses with respect to "employees working in jails, prisons or other corrections facilities to inmates and certain others associated with the corrections facility." *Id.* Although the district court held that the payroll data in dispute were properly classified as personnel data under the MGDPA, it read Minn. Stat. § 13.43, subd. 5a to establish that home addresses of government employees other than the correctional employees listed is public information. *Id.*

The district court wholly rejected Design's argument that IBEW had restricted rights to personnel data, public or private, and held,

[t]o construe Minn. Stat. § 13.43, subd. 6 as strictly limiting the information labor unions can obtain would produce an absurd result because an employee of the 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.

Id

Upon receiving the district court's summary judgment order, the City made preparations to comply and release the payroll data the court deemed public. However, Design moved for and was granted a stay of enforcement of the court order. (AA-24-27). The district court specifically ordered the City to *not* disclose the data pending an outcome on Design's appeal. (RA- 5).

D. The Court of Appeals Decision

On June 10, 2008, the court of appeals partially affirmed and partially reversed the district court, holding that name and wage information of Design employees was public personnel data releasable to IBEW; but employee home addresses were private personnel data not subject to release. (AA-3-14). The court of appeals rejected IBEW's argument that Minn. Stat. § 13.43 does not apply to data maintained by the City on Design employees because it falls into the general category of public government data. (AA-9-10). IBEW argued, as it does here, that because the City contracted with Design Electric, and not individual employees, those individuals working for Design have no privacy protections in personnel data gathered and maintained on them because of their work on the City Project.

The court of appeals specifically held that the payroll records at issue fit within the confines of personnel data under the MGDPA because they meet the following definition of personnel data found in Minn. Stat. § 13.43, subd. 1: “[d]ata on individuals collected because the individual is or was an employee of . . . or acts as an independent contractor with a government entity.” (AA-9-10) (emphasis added). As for home addresses, the court of appeals rejected the district court’s conclusion that Minn. Stat. § 13.43, subd. 5a limited public release of home addresses to those employees working in jails, prisons or other correctional facilities. The court of appeals found that this conclusion “misconstrues the statute and its explicitly limited amount of personnel data that it made public.” (AA-10). Ultimately, the court of appeals held,

[b]ecause home addresses are not listed in the personnel data that is public in [Minn. Stat. § 13.43] subdivision 2, home addresses are made private by [Minn. Stat. § 13.43] subdivision 4 and should be redacted from personnel data disclosed to IBEW.

(AA-11).

Finally, the court of appeals affirmed the district court and rejected Design’s argument that the MGDPA limits a labor union’s access to personnel data unless the labor union asserts a specific purpose in requesting the data as listed in the statute. *Id.* After reviewing the legislative history of subdivision 6, and after reading this provision in the context of the rest of Minn. Stat. § 13.43, the court of appeals held that the statute was intended to give labor unions greater, not lesser, access rights to personnel data. A labor union has access to personnel data that would otherwise be private if the labor union was requesting the data for any of the specific purposes enumerated in subdivision 6.

However, because the record in this case did not reflect IBEW was requesting private personnel data on Design employees for one of the purposes permissible under the statute, the court of appeals declined to apply Minn. Stat. § 13.43, subd. 6 to its request and held the home addresses could not be disclosed. (AA-10).

E. The City's Release of Records

On July 21, 2008, the City mailed copies of Design's certified payroll records to IBEW, with social security numbers, child support information, and home addresses redacted. (RA-10).

STANDARD OF REVIEW

Statutory interpretation is a question of law subject to de novo review. *Houston v. Int'l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002). In this case, the parties have agreed that the material facts are not in dispute. The application of a statute to undisputed facts results in a legal conclusion reviewed de novo by the appellate court. *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998). 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*, 42 N.W.2d 534, 538 (Minn. 1950). Here, the plain language of the MGDPA supports that the court of appeals correctly classified Design's payroll records as personnel data pursuant to Minn. Stat. § 13.43 and releasable to IBEW with the exception of private data listed in the records including employee home addresses.

LEGAL ARGUMENT

I. THE COURT OF APPEALS CORRECTLY HELD THAT HOME ADDRESSES OF DESIGN EMPLOYEES ARE PRIVATE PERSONNEL DATA UNDER MINN. STAT. § 13.43 (2008).

A. Design's Payroll Records are Personnel Data

The court of appeals applied the plain language of the MGDPA and provided clear direction in dealing with personnel data under the statute. The MGDPA defines "personnel data" as:

[D]ata 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 (2008).

The MGDPA then lists a variety of personnel data on individuals that are classified as public, including the following payroll-type data: actual gross salary, salary range, contract fees, actual gross pension, expense reimbursement, and the value of employer paid fringe benefits. Minn. Stat. § 13.43, subd. 2 (2008). All other personnel data not listed in subdivision 2 are private data on individuals not subject to public disclosure, but which “may be released pursuant to a court order.” Minn. Stat. § 13.43, subd. 4 (2008).

IBEW argues that Minn. Stat. § 13.43 does not apply because Design employees fall outside the definition of personnel data. According to IBEW, because the City contracted with Design as a corporation, and not with individual Design employees, the payroll records are general government data, which are presumed public, and not personnel data, which fall into public and private categories. However, IBEW cites the incorrect passage from the MDGPA to support its argument. IBEW looks to the definition of “individual” in Minn. Stat. § 13.02, subd. 8. (Appellant’s Brief p. 18.) Instead, the definition of “data on individuals” should apply because it is the precise terminology used in §13.43. “Data on individuals” is defined as:

[A]ll government data in which *any individual* is or can be identified as the subject of that data. . . .

Minn. Stat. § 13.02, subd. 5 (emphasis added).

Clearly, data on the payroll records in question meet this definition. Design employees are individuals – natural persons. *See* Minn. Stat. § 13.02, subd. 8. Records showing an individual’s base pay and benefits alongside identifying information such as their name and the name of their employer are data in which an individual can be identified as the subject of that data.

The rest of the definition of personnel data is also met. The data were collected because the individual employees performing work on the Project acted as independent contractors for a government entity: the City of St. Cloud. *See* Minn. Stat. § 13.43, subd. 1. The fact that the City contracted with Design as a corporation on the Project does not change the analysis. Regardless of the contractual arrangement, the data sought are still data on individuals—not the corporation. Therefore, Minn. Stat. § 13.43 applies to the payroll data in question. IBEW’s argument ignoring the plain language of the MGDPA was rejected by both the court of appeals and the district court, and should likewise be rejected by this Court.

Applying different standards to contract employees as IBEW suggests would lead to absurd results. An employee who entered into an individual contract with a government employer would have privacy protections in the information gathered and maintained on him or her but an employee hired through an employment agency or general contractor would have *no* protections – all information gathered on the employee

would be public simply because of the nature of the contractual arrangement. Two employees could literally be sitting side by side, performing the same job duties, and only one would have privacy rights provided under the MGDPA. The plain language of the statute does not support such a distinction. In addition, in ascertaining the intent of a statute, courts may presume the legislature does not intend a result that is absurd or unreasonable. Minn. Stat. § 645.17 (1). There is no legitimate rationale to treat contract employees differently for purposes of the MGDPA simply because of differences in contractual arrangements. Individuals doing work for a government agency are provided protections against public disclosure of certain personnel information gathered on them – regardless of the signatories on a government contract.

IBEW concedes that employees working under contract with a government entity should be identifiable to the public and information on these employees should be disclosed under the “spirit and structure” of the MGDPA. IBEW argues that “[b]ecause so much work is out-sourced by government entities, private companies act as public entities in performing government-funded work.” (Appellant’s Brief p. 28). Following this argument logically results in affirming the court of appeals’ decision treating workers, whether regular employees or contract employees, the same in terms of data gathered and maintained on them by the government entity. Thus, Design employees, as contract employees with a government entity, have privacy rights under the MGDPA identical to those of other City employees.

The Minnesota Court of Appeals has elsewhere suggested that Minn. Stat. § 13.43 applies even if it is a corporation that contracts with a government entity. In *City Pages v*

State, a newspaper sought the billing records of the law firm—RKMC—that handled the tobacco litigation for the state and Blue Cross Blue Shield (BCBS). 655 N.W.2d 839, 842 (Minn. App. 2003). BCBS tried to argue that the timekeeper’s names in the billing records were personnel data protected under the MGDPA. *Id.* at 843. The court stated that “this data pertains to RKMC members and employees, not to BCBS, which lacks standing to invoke the exception” *Id.* (footnote omitted). The court’s reasoning implies that while BCBS could not raise the personnel issue, the law firm could have even though it contracted with the State as an entity. That reasoning makes sense considering the statute focuses on whether the data concerns individuals rather than focusing on the contractual relationship with the government entity.

In the present case, this Court should adopt a similar approach and hold that data on Design’s employees are entitled to the same treatment as other personnel data gathered and maintained on other City employees.

B. Employee Home Addresses are Private Personnel Data

A plain reading of the MGDPA reflects that employee home addresses are not included in the list of *public* personnel data. *See* Minn. Stat. § 13.43, subd. 2. Therefore, the court of appeals correctly interpreted the MGDPA to require the release of names and wage information on Design employees, but to exclude from release home addresses. This Court should affirm the court of appeals’ decision as a consistent and correct application of the plain language of the MGDPA.

The record on review reflects that the payroll records in question contain names, wage information, home addresses, social security numbers and child support

information. However, only the home addresses were a source of disagreement among the parties concerning what data fell within the MGDPA definition of public personnel data. A plain reading of subdivision 2, the provision explicitly outlining the data on employees classified as public, supports the court of appeals' decision that home addresses are omitted and thus considered private. *See* Minn. Stat. § 13.43, subd. 4 ("All other personnel data is private data on individuals. . .").

In fact, contrary to IBEW's assertions, this interpretation of the MGDPA is consistent with the City's interpretation and historical application of the statute in handling requests for personnel data on employees, including contract employees.⁴ In this case, while initially the City withheld the payroll records because of Design's assertion of trade secret status,⁵ when Design reversed its position, the City determined

⁴ IBEW includes information *for the first time* in this appeal from other government entities reflecting their purported release of home addresses on payroll records of contract employees. (AA-140-153). This information should be ignored because it is not relevant to the issue before this Court. The City of St. Cloud has a responsibility under the MGDPA to respond to data requests and to make determinations as to the proper classification of government data. Minn. Stat. § 13.05 (2008). Here, two courts – the district court and the court of appeals – found the City properly classified Design's payroll records as personnel data. The court of appeals further held that the City properly classified home addresses as private personnel data pursuant to Minn. Stat. § 13.43.

⁵ To be protected trade secret information under the MGDPA, the data must meet the criteria laid out in Minn. Stat. § 13.37, subd. 1(b). However, who determines whether the data meet the criteria is difficult to ascertain. Indeed, the Commissioner of Administration, who is statutorily authorized to issue opinions regarding the MGDPA, acknowledges the difficulty in determining whether particular data constitute trade secrets. *See* Minn. Dep't of Admin. Advisory Op. 06-005 (RA-7); *see also* Minn. Dep't of Admin. Advisory Op. 03-009 ("[I]t is very difficult for the Commissioner to make a determination without being able to obtain more information or become an expert in matters involving trade secrets.") (RA-11). In most instances, the organization supplying the data has the best information to make that determination: "Clearly, the individuals who create the data, whether they are outside vendors or government staff, are in the best

that it would release data on the payroll records that fit within the MGDPA definition of public personnel data – Minn. Stat. § 13.43, subd. 2. The City did *not* agree with Design’s argument that while the payroll data contained public personnel data, the data were not available to IBEW as it would be to any other person. The City was prepared to release Design’s payroll records to IBEW to the extent they were classified as public. The City determined that social security numbers, child support information *and* home addresses would be redacted. IBEW’s insistence that home addresses be included resulted in disagreement among the parties and mutual reliance on the courts for guidance.

It should be noted that the court of appeals confused the factual record in this case as to the type of data included on the payroll records in question. The district court took notice that the payroll records contain addresses, social security numbers and child support information in addition to wage information and names of employees. (AA-31-32). The actual records were not produced to the district court, but there is no evidence in the record showing the payroll documents also included “marital status, tax exemptions, tax withholdings, hours and days worked, garnishment information, and identifying information of gender, race, age and national origin” as asserted in the court

position to make the case as to how the data satisfy the requirements of section 13.37, subdivision 1(b).” Minn. Dep’t of Admin. Advisory Op. 06-005; *see also* Minn. Dep’t of Admin. Advisory Op. 03-009; *EOP-Nicollet Mall, L.L.C. v County of Hennepin*, 2004 WL 1161412, at *3 (Minn. Tax Reg. Div. 2004) (finding data to constitute trade secrets based on, among other things, fact that affected organization tried to maintain the data’s secrecy) (RA-17). Here, the City initially deferred to Design’s determination that the wage data constituted trade secrets reasoning Design was best positioned to make that

of appeals' opinion. (AA-7). Ultimately, the court of appeals held that home addresses were protected from disclosure to IBEW under the facts of this case. This Court should clarify, however, that any other information contained on the payroll records that is not listed in Minn. Stat. § 13.43, subd. 2, is likewise protected from disclosure.

II. THE COURT OF APPEALS CORRECTLY HELD MINN. STAT. § 13.43, SUBD. 6 DOES NOT LIMIT IBEW'S RIGHT OF ACCESS TO PUBLIC PERSONNEL DATA

IBEW incorrectly asserts that the City agreed with Design's position that the payroll records were inaccessible to IBEW because of IBEW's status as a labor union. (Appellant's Brief, pp. 8-9, 13). The City did not, and does not, argue that the MGDPA limits or restricts IBEW's access to public personnel data. The court of appeals correctly held that Minn. Stat. § 13.43, subd. 6, acts as an expansion of a labor union's right of access to personnel data maintained by a government employer. (AA-12). These expanded rights allow a labor union to access otherwise private personnel data without a court order if the labor union is seeking the data for certain specified purposes. Minn. Stat. § 13.43, subd. 6. Because IBEW has never asserted a purpose for its data request, the court of appeals did not interpret subdivision 6 to allow IBEW access to home addresses of Design employees, which are classified as private. The City agrees that this is a correct application of the statute to the facts of this case and the court of appeals' decision should be affirmed.

classification but at the same time the City sought additional information from Design to ensure the data were being properly classified.

CONCLUSION

For the above reasons, the court of appeals' decision should be affirmed. This Court should clarify, however, that any information on the payroll records at issue not listed in Minn. Stat. § 13.43, subd. 2 is classified as private personnel data and thus not releasable to IBEW.

Respectfully submitted,

LEAGUE OF MINNESOTA CITIES

Date: October 16, 2008



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