COURT OF APPEALS
DECISION
DATED AND FILED

May 3, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-1397

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

RACINE EDUCATION ASSOCIATION,

PETITIONER-APPELLANT-
CROSS-RESPONDENT,

v.

RACINE UNIFIED SCHOOL DISTRICT, THE SCHOOL BOARD OF THE RACINE UNIFIED SCHOOL DISTRICT AND SUPERINTENDENT OF SCHOOLS DENNIS MCGOLDRICK,

RESPONDENTS-RESPONDENTS-
CROSS-APPELLANTS.

APPEAL and CROSS-APPEAL from an order of the circuit court for Racine County: RICHARD J. KREUL, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Snyder, JJ.

¶1 PER CURIAM. The Racine Education Association appeals from, and the Racine Unified School District, the School Board of the Racine Unified School District, and the Superintendent of Schools (hereinafter the School

District) cross-appeal from an order granting mandamus in part to the Racine Education Association. The issue on appeal is whether the circuit court correctly applied WIS. STAT. § 19.31 through § 19.37 (1997-98),[1] also known as the Open Records Law, to determine that certain documents should be released and certain documents should not be released. We conclude that the circuit court considered the appropriate factors, applied the proper analysis and reached a well-reasoned conclusion. Therefore, we affirm.

¶2 The facts are not in dispute. In March 1998, the Racine Education Association requested from the School District under the Open Records Law: "Copies of District records relating to any District investigative records and/or disciplinary actions taken against any of the following building administrators since January 1, 1992: …." There followed a list of eight administrators. All of the administrators are school principals and four of them served on the School District's bargaining agreement negotiating committee.

¶3 Seven documents were identified as meeting the request. The documents have been described as four memoranda of rebuke for the way certain principals dealt with their staff or parents, and one for failure to timely complete an assignment (exhibits 3, 5, 6 and 7), one memorandum response from one of the principals (exhibit 4), and two letters from the Department of Public Instruction (exhibits 1 and 2). The School District rejected the request in a letter which explained the reasons why access to the records was being denied.

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶4 The Racine Education Association then filed a complaint alleging a violation of the Open Records Law, WIS. STAT. § 19.31 through § 19.37, and seeking mandamus to enforce its right to inspect the documents. The Racine Education Association subsequently moved for summary judgment.

¶5 The circuit court granted the Racine Education Association mandamus as to exhibits 3, 4 and 5, and denied mandamus as to exhibits 1, 2, 6, and 7. Exhibits 1 and 2 are not at issue in this appeal. The Racine Education Association argues on appeal that the court should have ordered exhibits 6 and 7 to be made available for copying and inspection. In its cross-appeal, the School District argues that the court should not have ordered exhibits 3, 4 and 5 available for copying and inspection.

¶6 The right to inspect public documents is not absolute. *See* ***State ex rel. Youmans v. Owens***, 28 Wis. 2d 672, 681, 137 N.W.2d 470 (1965), *modified*, 28 Wis. 2d 672, 139 N.W.2d 241 (1966). "There may be situations where the harm done to the public interest may outweigh the right of a member of the public to have access to particular public records or documents. Thus, the one must be balanced against the other ...." ***Id.*** Prior to the release of records, the custodian of the records has a duty to consider all the relevant factors in balancing the public interest and the private interest. *See* ***Kailin v. Rainwater***, 226 Wis. 2d 134, 142, 593 N.W.2d 865 (Ct. App. 1999). The custodian must then "weigh the competing interests involved and determine whether permitting inspection would result in harm to the public interest which outweighs the legislative policy recognizing the public interest in allowing inspection." ***Id.*** (citations omitted).

¶7 When a circuit court reviews the actions of the custodian, it must then determine if the custodian performed the appropriate balancing test. If the

court determines that the custodian acted correctly, the court must then review de novo the decision of the custodian. *See* ***id.*** at 144.

¶8 In this case, the parties do not dispute the underlying facts, but rather contest the correctness of the circuit court's application of the law to those facts. Since the facts are not in dispute, this situation presents a question of law which this court reviews de novo. *See* ***id.*** at 147. While under this standard we are not required to give deference to the circuit court's opinion, we nonetheless value a circuit court's decision. *See* ***id.*** We conclude that the circuit court thoroughly analyzed the applicable law in this case, applied the appropriate balancing test and reached a well-reasoned decision. Consequently, we affirm the order of the court and adopt the court's opinion and analysis as our own. *See* WIS. CT. APP. IOP VI (5)(a) (1997-98).

¶9 The briefs submitted to this court, including an amicus curiae brief, raise the question of whether the circuit court properly considered that the requester was a labor organization and whether labor peace was an appropriate public policy consideration. We note that while the circuit court considered the fact that the requester was a labor organization, this was not the basis for its decision. Furthermore, we do not consider this acknowledgment of the relationship of the parties in this case to have been inappropriate. These parties have been involved in many disputes, and the circuit court was certainly aware of their history. Public policy interests could not be served if the court were required to consider the facts in a vacuum. The court did not place undue or inappropriate consideration on the fact that the requester was a labor organization involved in negotiations with the School District. The order of the circuit court is affirmed.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.