STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SCHOOL DISTRICT OF DRUMMOND EMPLOYEE'S ASSOCIATION, Complainant, vs. SCHOOL DISTRICT OF DRUMMOND, Respondent.	Case XIII No. 24985 MP-1010 Decision No. 17251-A

Appearances:

Mr. Barry Delaney, Executive Director, Chequamegon United Teachers, Route 1, Box 111, Hayward, Wisconsin 54843, appearing on behalf of the Complainant.

Mr. Dale R. Clark, Clark & Clark, Attorneys at Law, 214 West Second Street, P. O. Box 389, Ashland, Wisconsin 54806, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

School District of Drummond Employee's Association (hereinafter the Association or Complainant) filed a complaint with the Wisconsin Employment Relations Commission (Commission) on August 6, 1979, in which the Association alleged that the School District of Drummond (hereinafter the School District or District or Respondent) had committed and was continuing to commit certain named prohibited practices within the meaning of Section 111.70 of the Municipal Employment Relations Act (MERA). The Commission thereafter appointed Michael F. Rothstein, a member of its staff, as an Examiner to make and issue Findings of Fact, Conclusions of Law and Order in the matter.

Hearing in the above-captioned case was held on September 25, 1979 in Ashland, Wisconsin. A stenographic transcript of the hearing was prepared and filed with the Commission on November 19, 1979. The parties thereafter submitted to the Examiner post-hearing briefs and reply briefs through August 6, 1980. The undersigned having fully considered the evidence and arguments and being fully advised in the matter, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The School District of Drummond Employee's Association is a labor organization within the meaning of Section 111.70(1)(j), Wis. Stats., with its business address at Route 1, Box 111, Hayward, Wisconsin 54843.

2. The School District of Drummond is a municipal employer within the meaning of Section 111.70(1)(a), Wis. Stats., with its principal business address at Drummond, Wisconsin 54832; and that the Drummond Board of Education is an agent of the District and is charged with the possession, care, control and management of the property and affairs of the District.

3. At all times material herein the Association has been the certified collective bargaining representative for all non-certified staff regularly employed by the District excluding managerial, supervisory and confidential employes.

4. The Association and the District have been parties to a collective bargaining agreement, which was in effect from November 1, 1978 through June 30, 1980; this agreement was bargained during the months of January through May, 1979; on May 21, 1979 a tentative agreement was reached between the parties and subsequently ratified by both parties.

5. During the course of negotiations the Association informed the District that they had heard that the Board of Education was considering the adoption of a nepotism policy; the Association, by its representative Barry Delaney, therefore sent a letter to the District as follows:

> It has come to the attention of the School District of Drummond Employee's Association that the Board of Education is considering a nepotism policy. If the Board is considering a nepotism policy which would not allow an individual to work for the District if such individual has a relative who is a member of the Board of Education, then the Board of Education has an obligation to notify the employees' unions of such action and allow them to bargain this change in working conditions. The Board of Education cannot unilaterally change working conditions legally without bargaining such change with the unions involved.
>
> If the Board is, in fact, considering this change please inform us before the next bargaining session scheduled for May 21, 1979.

6. On May 23, 1979, at a regular meeting of the Board of Education of the School District, a resolution was adopted which provided in pertinent part that the Board would not enter into an employment contract with a spouse or child of any Board member if that contract would provide an annual compensation in excess of a fixed dollar amount ($5000).

7. On May 29, 1979 the District, by its administrator Kathryn Prenn, advised the Association that the Board of Education had adopted a nepotism policy.

8. On May 30, 1979, the Association advised the District as follows:

> It has come to the attention of the School District of Drummond Employee's Association that the Board of Education passed a nepotism policy on May 22, 1979. As per my letter dated May 9, 1979, the Association's position is that the District must bargain this change in working conditions. At the bargaining session on May 21, 1979 the District's negotiating team told us that they did not yet know what the Board intended to do, as far as a specific nepotism policy.
>
> The Association demands that the Board of Education rescind the newly adopted nepotism policy. If the Board wishes to change working conditions it has a legal obligation to notify the Association and we will meet and negotiate such changes. The Board cannot legally unilaterally change a working condition without offering to bargain. Clearly a nepotism policy and how it affects working conditions is a manadatory subject of bargaining.

9. On June 4, 1979 Respondent advised Complainant in pertinent part as follows:

> You are advised the policy was implemented in light of State Statute 946.]3, recommendative (sic) from the school auditor for the past two years, advice from the Wisconsin Association School Boards and consultation with the school district's attorney.

It is the Board's contention that the entire matter is a policy decision and, as such, falls within the realm of the policy-making authority vested with the Board.

10. On June 11, 1979 Complainant again informed Respondent that the Association demanded the right to bargain the issue of the nepotism policy if that policy would affect present employes of the District.

11. On July 16, 1979, the School Board of the District, at a regularly scheduled meeting, refused to provide a bus driving contract to Mr. Eldon (Al) Kravick on the basis that his wife was a member of the Board of Education of the District. Mr. Al Kravick had been employed previously by the School District for the prior eight years and his wife had been a member of the Board of Education for the District for the prior ten years.

12. On July 24, 1979, the Association advised Respondent District as follows:

> Because the Union clearly informed the District that we wanted to bargain this issue we are of the opinion that the Board's action is clearly illegal. The Board of Education cannot, legally, unilaterally change working conditions without bargaining such changes with the unions involved. We are willing to give the District one last chance to follow the proper procedure. We request a bargaining session regarding this matter on August 6, 1979, at 7:00 p.m. in the Drummond School Library.
>
> If we are not notified by August 2, 1979, that the Board is willing to bargain on this issue we will file a prohibited practice suit with the Wisconsin Employment Relations Commission against the District for failure to bargain and for unilaterally implementing a change in working conditions without bargaining.

Respondent did not reply to Complainant's request to bargain on the issue of the nepotism policy.

13. The collective bargaining agreement in effect between the Association and the District contains a three-step grievance procedure, the final step being an appeal to the Board of Education. There is no provision in the agreement for binding arbitration of disputes regarding the application or interpretation of the agreement. In addition, the agreement contains the following pertinent provision:

> C. No employee shall be terminated, suspended or reduced in compensation without cause. Employees will serve a ninety (90) day probationary period before being covered by the cause standard.

14. On July 24, 1979, the Association advised the District as follows:

> Mr. Al Kravick has requested that the School District of Drummond Employees' Association represent him in the matter of the Board's action of denying him a contract as a bus driver for the 1979-80 school year.
>
> It is our opinion that Article VII, section C, of the Collective Bargaining Agreement has been violated by the Board when it took action to deny Mr. Kravick employment. For this reason the Association demands that Mr. Kravick be issued a contract comparable to the one he received for the 1978-79 school year.

The Association further advised the District that this letter should be treated as the initiation of a grievance.

15. On July 27, 1979 the District advised the Association as follows:

> Please consider this letter a response at Step Two of the grievance procedure in the grievance regarding Mr. Kravick.
>
> The Master Agreement citation in your letter of July 24, 1979, appears of little consequence in the matter of Mr. Kravick. Clearly the cause of Mr. Kravick's not receiving a contract for the 1979-80 school year is the fact that Mrs. Kravick is a member of the Drummond Board of Education. You are well aware of the history of the situation and the fact that Mr. Kravick's position as bus driver for the 1979-1980 school year would have yielded more than $5,000 and thus, would have violated the district's nepotism policy.

16. On August 20, 1979, the Board of Education denied the Al Kravick grievance and subsequently advised the Association that Step Three of the grievance procedure was therefore completed.

17. The resolution adopted by the Board of Education which has been referred to by both the Association and the District as a "nepotism policy" provides, in pertinent part, as follows:

> NOW, THEREFORE, BE IT RESOLVED by the board of the School District of Drummond that it henceforth will not enter into and (sic) employment contract with a spouse or child of any board member if such contract provides for an annual compensation in excess of $5,000.00; that any individual employment contract between the board and a husband, wife or child of a member of the board entered into prior to the date of this resolution and currently in effect shall be performed to the completion of its term and it shall then terminate and be at an end; that the husband, wife or child of any current member of the board, performing services for the district at an annual compensation in excess of $5,000.00 pursuant to an arrangement other than an individual employment contract, shall resign forthwith; and that any person, hereafter performing services for the district at an annual compensation in excess of $5,000.00 pursuant to an arrangement other than an individual employment contract, whose husband, wife, or parent is hereafter elected to serve on the board, shall end such performance of services immediately when his or her husband, wife or parent assumes the office of board member.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. The School District of Drummond by the actions of its various agents in adopting and implementing a nepotism policy without bargaining the decision to adopt such a policy where that policy affects present employes of the School District, after receiving requests by the Association to bargain the adoption and impact of such policy, has committed a prohibited practice within the meaning of Section 111.70(3)(a)4, Wis. Stats.

2. The School District of Drummond, by the actions of its agent the Board of Education, in refusing to grant an employment contract to Al Kravick because of the alleged violation of the District's "nepotism" policy, has committed and is committing a prohibited practice within the meaning of Section 111.70(3)(a)5, Wis. Stats.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following:

ORDER

IT IS ORDERED that the Respondent School District of Drummond, its officers and agents, immediately:

1. Bargain collectively with the School District of Drummond Employee's Association as contemplated in Section 111.70(1)(d) of the Municipal Employment Relations Act with respect to the adoption and implementation of any nepotism policy the District may wish to implement, if said proposed nepotism policy affects present employes of the Drummond School District.

2. Immediately offer an employment contract to Mr. Al Kravick as a bus driver or the substantial equivalent thereof without prejudice to his seniority or other rights and privileges previously enjoyed by him, and make Mr. Kravick whole for any loss of pay or benefits he has suffered by reason of the District's refusal to offer him a bus driving contract since the District first implemented its nepotism policy; the District shall make said individual whole by paying to Mr. Kravick the sums of money equal to that which he would have normally earned or received from the time period that he would normally have been offered a bus driving contract but for the implementation of the nepotism policy, up to the date of the unconditional offer of an employment contract with the District, less any earnings that he may have received during said period, and less the amount of unemployment compensation, if any, received by him during said period; and in the event that Mr. Al Kravick received unemployment compensation benefits, the District shall reimburse the Unemployment Compensation Division of the Department of Industry, Labor and Human Relations to the extent of monies received by Al Kravick.

3. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 3rd day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Michael F. Rothstein
Michael F. Rothstein, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Complainant Association alleges that the Respondent School District committed a prohibited practice within the meaning of Section 111.70(3)(a)4 of the Municipal Employment Relations Act (MERA) by refusing to bargain with Complainant during the term of the parties' current collective bargaining agreement prior to the Respondent's adoption of a nepotism policy; and that Respondent also committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of MERA by terminating the employment of Eldon (Al) Kravick without "cause" in violation of the parties' collective bargaining agreement.

Respondent denies that it has illegally refused to bargain over the issue of the nepotism policy, asserting rather that the adoption of such a policy was primarily related to the exercise by the Board (Respondent) of its political responsibility and legal right to manage the affairs of the School District. Respondent further contends that the nepotism resolution adopted by Respondent was necessary to "give effect to Section 946.13 of the Wisconsin Statutes which prohibits private interest in public contracts". Finally, Respondent contends that the doctrine of virtual representation and waiver and estoppel bar the Complainant from contending that the Respondent has a duty to bargain the impact of the nepotism resolution.

The existence of the duty to bargain on the part of the District is derived essentially from two Statutes: Section 111.70(3)(a)4 makes it a prohibited practice for a municipal employer to "refuse to bargain collectively with a representative of . . . its employes . . ."; and Section 111.70(1)(d) defines the word "collective bargaining" as "the performance of the mutual obligation of the municipal employer . . . and the representative of its employes to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement . . . The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. . . The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employes."

In interpreting the foregoing statutory provisions, the Commission has previously held that it is a violation of Section 111.70(3)(a)4 for municipal employers to make unilateral changes with respect to subjects about which the municipal employer has a duty to bargain collectively. 1/ Additionally, a violation of Section 111.70(3)(a)4 occurs when a municipal employer refuses to discuss, upon the request of the representative of its employes, any subject about which it has a duty to bargain collectively, i.e., any mandatory subject of bargaining. It is Complainant's contention that the Respondent Board has violated Section 111.70(3)(a)4 by refusing to bargain over a mandatory subject of bargaining and by unilaterally changing working conditions without bargaining to the point of impasse.

1/ City of Wisconsin Dells, Decision No. 11646(3/73), City of Brookfield, Decision No. 11406-A (7/73). See also NLRB vs. Katz, 369US 736, 50 LRRM 2177 (1952).

The initial inquiry to be made is thus whether the nepotism policy adopted by the School Board of Drummond in May of 1979 is a manadatory subject of bargaining. While there are no WERC decisions directly on point with regard to an employer's duty to bargain over a nepotism policy, the Commission has addressed issues of a similar nature on prior occasions. For example, the Commission has previously held that residency requirements constitute a "condition of employment" since they relate directly to the possible termination of employment, and therefore are a mandatory subject of bargaining. 2/ The nepotism policy involved in the instant matter has the same vital effect on an employe's conditions of employment as the residency requirements found by the Commission to be a mandatory subject of bargaining in the cited cases. The record of the instant case clearly demonstrates that the Association and the Board were fully aware that employe Kravick would be adversely affected by the proposed nepotism policy; this is fairly obvious since it was on the basis of that policy that his employment with the District was terminated. In City of Brookfield vs. Wisconsin Employment Relations Commission, 3/ the court stated the following:

> While the words "conditions of employment" can be broadly construed to cover many areas, the courts generally restrict interpretation of Statutory language to exclude various kinds of managerial decisions from the scope of the duty to bargain. The conditions of a person's employment have been held to include work hours, amount of work expected during work hours, relief periods and safety practices. Another condition would be job security; that is, the question of whether there is to be a job at all. Any change which directly relates to termination of employment has been recognized by the courts as being mandatorily bargainable. Labor Board vs. Adams Dairy, 322 Fed 2nd 553; Labor Board vs. Bachelder, 102 Fed 2nd 274; Labor Board vs. Westinghouse, 120 Fed 2nd 1004. (Emphasis added)

Clearly the resolution adopted by Respondent's School Board in the instant matter affects the job security of employes represented by the Complainant Association. The resolution adopted by the Board provides that the Board will not enter into an employment contract with the spouse or child of any member of the Board. It further provides that, if any individual employment contract exists between a member of the Board and a spouse or child of a Board member, that employe shall complete the individual employment contract and then have his/her job terminated. Thus, the policy adopted by the Board clearly affects the conditions of employment of unit employes. Under such circumstances, it is obvious that the Board had an obligation to bargain collectively with the representative of its employes.

The District tries to explain its refusal to bargain on the basis that it was engaged in implementing "the general policy of the State of Wisconsin that public officials have a complete personal disinterest in public contracts" and that the adoption of the resolution was "to prevent violation of Section 946.13, Wisconsin Statutes, a criminal statute, which prohibits private interest in public contracts". Additionally, the Respondent maintains that the adoption of the anti-nepotism resolution was in fulfillment of "obligations imposed upon it to manage the affairs of the District as charged by Section 120.12, Wisconsin Statutues, and such statutory responsibility is one that Respondent cannot delegate to or share with any other person or organization . . ." (answer to complaint).

2/ Milwaukee Sewerage Commission, Decision No. 11228-A (1972); City of Brookfield, Decision No. 11406-A,B (1973); City of Clintonville, Decision No. 12187-A, 12186-B (1974); City of Madison, Decision No. 15095 (1976).

3/ Case No. 31923, Circuit Court Waukesha County; WERC Decision No. 11406-B (9/73).

Such contentions on the part of the District, however, do not satisfy or absolve the District of its statutory obligation to bargain over the nepotism policy with the representative of its employes. This is not to say that the District was prohibited from addressing the conflict of interest issue which was a legitimate concern of the Board. To paraphrase the Commission in the City of Brookfield case, this is not to hold that nepotism limitations cannot be imposed upon employes of a school district; only that where such employes are subject to collective bargaining under MERA, the Act cannot be ignored in imposing such limitations. And as the court has said in Brookfield, 4/ "arguments that the ordinance is a managerial decision, fundamental to the direction of the municipality fails whenever, as in the case at hand, the action taken is in direct impingement of job security". The rationale for the court's decision in Brookfield and the Commission's policy on these matters is well stated in Police Officers Association vs. City of Detroit,

> The enactment of an ordinance, however, despite its validity and compelling purpose, cannot remove the duty to bargain . . . if the subject of the ordinance concerns the . . . conditions of employment of public employes. If the residency ordinance were to be read to remove a mandatory subject of bargaining from the scope of collective bargaining negotiations the ordinance would be in direct conflict with state law . . ." 5/

Finally, it should be noted that even though the municipal employer is required to collectively bargain with the representative of its employes, such a policy does not require that the municipal employer agree to the terms being proposed by the employes' representative:

> . . . if an employe were terminated because he violated the residency requirement, his condition of employment would be most drastically affected. To hold otherwise would be to adopt a most untenable and myopic approach to the reality of labor relations. The Municipal Employment Relations Act does require a Municipal Employer to bargain in good faith over subjects affecting wages, hours and conditions of employment, but it does not require a Municipal Employer to necessarily accede to a Union's proposal relating to those subjects. The Sewerage Commission of the City of Milwaukee, Decision No. 11228-A (10/72).

In its brief, the Association argues that even if the District were not obligated to bargain with the Association concerning the adoption of the anti-nepotism policy, "there can be no doubt that the impact of the adoption of that policy on employe wages, hours and conditions of employment is a mandatory subject of bargaining" (Brief of Association, p. 14). The Supreme Court, in Beloit Education Association vs. WERC, 6/ upheld the Commission's determination that bargaining is required on: 1) matters which are primarily related to wages, hours and conditions of employment; and 2) the impact of policies which affect the wages, hours and conditions of employment. Thus, in addition to its obligation to bargain as to matters which primarily relate to the wages, hours and conditions of employment of its bus drivers, the District would also be required to bargain as to the impact of a permissive managerial decision or the establishment of a managerial policy which affects its employe's wages, hours and conditions of employment: "The Municipal Employer may unilaterally implement such

---

4/ supra, Case No. 31923.

5/ 85 LRRM 2536, at 2540.

6/ 73 Wis 2nd 43, 242 NW 2nd 231 (1976).

managerial decision, but must, however, bargain on the impact thereof where such impact affects wages, hours and working conditions of the employes involved." 7/ It cannot be credibly argued that the implementation of the nepotism policy as adopted by the Respondent's Board of Education would not at least have an effect upon the working conditions of present employes (especially Kravick, whose wife was on the School Board at the time that the resolution was enacted) and other employes (who did not at the present time have a spouse or child on the Board of Education but might, at a future date, be faced with that problem).

There can be no doubt that the Association demanded to bargain with the School Board about the nepotism policy. As early as May 9, 1979, Complainant Association wrote to the Board advising them that "if the Board is considering a nepotism policy which would not allow an individual to work for the District if such individual has a relative who is a member of the Board of Education, then the Board of Education has an obligation to notify the employes' unions of such action and allow them to bargain this change in working conditions. The Board of Education cannot unilaterally change working conditions legally without bargaining such change with the unions involved." And again on May 30, 1979 (immediately after the passage of the resolution) the Association demanded the right to bargain: "As per my letter dated May 9, 1979, the Association's position is that the District must bargain this change in working conditions. At the bargaining session on May 21, 1979 the District's negotiating team told us that they did not yet know what the Board intended to do as far as a specific nepotism policy."

The Board's consistent response to the request on the part of the Association to bargain this matter was that the nepotism policy was a matter exclusively vested in the decision-making authority of the Board. The Answer of the Respondent amplifies that position by stating that the resolution was simply the matter of fulfilling obligations imposed upon the District pursuant to Section 120.12 of Wisconsin Statutes as well as a desire to prevent violations of Section 946.13 of the Wisconsin Statutes. While the argument is often made that a particular policy decision made by a municipal employer is based on other statutory authority which precludes the "delegation" of that authority to the process of collective bargaining, that argument has consistently been rejected by the WERC and by the courts, since the ultimate decision will remain with the municipal employer, and bargaining on the issue of the impact of a decision is not a threat to that decision-making authority. 8/ Thus, Respondent's refusal to bargain with the Association after the passage of the nepotism policy was likewise a violation of Section 111.70(3)(a)4, Wis. Stats.

There are situations in which a municipal employer's duty to bargain and the union's right to same are waived by the parties' collective bargaining agreement and/or pertinent bargaining history. 9/ However, the Commission has previously stated that a waiver by a party on the right to bargain on a mandatory subject of bargaining ought not be readily inferred, and that such waivers must be "clear and unmistakable" and "based upon specific language in the agreement

---

7/ City of Brookfield, Decision No. 11489-B, 11500-B (4/75).

8/ Joint School District No. 8, City of Madison, vs. WERC, 37 Wis 2nd 483 (1967); Beloit Education Association vs. WERC, 73 Wis 2nd 43 (1976); Unified School District No. 1 of Racine County vs. WERC, 81 Wis 2nd 89 (1977).

9/ City of Madison, Decision No. 15095 (12/76); Middleton Joint School District No. 3, Decision No. 14680-A,B (6/76).

or history of bargaining". 10/ Nothing in the record in this case can be construed as a waiver by the Association of its desire to bargain the nepotism policy. In fact, quite to the contrary, as previously demonstrated by statements from the Association directed to the Board of Education, the Association contended throughout negotiations and after the implementation of the nepotism policy that the Board had an obligation to bargain with it (the Association) about the implementation and/or impact of that policy. Respondent's reliance upon Middleton Joint School District No. 3 11/ is absolutely inappropriate to the facts of the instant dispute. In the Middleton case the Examiner found that while contract negotiations were in progress, the Association did not request to bargain the "no smoking" policy then being proposed by the Administration; and that subsequent to the adoption of the "no smoking" policy, the Association did not demand to bargain about the policy or the proposed disciplinary procedure. Obviously, that is not the case before this Examiner. Here, Delaney consistently demanded, throughout negotiations and immediately after the proposed nepotism policy was adopted, that the Board bargain both the decision and the impact of the policy. He was consistently put off on the basis that the Board was carrying out a policy decision which it could not bargain.

Respondent's reliance on the doctrine of virtual representation, raised for the first time in Respondent's brief, does not relate to the issues before the Examiner. Respondent contends that because a number of individuals who were members of the Association informally discussed the matter with the Superintendent of the School District, and because the President of the Association addressed a letter to the Board of Education suggesting that the Association was "concerned" about potential conflicts of interest, that these contacts should somehow be construed as a condonation of the policy adopted by the Board, and therefore act as an estoppel to the claims of the Association and Kravick. However, the record does not support a finding that the doctrine of virtual representation existed in this case.

The second issue involves the refusal of the District to issue an employment contract to Eldon Kravick because his wife was a member of the School Board. The Association argues that the Respondent Board violated Section 111.70 (3)(a)5 of Wisconsin Statutes by improperly terminating the employment of Eldon Kravick without cause, contrary to the parties' collective bargaining agreement. Article VII, Section C, of that agreement provides that "no employe shall be terminated, suspended or reduced in compensation without cause." Kravick had been employed for approximately eight years prior to his termination. The basis for his discharge was solely premised on the adoption of the nepotism policy. Since it has been determined by the undersigned Examiner that the nepotism policy was improperly adopted by the Respondent School Board because the Board refused to bargain about the decision to adopt a policy which affected current employes, it obviously follows that the discharge of Eldon Kravick lacked cause under the collective bargaining agreement. Consistent with Commission law as well as established case law, the undersigned Examiner has ordered the Employer to return to the status quo ante which existed prior to violation. 12/

10/ See for example City of Brookfield, Decision No. 11406-A,B (9/73); City of Milwaukee, Decision No. 13495 (4/75); City of Menomonee, Decision No. 12674-A,B (10/74); Fennimore Joint School District, Decision No. 11865-A,B (7/74).

11/ Decision No. 14680-A (6/76).

12/ See for example Unified School District No. 1 of Racine County vs. WERC, 81 Wis 2nd 89 (1977); City of Milwaukee, Decision No. 16602-A (5/79).

Subsequent to hearing and initial briefing by the parties, Senate Bill 235 was enacted into law, effective March 1, 1980. That bill created Section 19.59, Wis. Stats., entitled Codes of Ethics for Local Government Officials, Employes and Candidates. Section 19.59 provides, inter alia, for the adoption of an ordinance establishing a code of ethics for public officials and employes of a county or municipality and candidates for county or municipal elective offices, and lists provisions which may be contained in any ordinance affecting the conduct of public officials, employes, and candidates, however, as that provision relates to employes, Section 19.59 provides that public employes must identify their economic interests as specified in Section 19.44 (but to no greater extent than is required under that Section), a sanction for failure to disclose (including the withholding of payment of salary to public employes for failure to disclose his/her economic interests pursuant to the ordinance of a municipality), and provisions prohibiting conflicts of interest on the part of public employes "similar in scope to the provisions of Section 19.45, where applicable, but not more restrictive than the requirements of that Section." Section 19.45 (Code of Ethics) recognizes that public officials may, because they live in a representative democracy, have a personal or economic interest in the decisions and policies of government; that Section goes on to state that "citizens who serve as state public officials or state public employes retain their rights as citizens to interests of a personal or economic nature; standards of ethical conduct for state public employes . . . need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society and those conflicts which are substantial and material;" and that such activities or investments on the part of public officials or public employes may be continued unless they conflict with a specific provision of Section 19.45. The Section then goes on to discuss such items as benefit of unlawful gain, the solicitation of votes in exchange for receipt of value, and other measures of that sort.

Respondent contends that Section 19.59 permits the locality to adopt an ordinance which prohibits conflicts of interest and that the resolution adopted by the Respondent School Board is now authorized through laws of the State of Wisconsin and thus, by innuendo, removes the obligation on the part of the Respondent Board to bargain with the representative of its employes.

There are many problems with Respondent's arguments relating to reliance upon Section 19.59, Wis. Stats., to support the nepotism policy adopted by the Respondent Board. The first and foremost problem is that a literal reading of Section 19.59 simply does not apply to a common school district, and Respondent School District is a common school district. Additionally, Section 19.59 provides for adoption of a Code of Ethics by ordinance, not by resolution. But most importantly is that, in the opinion of the undersigned Examiner, even if Section 19.59 did apply to the School District of Drummond, nothing contained in that Section authorizes a municipal employer to violate the provisions of Section 111.70. Wis. Stats.

"It is a cardinal rule of statutory construction that conflicts between different statutes, by implication or otherwise, are not favored and will not be held to exist if they may otherwise be reasonably construed . . .", Moran vs. Quality Aluminum Casting Co., 34 Wis 2nd 542, 553, 150 NW 2nd 137 (1967). Futhermore, when the legislature enacts a statute, that body is presumed to act with full knowledge of prior existing laws, including all statutes. 13/ And, as the Supreme Court pointed out in Muskego Norway CSJSD No. 9 vs. WERB 14/, the provisions of Section 111.70 apply to the authority of

---

13/ See for example Joint School District No. 2 vs. State, 71 Wis 2nd 276, 237 NW 2nd 739 (1976).

14/ 35 Wis 2nd 540, 151 NW 2nd 617 (1967).

school districts to the same extent as the authority of other municipal governing bodies; and the construction of statutes should be done in a way which "harmonizes the whole system of law of which they are a part and any conflicts should be reconciled if possible". 15/ To what degree a later enactment modifies the pre-existing statute ". . . is a question of legislative policy". 16/ Thus, adopting the requirements for construction of statutes prescribed by the Supreme Court of this State, it is clear that an ordinance establishing a Code of Ethics and prohibiting conflicts of interest on the part of public employes does not, per se, remove the duty of the municipal employer to bargain with the representative of its employes when demand is made to bargain the adoption of such an ordinance, if that ordinance has in fact a direct effect upon the wages, hours and working conditions of employes of the municipality.

In the instant dispute, clear demand was made on the part of the Association to bargain the adoption and/or impact of any nepotism policy which might be adopted by the Respondent School District. In response to this demand, the School District consistently took the position that it was not required to bargain either its decision to pass a nepotism policy or to bargain the impact of that decision as it affects the wages, hours and working conditions of its present employes. Such a position is simply indefensible. Section 111.70 (3)(a)4 cannot be abrogated or abridged by a municipal employer simply because a statute permits that municipal employer to enact and adopt a Code of Ethics and/or a Conflict of Interest ordinance. The duty to bargain with the representative of its employes remains so long as, in the exercise of its decision-making process, the municipal employer adopts rules, regulations, ordinances, resolutions, etc., which directly affect the wages, hours and working conditions of its employes. The adoption of a nepotism policy which leads to the termination of the employment of a public employe cannot be defended as the simple exercise of managerial decisions reserved to the municipal employer. Therefore, Respondent School District has violated Section 111.70(3)(a)4, Wis. Stats., by its continued refusal to bargain over the adoption and/or implementation of the nepotism policy which directly resulted in the loss of employment to Kravick. Additionally, because the collective bargaining agreement in existence required "cause" for termination, and the municipal employer relied solely upon the adoption of the nepotism resolution when it refused to offer a contract of employment to Kravick, the Respondent District has violated Section 111.70(3)(a)5 of the Wisconsin Statutes by terminating Kravick's employment without cause. The relief ordered by the undersigned Examiner is the same relief that the Commission has previously ordered in similar cases. 17/

Dated at Madison, Wisconsin this 30th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Michael F. Rothstein, Examiner

15/ Id.

16/ Id.

17/ See for example City of Madison, Decision No. 15095.