

RECEIVED

AUG 22 1983

STATE OF WISCONSIN

CIRCUIT COURT WISCONSIN BAYFIELD COUNTY
RELATIONS COMMISSION

SCHOOL DISTRICT OF DRUMMOND,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

Respondent.

NOTICE OF ENTRY OF
JUDGMENT

Case No. 82 CV 114

Decision No. 17251-B

TO: John D. Niemisto
Assistant Attorney General
The State of Wisconsin
Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707
Attorney for the respondent, Wisconsin Employment
Relations Commission

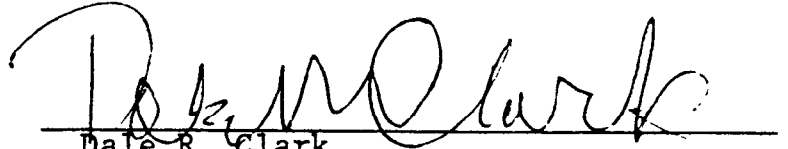
Michael J. Stoll
Staff Counsel
Wisconsin Education Association Council
P.O. Box 8003
Madison, Wisconsin 53708

Gentlemen:

PLEASE TAKE NOTICE that on the 19th day of July 1983 Findings of Fact, Conclusions of Law and Judgment were entered herein by Circuit Judge Douglas S. Moodie and such Findings, Conclusions and Judgment were thereafter and on the 1st day of August 1983 filed in the office of the Clerk of Circuit Court for Bayfield County, which Judgment set aside the "Enlarged Order" of the Wisconsin Employment Relations Commission entered herein by the commission the 15th day of June 1982 and further the Judgment directed that the School District of Drummond bargain the effects of passage of the anti-nepotism resolution

upon the employment of Eldon Kravick as a school bus driver.

Dated: August 4th, 1983.

A handwritten signature in cursive script, appearing to read "Dale R. Clark", written over a horizontal line.

Dale R. Clark
214 West Second Street
Ashland, Wisconsin 54806

Kathryn J. Prenn
Route 2, Box 20
Cable, Wisconsin 54821

Attorneys for the Petitioner,
School District of Drummond.

RECEIVED

STATE OF WISCONSIN

CIRCUIT COURT

AUG 22 1983
BAYFIELD COUNTY
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

SCHOOL DISTRICT OF DRUMMOND,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

Respondent.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
JUDGMENT

Case No. 82 CV 114

Decision No. 17251-B

The petition of School District of Drummond for judicial review of the decision of the respondent, Wisconsin Employment Relations Commission, dated June 15, 1982, by which the respondent affirmed its examiner's decision dated June 3, 1981, having come on to be heard by the Court at the Bayfield County Courthouse in the City of Washburn, in Bayfield County, Wisconsin, on June 3, 1983, the Honorable Douglas S. Moodie, Circuit Judge, presiding; the petitioner having appeared by Kathryn J. Prenn and Dale R. Clark, its attorneys; and the respondent having appeared by John D. Niemisto, Assistant Attorney General; and Michael L. Stoll having appeared for Wisconsin Education Association Council; and there being no other appearance; and the Court having considered the entire record of the proceedings on which the June 15, 1982 decision of respondent was made and having considered all of the briefs prepared and filed by all counsel and having fully considered the arguments of counsel made in open Court on June 3, 1983, and, being fully advised in the premises;

NOW, THEREFORE, the Court, upon the record herein, does hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That the School District of Drummond Employee's Association, hereinafter referred to as the Association, is a labor organization representing municipal employees for purposes of collective bargaining, and has its address at Route 1, Box 111, Hayward, Wisconsin 54843.

2. That the School District of Drummond, hereinafter referred to as the District, has its principal offices at Drummond, Wisconsin 54832; that the District manages and operates a public school system in the Drummond area; 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. That at all times material herein the Association has been, and is, the certified collective bargaining representative of all non-certified staff regularly employed by the District, excluding managerial, supervisory and confidential employees; that school bus drivers are included in said bargaining unit, and their employment is continued from year to year, similar to teachers, by individual employment contracts; that as of January, 1979 Mr. Eldon Kravick, Route 2, Cable, Wisconsin, had been employed as a school bus driver for approximately eight years, and that also at the time, his wife, Mrs. Shirley Marie Kravick, had been an elected School Board member of the District for some ten years; and that in January 1979 the Association and the District commenced negotiations on a collective bargaining agreement, which was to become effective November 1, 1978 and continue in effect through at least June 30, 1980.

4. In August, 1978 a former Board president of the School District of Drummond was convicted of a felony, sale of steel to the

District in violation of Wisconsin Statute Section 946.13, in a highly publicized case.

7. 5. A John Doe proceeding was commenced in Bayfield County Circuit Court concerning unexplained money shortages in the District prior to March, 1979.

6. Auditors' reports to the Board of the School District of Drummond in 1976 and 1978 specifically described the conflict of interest which existed because the District employed the spouse of a Board member. Those reports cited the apparent violation of Section 946.13 and recommended that the situation be rectified.

7. Board members who attended a seminar sponsored by the Wisconsin Association of School Boards in the fall of 1978 were advised by the speakers to eliminate potential areas of conflict of interest.

8. The Drummond Education Association, in a letter dated December 13, 1978, urged the Board of Education to adopt the sort of anti-nepotism policy eventually adopted.

9. The discussion of the anti-nepotism policy had been on the agenda of the School Board since March 12, 1979 and the people of the community were generally aware of that discussion.

10. That at a regular meeting of the District's School Board, which was held on April 16, 1979, the members of said Board, with Mrs. Kravick abstaining, voted to offer contracts of re-employment, for the 1979-1980 school year, to all employees in the bargaining unit represented by the Association, with the exception of Mr. Kravick "due to a questionable conflict of interest with a Board member"; that having learned that the Board was contemplating the adoption of a nepotism policy, Mr. Barry Delaney, a representative of the Associa-

tion, on May 9, 1979, directed the following letter to the District:

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.

11. That on May 21, 1979, in a bargaining meeting, representatives of the Association and the District, who were engaged in negotiating the collective bargaining agreement, which was to be effective from November 1, 1978 through at least June 30, 1980, reached a tentative accord on said new agreement, subject to final ratification by Association members and the members of the School Board of the District; that during the May 21 meeting, the District advised the Association that it had reached no decision as to the adoption of a nepotism policy; that at a regular meeting of the School Board, held on May 23, 1979, a majority of the Board in attendance, with Mrs. Kravick abstaining, voted to adopt the anti-nepotism resolution as follows:

"WHEREAS, it is the general policy of the State of Wisconsin that public officials shall have a complete personal disinterest in public contracts; and

WHEREAS, criminal statutes of the State of Wisconsin prohibit a school board member, in his private capacity, from negotiating or bidding for or entering into a contract which he has participated in making as a public official, and prohibit a school board member from participating in the making of such contract in his public capacity of performing some discretionary function in regard to the contract; and

WHEREAS, responsibilities and duties of the board of education are comprised, to an increasingly large degree, of negotiating and entering into and executing employment contracts with school district employees; and

WHEREAS, it is, to a like and increasing degree, more difficult for the active and conscientious school board member, in his private capacity, to remain sufficiently aloof from participating in the making, formation and execution of such public contracts so as not to violate such criminal statutes; and

WHEREAS, the Board of Education of the School District of Drummond is acutely aware of the need to restore the confidence, faith and trust of the citizenry in the integrity of the manner of functioning of governmental bodies at all levels,

NOW, THEREFORE, BE IT RESOLVED by the board of the School District of Drummond that it henceforth will not enter into any 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."

12. That on May 29, 1979, in a letter directed to Mr. Kravick, over the signature of the District's Administrator, Mrs. Kathryn J. Prenn, the District enclosed a copy of the above adopted nepotism policy, and a copy of such policy was also sent to Mr. Delaney on the same date.

13. That on May 30, 1979, Mr. Delaney sent the following letter to Mr. Edward Cleary, the President of the School Board:

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 mandatory subject of bargaining.

14. That on May 31, 1979 the membership of the Association ratified the terms of the collective bargaining agreement which was to be retroactive to November 1, 1978 and was to continue to at least June 30, 1979; that said agreement contained among its provisions a three-step grievance procedure, the last step being an appeal to the Board of Education; that however, said procedure did not provide that the Board of Education's action on the grievance was to be final and binding on the parties and/or the grieving employee; and that said agreement also contained the following provision material herein:

ARTICLE VII - DISCIPLINE PROCEDURE

C. No employee shall be terminated, suspended or reduced in compensation without cause . . .

15. That on June 4, 1979 Mrs. Prenn directed the following letter to Mr. Delaney:

In response to your letter of May 30, Mr. Cleary has asked that I direct a letter to you requesting clarification on the union's position that the recently passed nepotism policy falls within the definition of working conditions.

You are advised the policy was implemented in light of State Statute 946.13, recommendative 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 policymaking authority vested with the Board.

With the implementation of the policy, the decision as to whether Mr. Kravick will receive a contract as bus driver for the 1979-80 school year appears to rest with Mr. and Mrs. Kravick.

16. That, in responding to the above letter, Mr. Delaney, on June 11, 1979, by letter addressed to Mr. Cleary, indicated that the Association "demands" that the nepotism policy be bargained, and in said regard Mr. Delaney requested that the Board set a date therefor; that the Board did not respond to said request, and that on July 16, 1979 at a regular Board meeting the members thereof voted not to offer Mr. Kravick, whose compensation during the 1978-1979 school year exceeded \$5,000.00, a contract as a bus driver for the 1979-1980 school year "in accordance with the District's nepotism policy"; and that on July 24, 1979 Mr. Delaney directed a letter to Mr. Cleary, wherein Mr. Delaney reviewed the previous correspondence between the parties regarding the implementation of the nepotism policy, and further stated 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.

17. That also on July 24, 1979, in a letter to Mrs. Prenn, Mr. Delaney "filed" the following grievance:

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.

18. That in a letter addressed to Mr. Delaney, dated July 27, 1979, Mrs. Prenn responded 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 1979-80 school year would have yielded more than \$5,000 and thus, would have violated the district's nepotism policy. You are also aware of the fact that Mr. Kravick was permitted to complete his contract for the 1978-79 school year as afforded by the nepotism policy adopted by the Board in May, 1979.

As I stated to you in my letter of June 4, 1979, the final decision as to whether Mr. Kravick would receive a contract for 1979-80 rested with Mr. & Mrs. Kravick. The Kravicks were given considerable time by the Board in which to make that decision. At the July 16th meeting of the Board, Mrs. Kravick informed the Board that she had decided not to resign. Thus, the decision had been made, and the Board passed a motion not to offer Mr. Kravick a contract for the 1979-80 school year in accordance with the District's nepotism policy.

In light of the facts cited above, this grievance is denied.

19. That said grievance was appealed to the Board in the final step of the grievance procedure and that on August 23, 1979

the Board, in writing, advised Mr. Delaney that at its meeting held August 20, 1979 it had denied the Kravick grievance.

20. That at all times material herein the District, its officers and agents have refused, and continue to refuse, to bargain collectively with the representatives of the Association with respect to its decision to implement its nepotism policy and/or with respect to the impact of such decision upon the employees of the District employed in the collective bargaining unit represented by the Association.

CONCLUSIONS OF LAW

21. The anti-nepotism resolution primarily relates to public policy and only secondarily to conditions of employment and it is public policy for the School Board to determine in an open meeting with public input.

22. The anti-nepotism resolution primarily affects public attitudes toward government and credibility of the particular municipal board, viz: the School Board.

23. The School District's policy-making function is exclusively vested in the School Board which has the overall responsibility for the governance of the District.

24. The matter of the passage of the anti-nepotism resolution was not a matter for mandatory bargaining.

25. The School District is required to bargain the effects of the ~~layoff~~^{termination} resulting from the passage of the anti-nepotism resolution.

26. The conclusions of law of the Wisconsin Employment Relations Commission, including that which declared the anti-nepotism resolution to be illegal, are set aside.

27. The orders of the W.E.R.C., including that requiring reinstatement of Mr. Eldon Kravick, the only affected employee, are set aside.

28. The School District shall bargain with Mr. Eldon Kravick with respect to his employment.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this _____ day of July, 1983.

BY THE COURT:

Douglas S. Moodie
Circuit Judge

JUDGMENT

Upon the record of proceedings in this case and upon the arguments of counsel presented in open Court on June 3, 1983 and upon the foregoing findings of fact and conclusions of law and upon motion of Kathryn J. Prenn and Dale R. Clark, attorneys for the petitioner, School District of Drummond,

IT IS ADJUDGED:

1. That the "Enlarged Order" entered herein by the Wisconsin Employment Relations Commission on the 15th day of June, 1982 be and the same hereby is set aside.

2. That the School District of Drummond bargain the effects of passage of the anti-nepotism resolution upon the employment of Eldon Kravick as a school bus driver.

Entered this 19th day of July, 1983.

BY THE COURT:

 S
Douglas S. Moodie
Circuit Judge