COURT OF APPEALS
DECISION
DATED AND FILED

July 6, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP2998 **Cir. Ct. No. 2005CV129**

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

STATE OF WISCONSIN EX REL. BRIAN L. BUSWELL,

PLAINTIFF-APPELLANT,

V.

TOMAH AREA SCHOOL DISTRICT,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Monroe County: MICHAEL J. ALPINE, Judge. *Affirmed*.

Before Lundsten, P.J., Dykman and Higginbotham, JJ.

¶1 PER CURIAM. Brian Buswell appeals a judgment that dismissed his claims against the Tomah Area School District for alleged violations of the public notice provision of Wisconsin's open meetings statute. Based on

controlling precedent, we affirm the circuit court's conclusion that the statute was not violated.

BACKGROUND

¶2 The district's school board held a special meeting on June 1, 2004. Public notice for the meeting included the following agenda item:

> 2. Contemplated Closed Session for Consideration and/or Action Concerning Employment/Negotiations with District Personnel Pursuant to Wis. Stats. 19.85(1)(c).

During the closed session of the June 1st meeting, the board approved the 2003-04 and 2004-05 bargaining contract with the teachers' union, the Tomah Education Association (TEA), subject to TEA's ratification. The contract included a new procedure giving hiring preference to TEA members for coaching vacancies within the district.

¶3 The board held a regular meeting on June 15, 2004. The public notice for that meeting included an agenda item listed as "TEA Employee Contract Approval." During the open session at the June 15th meeting, the board officially ratified the TEA contract which had been tentatively approved at the prior meeting.

¶4 Buswell filed suit, alleging that the school district had violated the open meetings law by failing to give adequate notice that the board would be considering whether to approve the teachers contracts and the new hiring procedure for coaches at the June 1st meeting, and that the board would be considering final ratification of the new hiring procedure for coaches at the June 15th meeting. The circuit court dismissed Buswell's action on the pleadings, and he appeals.

DISCUSSION

¶5 Wisconsin's open meetings law provides in relevant part:

> Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof.

WIS. STAT. § 19.84(2) (2003-04).[1] We have previously held that the subject matter of a meeting need not be described in specific detail. ***State ex rel. H.D. Enterprises II v. City of Stoughton***, 230 Wis. 2d 480, 486-87, 602 N.W.2d 72 (Ct. App. 1999). Rather, notice of the "general topic of items to be discussed" is sufficient. ***Id.*** at 487. Thus, by a two-to-one majority in ***H.D. Enterprises***, we held that notice that "licenses" were to be discussed at a city council meeting was sufficient to apprise the public that the council would consider whether to grant a liquor license to a local grocery store. ***Id.*** at 486.

¶6 Buswell argues, as did the dissent in ***H.D. Enterprises***, that the underlying policy of the open meetings law requires some greater degree of specificity for notice provisions. *See* ***id.*** at 488-94 (Vergeront, J., dissenting in relevant part). In particular, Buswell notes that WIS. STAT. § 19.81(1) states "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business," and § 19.81(4) directs the statute to be liberally construed to achieve that objective. While we are sympathetic to Buswell's policy argument, and might have decided

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

the issue differently prior to our ***H.D. Enterprises*** decision, we do not write on a clean slate. ***H.D. Enterprises*** has already struck the balance between the public's right to information and the government's need to conduct its business efficiently in favor of permitting very general notice provisions for the proposed subject matter of meetings. Arguments urging a shift in that balance need to be directed to the Wisconsin Supreme Court. *See generally* ***Cook v. Cook***, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997) (we are bound by the precedent of our own court.).

¶7 Under ***H.D. Enterprises***, the district gave sufficient notice of the subject matter of its meetings. While the terms "Employment/Negotiations" and "TEA Contract Approval" are admittedly broad, they are not more general than the term "licenses" in ***H.D. Enterprises***. Nor do we see any reason why the district would be required to use the exact same language in each notice, or for that matter, be prohibited from using catchall language each time a teacher contract issue is likely to be discussed. If the notice in ***H.D. Enterprises*** did not need to specify whose license was going to be considered, we cannot conclude that the notice here needed to specify whose contracts were being considered or what new provisions were being added to those contracts. To the contrary, the very fact that the meetings at issue here were being held by the school board likely gave the public better notice of what employment negotiations or contracts were at issue than a city council's general consideration of licenses in ***H.D. Enterprises***. In sum, the new hiring policy for coaches was included in the teacher's contract, and approval of the contract was well within the scope of the generalized agenda items for which notice was given.

¶8 Buswell proposes two potential exceptions to the general notice requirement set forth in ***H.D. Enterprises***. He contends that more specific notice should be required when a matter is one of general public interest or when officials

have actual knowledge that a particular matter is to be discussed. Otherwise, he argues, officials could pass controversial measures without public input by "subterfuge." It appears, however, that officials did have knowledge of the particular license that was to be considered in ***H.D. Enterprises*** and that the issue there was also one of general public interest. Therefore, ***H.D. Enterprises*** also compels rejection of these arguments.

By the Court.—Judgment affirmed.

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