STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

DANE COUNTY

Requesting a Declaratory Ruling Pursuant to Section 227.06, Stats., Involving a Dispute Between Said Petitioner and

DANE COUNTY SPECIAL EDUCATION ASSOCIATION

Case IV
No. 23400 DR(M)-96
Decision No. 17400

Appearances:

Mulcahy & Wherry, S.C., Attorneys at Law, 110 East Main Street, Madison, Wisconsin 53703, by Mr. John T. Coughlin, appearing on behalf of the County.

Mr. Michael L. Stoll, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P. O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of the Association.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

Dane County, hereinafter referred to as the County, filed a petition on August 15, 1978, seeking a declaratory ruling pursuant to Sec. 227.06, Stats., 1/ wherein it asks for a determination of whether the mediation-arbitration provisions set forth in Sec. 111.70(4)(cm)6, Stats., apply to an impasse in an existing dispute between the County and the Dane County Special Education Association, 2/ hereinafter referred to as the Association. Hearing in the matter was held in abeyance pending settlement efforts, and after settlement efforts failed, the parties executed a stipulation in lieu of a hearing. On March 2, 1979, the Association filed a statement in response to the County's petition, and on March 19, 1979, the parties executed the stipulation. Initial briefs were filed and exchanged on June 21, 1979. Reply briefs were filed and exchanged on August 6, 1979. Based on the record thus presented, the Commission issues the following

FINDINGS OF FACT

1. The County is a municipal corporation and a municipal employer within the meaning of Sec. 111.70(1)(a), Stats. Prior to June 30, 1978, the County operated a handicapped children's education program under Ch. 115, Stats.

2. The Association is a labor organization within the meaning of Sec. 111.70(1)(j), Stats., and has at all times relevant herein represented certain employes employed by the County to work in support

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1/ The petition was erroneously captioned as a "Petition for Declaratory Judgment" and omitted any reference to Sec. 227.06, Stats. However, the Commission has processed said petition as a petition for declaratory ruling under Sec. 227.06, Stats., without objection of the parties.

2/ On July 19, 1978, the Association had filed a petition for mediation-arbitration. Dane County Handicapped Children's Education Board, Case III, No. 23296, MED/ARB-160.

of the County's special education programs. The bargaining unit consisted of approximately 92 persons and was described in the parties' most recent collective bargaining agreement as:

> All classroom teachers, art, music and physical education teachers, support teachers, teaching aides, speech therapists and psychologists, who work for a half-day session or more, excepting the director, and other full-time or part-time administrators, and clerical personnel.

3. The County and Association were parties to a collective bargaining agreement covering the employes represented by the Association effective from August 1, 1976 to August 13, 1978. The terms of said agreement do not specifically refer to any right of the County to terminate its special education programs, or any rights of employes in the event the County decided to terminate its special education programs. It did contain the following provisions relevant herein:

> ARTICLE II - NEGOTIATING PROCEDURES
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> After the expiration date hereof the collective bargaining agreement shall remain in effect from year to year unless either party notifies the other in writing prior to October 15 of any subsequent year of its desire to amend the agreement. If a request to amend the agreement is made, the parties will schedule a meeting for the purpose of discussing proposals and counterproposals which shall be in writing. Negotiations will begin by January 15th of the following years.
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> . . .
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> ARTICLE XI - DURATION
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> The provisions of this Agreement will be effective as of the 1st day of August, 1976, and shall continue and remain in full force and effect as binding on the parties until the 13th day of August, 1978. This Agreement shall not be amended orally.

4. Sometime prior to August 5, 1977, representatives of the Association became aware that the County was considering the possibility of terminating its special education programs. On August 5, 1977, representatives of the Association wrote a letter to Walter Brink, Chairman of the Handicapped Children's Education Board, which read as follows:

> It has come to our attention that the Handicapped Childrens Education Board is contemplating terminating the employment of all bargaining unit positions in the Dane County Special Education Association. Such a decision will have an obviously direct effect on the terms and conditions of employment of all bargaining unit employees and therefore is a mandatory subject of bargaining.

> The Dane County Special Education Association, which is the recognized bargaining representative for all employees in that unit, hereby requests that the Handicapped Childrens Education Board begin immediate negotiations with the Association concerning the decision to terminate the employment of any bargaining unit employee.
>
> Should the Dane County Board of Supervisors approve any plan which would result in the termination of unit employees prior to the successful completion of bargaining, the Association will take appropriate legal action to vitiate any such decision and protect the employment of its bargaining unit members.

There were no negotiations thereafter with regard to the possible decision to terminate the County's special education programs or the decision, implicit therein, to terminate the employes represented by the Association. On October 6, 1977, the County's Board of Supervisors adopted a resolution (Substitute Resolution 1 to Resolution 167, 1977-1978) which authorized certain measures designed to terminate its special education programs effective at the end of the 1977-1978 school year. Pursuant to said resolution, the County took actions to cease operating its special education programs. As a result of those actions, all of the approximately 92 employes represented by the Association were terminated effective on or about the end of the 1977-1978 school year, and those employes subject to the requirements of Sec. 118.22, Stats., were given timely notice of non-renewal and were non-renewed. Most classroom teaching ceased on or about June 1, 1978, and the County ceased operating special education programs effective June 30, 1978.

5. After the County's decision to terminate the special education programs had been made, the parties engaged in collective bargaining regarding the impact of such decision on the wages, hours and working conditions of the employes represented by the Association. The Association's initial bargaining proposal, dealing with teachers' files, interview days, student files and classrooms, timing of the last paycheck, severance pay, insurance, accumulated sick leave and savings clause, was submitted to the County on or about December 14, 1977. The County did not submit any initial bargaining proposals. After December 14, 1977, the County and the Association met at various times and exchanged proposals and counterproposals until the end of April 1978, when an impasse was reached.

6. Prior to reaching such impasse, the Association filed a notice of commencement of negotiations pursuant to Sec. 111.70(4)(cm)1, Stats., which was dated April 10, 1978, and was received by the Commission on April 17, 1978, wherein it stated that it had, on August 5, 1977, requested that the County "bargain over the effects of termination." Said notice was accompanied by a letter of explanation regarding the County's decision and the bargaining that had taken place up to that point in time and indicated that the notice was being filed because there were indications that the negotiations might "stalemate." The letter, which was also dated April 10, 1978, further stated that the notice was being filed because of the possibility of a stalemate in the negotiations. A copy of said letter was sent to the County.

7. On May 31, 1978, the Association sent a letter to the Commission, wherein it made reference to its letter of April 10, 1978, indicated that there was an impasse, and requested mediation. The County declined a request to participate in mediation, and, on July 19, 1978, the Association filed a petition for mediation-arbitration pursuant to Sec. 111.70(4)(cm)6, Stats. An informal investigation meeting was thereafter scheduled for August 10, 1978, and rescheduled at the Association's request for August 16, 1978. When the instant petition for declaratory ruling was filed on August 15, 1978, the informal investigation meeting was cancelled.

8. The parties agree that the County was under a duty to bargain with respect to the impact of its decision to terminate its special education programs on the wages, hours and conditions of employment of the employes represented by the Association; that such bargaining has occurred; and that there is an impasse or "deadlock" in the negotiations. It is the County's position that the mediation-arbitration provisions contained in Sec. 111.70(4)(cm)6, Stats., are inapplicable to said deadlock, while the Association contends that said provisions are applicable to the deadlock in question.

9. The deadlock in negotiations between the County and the Association arises in negotiations over the impact of the County's decision to terminate its special education programs on the wages, hours and working conditions of employes represented by the Association and not in reopened negotiations under a binding collective bargaining agreement to amend or modify a specific portion of an existing collective bargaining agreement subject to a specific reopener provision or negotiations with respect to the wages, hours and working conditions to be included in a successor collective bargaining agreement for a new term, or negotiations for an initial collective bargaining agreement where no such agreement exists.

Based on the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSION OF LAW

The mediation-arbitration provisions contained in Sec. 111.70(4)(cm)6, Stats., are only applicable to deadlocks in reopened negotiations under a binding collective bargaining agreement to amend or modify a specific portion of an existing collective bargaining agreement subject to a specific reopener provision or with respect to negotiations over the wages, hours and working conditions to be included in a successor collective bargaining agreement for a new term, or negotiations for an initial collective bargaining agreement where no such agreement exists and that said provisions are, therefore, inapplicable to deadlocks which may arise in other negotiations which may occur during the term of a collective bargaining agreement.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes the following

DECLARATORY RULING

The County is not required to proceed to mediation-arbitration under the provision of Sec. 111.70(4)(cm)6, Stats., on the deadlock

in negotiations with the Association concerning the impact of the County's decision to terminate its special education programs on the wages, hours and working conditions of the employes represented by the Association.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of November, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Herman Torosian, Commissioner

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Gary L. Covelli, Commissioner

DANE COUNTY, IV, Decision No. 17400

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW
AND DECLARATORY RULING

The instant petition raises a question as to the applicability of the mediation-arbitration provisions 3/ of the Municipal Employment Relations Act (MERA) to an impasse in bargaining concerning the impact of the County's decision to terminate its special education programs on the wages, hours and working conditions of the approximately 92 employes represented by the Association. As noted in our findings, the District, contrary to the Association, takes the position that said provisions do not apply to the impasse in question.

COUNTY'S POSITION

In the County's view, the procedure in question does not apply to all impasses in bargaining which occur during the term of an existing collective bargaining agreement. According to the County, the mediation-arbitration procedures apply only to impasses which occur in bargaining pursuant to the reopening of negotiations under an existing collective bargaining agreement for a successor agreement or the negotiations for an initial collective bargaining agreement.

It is the County's contention that the impasse herein arose out of mandatory impact bargaining which occurred during the term of an existing collective bargaining agreement and not bargaining over a successor agreement. It bases this conclusion on four arguments:

1. The Association never reopened the agreement.

2. The proposals made by the Association and the counter-proposals made by the County all relate to the impact of the termination of the special education programs rather than other aspects of the wages, hours and conditions of employment of the employes represented by the Association.

3. Any request to reopen the existing collective bargaining agreement would not have been timely until after August 13, 1978, and prior to October 15, 1978.

4. The decision to terminate the special education programs made any bargaining over a successor agreement an "exercise in fatuousness."

The County relies on the following provisions of the statutes to support its interpretation:

1. Sec. 111.70(4)(cm)6 (introduction), Stats., in stating the prerequisites to the filing of a

2. Sec. 111.70(4)(cm)6a, Stats., states that the parties are required to execute a stipulation ". . . with respect to all matters which are agreed upon for inclusion in the new or amended collective bargaining agreement." (emphasis supplied)

3. Sec. 111.70(4)(cm)6d, Stats., provides that the arbitrator's decision ". . . shall be incorporated into a written collective bargaining agreement."

In this connection, the County points out that the impasse here was not over wages, hours and conditions of employment to be included in a new collective bargaining agreement; the parties did not execute a stipulation with regard to matters to be included in a "new or amended collective bargaining agreement"; and any award would not be "incorporated into a written collective bargaining agreement' since there will be no such agreement.

In addition, the County relies on a number of the Commission's rules governing the administration of the mediation-arbitration procedure to support its interpretation. Specifically, the County contends that the wording of the rules implementing the notice of commencement of negotiations (ERB 31.03(1), 31.03(2)(a) and 31.03 (2)(c), Wis. Adm. Code); the rule regarding the filing of copies of voluntary impasse resolution procedures (ERB 31.04, Wis. Adm. Code), the rules prescribing the content of petitions for mediation-arbitration (ERB 31.05(3)(d) and 31.05(3)(e)1., Wis. Adm. Code); the rules regarding stipulations in informal investigations and hearings (ERB 31.09 (introduction), and ERB 31.09(2), Wis. Adm. Code), and the rule regarding the enforcement of the requirement that the award be incorporated into a written collective bargaining agreement (ERB 31.18, Wis. Adm. Code)--which make repeated reference to the above-quoted language used in the statute--all in support of its contention that the mediation-arbitration procedures only apply to impasses which occur in bargaining pursuant to a reopener of negotiations under an existing collective bargaining agreement or the negotiations for an initial collective bargaining agreement.

Finally, the County argues that the Commission's prior decision in the City of Green Bay 4/ interpreting similar interest arbitration provisions set out at Sec. 111.77, Stats., is consistent with its position here. In that case, the Commission concluded that the interest arbitration provisions contained in Sec. 111.77, Stats., did not apply to impasses which occur in processing a contractual grievance or with respect to bargaining during the term of an agreement on matters not covered by said agreement.

ASSOCIATION'S POSITION

The Association contends that the language used by the legislature in Sec. 111.70(4)(cm), Stats., does not preclude and, in fact, supports the conclusion that the mediation-arbitration procedures contained therein are applicable to the impasse in this case. According to the Association, the impasse herein occurred in negotiations for a "new collective bargaining agreement" to govern the "unique conditions of employment" caused by the cessation of operations. The Association contends that Sec. 111.70(4)(cm)1, Stats., which requires notice to the Commission of the commencement of negotiations "whenever either party requests the other to reopen negotiations under a binding

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4/ Decision No. 12307-A, (2/74).

collective bargaining agreement or the parties otherwise commence negotiations if no such agreement exists" empowers the Commission to provide mediation-arbitration procedures where there is an impasse in mandatory bargaining for a "new agreement" to cover the impact of a decision to terminate operations.

Similarly, the Association argues:

1. Sec. 111:70(4)(cm)2, Stats., is consistent with this interpretation, since it refers to "meetings between parties to a collective bargaining agreement or proposed collective bargaining agreement under this subchapter. . ."

2. Sec. 111.70(4)(cm)6 (introduction) and Sec. 111.70(4)(cm)6a, Stats., relied upon by the County, both refer to "new" collective bargaining agreements and should be interpreted to include new agreements such as the one sought herein. The only exclusion intended by this language, according to the Association, would be impasses in collective bargaining over the proper interpretation of an existing agreement, as the Commission recently concluded in Racine Unified School District (17022), 5/79.

3. Sec. 111.70(4)(cm)5, Stats., permits the parties to negotiate voluntary impasse procedures to resolve "an impasse over terms of any collective bargaining agreement under this subchapter." The reference to "any collective bargaining agreement" would appear to govern any agreements reached under the duty to bargain as defined in Sec. 111.70(1)(d), Stats., such as the agreement sought here. Since the voluntary procedures are intended to serve as a substitute for the mandated procedures, the inference follows that the legislature intended the mandated procedures to apply to any impasse in bargaining as defined in the Act.

The Association likewise relies on a number of the Commission's rules governing the administration of the mediation-arbitration procedure in support of its position that those procedures are applicable to the impasse here. In particular, the Association relies on the final version of ERB 31.03(1), 31.03(2)(a), 31.09(1), and 31.09(2), Wis. Adm. Code, as being reflective of the Commission's view that mediation-arbitration procedures are available to resolve impasses other than those occurring in bargaining for an initial or successor collective bargaining agreement. 5/

It is the Association's contention that the changes made in the permanent rules were in response to criticism that the emergency rules were overly restrictive in limiting the applicability of the mediation-arbitration procedure. The changes made in the wording of the rules is consistent with the statutory wording, which, in the Association's view, allows for a broader application than simply to impasses in bargaining for an initial or successor collective bargaining agreement.

The Association also argues that its interpretation of the statutes and rules is more consistent with the legislative intent and public policy underlying the enactment of Sec. 111.70(4)(cm), Stats. In this regard the Association argues:

5/ See Commission's emergency rules promulgated on December 27, 1977, and effective on January 1, 1978.

1. The overall purpose of Sec. 111.70 is to facilitate collective bargaining and achieve labor peace and stability.

2. The policy of favoring grievance arbitration is indicative of a general policy favoring the peaceful resolution of disputes through the use of procedures.

3. The policy statements contained in Sec. 111.70(6), Stats., and ERB 31.02, Wis. Adm. Code, reflect an intent to establish peaceful procedures for resolving impasse which are co-extensive with the duty to bargain.

Further in this regard, the Association argues that the mediation-arbitration procedures, which include a limited right to strike as well as new and increased penalities for strikes, were adopted in reaction to, and in order to avoid strikes by municipal employes. For this reason, the Association argues that the right to utilize the mediation-arbitration procedures should be interpreted as being co-extensive with what would otherwise be the Association's right to resort to lawful strikes in the private sector. In this case the Association would have had the right to resort to economic pressure to support its demands in the mandatory negotiations which occurred over the economic impact of the decision to terminate the special education programs.

Finally, the Association contends that it is not necessary for the Commission to decide whether mediation-arbitration procedures are available for all types of bargaining impasses that may arise during the term of a collective bargaining agreement, and argues that those procedures are particularly appropriate to resolve the type of dispute herein. The agreement sought herein is a terminal agreement governing the unique conditions of employment brought about by the cessation of the special education programs. The Association further notes that although the County advanced a number of proposals in bargaining which were substantially identical to Association proposals, none of those proposals were implemented after the impasse was reached. According to the Association, this fact strongly suggests the need for a strong impasse resolving procedure (in lieu of the right to strike) to encourage a negotiated settlement in such a case. Because the employes had no lawful right to strike, they were powerless to resolve the impasse because of the power imbalance presented. In addition, the availability of such procedures would serve to discourage the employes from resorting to an unlawful strike which might otherwise be appealing due to the fact that the employes and the Association had little to lose (e.g., employment or dues) under the strike penalties provided, and yet could cause a substantial disruption in the orderly delivery of public services.

DISCUSSION

Based on the record it is clear that the dispute herein arises out of bargaining over the impact of the County's decision to terminate its special education programs on the wages, hours and working conditions of the employes represented by the Association. It is not a dispute over the wages, hours and working conditions to be included in a successor collective bargaining agreement for a new term. In fact, it would appear that neither party sought to reopen negotiations under the existing collective bargaining agreement for the obvious reason that such negotiations would be pointless in view of the County's decision to terminate its special education programs. The letter dated August 5, 1977, was not a request to amend the agreement under the terms of Article II. The letter in question amounted to a demand to negotiate concerning the decision to terminate the special education programs and the decision, implicit therein, to terminate the employes represented by the Association.

On the other hand, the notice of commencement of negotiations filed with the Commission on April 17, 1978, was intended to comply (albeit retroactively) with the recently enacted provisions of Sec. 111.70(4)(cm)1, Stats., and the Commission's emergency rule, ERB 31.03, Wis. Adm. Code, to the extent that they were applicable to the impact negotiations that had taken place prior to that date. However, the question of the effectiveness of the Association's attempted compliance with those provisions of the statute and rules is not, in our opinion, controlling on the outcome of the dispute herein. The issue here is not whether the Association adequately complied with all of the prerequisites for the filing of a mediation-arbitration petition set out in Sec. 111.70(4)(cm)6 (introduction), Stats., or whether compliance with that procedure would have, in the Commission's view, tended to result in a settlement. 6/ The issue presented is whether the provisions of Sec. 111.70(4)(cm)6, Stats., are applicable to the deadlock which admittedly occurred in the negotiations over the impact of the County's decision to terminate its special education programs on the wages, hours and working conditions of the employes represented by the Association.

The answer to this question turns on the proper interpretation of certain statutory provisions. Consequently, the parties' arguments which are based on interpretations of the Commission's rules are deemed to be irrelevant unless it can be said that the legislature specifically authorized the Commission to develop rules regarding the applicability of the mediation-arbitration procedure or impliedly did so by failing to address the question itself. In our opinion the legislature specifically addressed the question of the applicability of the mediation-arbitration procedure. While the wording of the statute leaves some room for debate as to its intended meaning, as reflected in the parties' arguments, we have no doubt that the legislature addressed this issue. For this reason we do not specifically treat each of the parties arguments regarding our emergency and permanent rules other than to point out that the permanent rules were reworded in such a way so as to be more consistent with the wording of the statute and avoid any implication that they were intended to rule on the question presented here sub silentio. 7/

6/ See Sec. 111.70(4)(cm)6a, Stats., which states in relevant part, ". . . If in determining whether an impasse exists the commission finds that the procedures set forth in this paragraph have not been complied with and such compliance would tend to result in a settlement, it may order such compliance before ordering mediation-arbitration."

7/ For example, in a letter dated March 2, 1978, and addressed to the Senate Agricultural, Aging and Labor Committee, Robert J. Taylor, Negotiations/Arbitration Specialist for the Wisconsin Education Association Council suggested the following two changes in the Commission's proposed permanent rules

1. ERB 31.09(1) -- Line 9, change "successor to "amended" so that the language of the Rules is

Likewise, because we view the issue here to be one of statutory interpretation, the policy arguments advanced by the Association, some of which are quite compelling based on the unusual factual sitatuion presented here, are largely irrelevant. This is not a case where the legislature has failed to express its intent or granted the Commission considerable latitude in interpreting the statute in a way which, in its view, represents the most appropriate policy choice given the underlying purposes of the legislation. On the contrary, we view the legislation as addressing the question rather specifically.

The key phrase in the law is the phrase contained in Sec. 111.70 (4)(cm)6 (introduction), Stats., to the effect that a petition for mediation arbitration can be filed if the parties are . . . deadlocked with respect to any dispute between them over wages, hours and conditions of employment to be included in a new collective bargaining agreement . . ." This phrase stands in marked contrast to the parallel phrase contained in the fact finding procedure (Sec. 111.70(4)(c)3. Stats.), which it displaced, to the effect that a petition for fact finding may be filed if the parties are ". . . deadlocked with respect to any dispute between them arising in the collective bargaining process. . ." We have interpreted that provision to cover deadlocks in all disputes which are subject to the collective bargaining process under Sec. 111.70, Stats. 8/

Absent some other indication of legislative intent, the wording of this provision would appear, on its face, to limit the application of the mediation-arbitration procedure to situations where the parties are negotiating a collective bargaining agreement which either constitutes the first collective bargaining agreement between the parties or a "new" agreement to replace an existing or expired agreement. The provisions of Sec. 111.70(4)(cm)6a. Stats., calling for the execution of . . . a stipulation, in writing, with respect to all matters which are agreed upon for inclusion in the new or amended collective bargaining agreement . . . and the provisions of Sec. 111.70(4)(cm)6d, Stats., regarding the incorporation of the award into a written collective bargaining agreement are consistent with this interpretation. In fact, nowhere in the procedures outlined in Sec. 111.70(4)(cm)6, Stats., is there any indication that the legislature anticipated its application to deadlocks other than those which might occur in collective bargaining for a "new" agreement in this sense.

We note, as do the parties, that the legislature used slightly different terminology in the statutory provision requiring the parties to give notice to the Commission of the commencement of contract negotiations. In Sec. 111.70(4)(cm)1, Stats., the parties are required to so notify the Commission . . . whenever either party requests the other to reopen negotiations under a binding collective bargaining agreement, or the parties otherwise commence negotiations if no such agreement exists. . ."

On the assumption that the legislature intended the notice requirements to be co-extensive with the applicability of the mediation-arbitration procedure, we believe it is a reasonable

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8/ See Milwaukee County (8137-B), 12/67. Cf. Milwaukee County (9754), 6/70. On the other hand, the provisions of Sec. 111.70(4)(cm)5, Stats., which permit the parties to voluntarily agree in writing to arbitrate impasses in bargaining over the terms of any collective bargaining agreement under Subch. IV of Ch. 111, Stats., would, as argued by the Association, appear to be broad enough to encompass all disputes which are subject to the collective bargaining process.

interpretation of the legislature's intent to conclude that the reference to "new collective bargaining agreement" in Sec. 111.70 (4)(cm)6 (introduction), Stats., and the reference to a "new or amended collective bargaining agreement" in Sec. 111.70(4)(cm)6a, Stats., includes any agreement reached under a reopener clause whether it be a "successor" agreement or an amended agreement reached pursuant to a partial reopener clause. On the other hand, the reference to "reopen[ing] negotiations under a binding collective bargaining agreement" and the "commence[ment of] negotiations if no such agreement exists contained in Sec. 111.70(4)(cm)1. Stats., suggests that negotiations over new matters which arise during the term of a collective bargaining agreement are not covered by the notice requirements or the provisions of Sec. 111.70(4)(cm)6. Stats. 9/

For the above and foregoing reasons we conclude that the mediation-arbitration provisions contained in Sec. 111.70(4)(cm)6, Stats., are only applicable to deadlocks which occur in: (1) reopened negotiations under a binding collective bargaining agreement to amend or modify a specific portion of an existing collective bargaining agreement subject to a specific reopener provision, (2) negotiations with respect to the wages, hours and working conditions to be included in a successor collective bargaining agreement for a new term; or (3) negotiations for an initial collective bargaining agreement where no such agreement exists. Said provisions are therefore inapplicable to deadlocks which may arise in other negotiations which may occur during the term of a collective bargaining agreement. Here it is clear that the deadlock arose in negotiations which dealt with the impact of the County's decision to terminate its special education programs on the wages, hours and working conditions of employes represented by the Association and not in negotiations that were conducted pursuant to a specific reopener clause or for the purpose of reaching agreement on the wages, hours and working conditions to be included in a successor collective bargaining agreement for a new term. Consequently, we have issued a Declaratory Ruling to the effect that the County is not required to proceed to mediation-arbitration on the deadlock in question. 10/

Dated at Madison, Wisconsin, this 2nd day of November, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Herman Torosian, Commissioner

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Gary L. Covelli, Commissioner

9/ The kinds of matters which might be subject to the duty to bargain during the term of a collective bargaining agreement ordinarily would be proposed changes in wages, hours and working conditions of bargaining unit employes or the impact of management decisions on the wages, hours and working conditions of bargaining unit employes which are not governed by the terms of the agreement and are not subject to the unilateral control of the employer because of the existence of a waiver of the right to bargain.

10/ We have also today issued an Order dismissing the Association's petition for mediation-arbitration.