STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of TEAMSTERS LOCAL NO. 695 To Initiate Arbitration Between Said Petitioner and CITY OF MONONA	Case 37 No. 53515 INT/ARB-7823 Decision No. 28694
In the Matter of the Petition of TEAMSTERS LOCAL NO. 695 To Initiate Arbitration Between Said Petitioner and CITY OF MONONA	Case 38 No. 53516 INT/ARB-7824 Decision No. 28695
In the Matter of the Petition of TEAMSTERS LOCAL NO. 695 To Initiate Arbitration Between Said Petitioner and CITY OF MONONA	Case 39 No. 53517 INT/ARB-7825 Decision No. 28696

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, Attorneys at Law, by Ms. Renata Krawczyk, 1555 North RiverCenter Drive, Suite 202, Milwaukee, Wisconsin 53212, for the Union.

Melli, Walker, Pease & Ruhly, Attorneys at Law, by Mr. Jack D. Walker, Suite 600, Insurance Building, 119 Martin Luther King, Jr., Boulevard, Madison, Wisconsin

53701, for the City.

ORDER DENYING MOTION TO DISMISS

On December 15, 1995, Teamsters Union Local No. 695 filed petitions with the Wisconsin Employment Relations Commission seeking interest arbitration pursuant to Sec. 111.70(4)(cm)6, Stats., as to disputes between Local 695 and the City of Monona as to the terms of three new collective bargaining agreements. The parties thereafter engaged in an unsuccessful effort to voluntarily resolve their dispute. During that effort, by letter dated March 6, 1996, the City advised the Commission that it was moving to dismiss the petitions because it did not believe the interest arbitration procedure set forth in Sec. 111.70(4)(cm)6, Stats., was applicable to the City of Monona.

By letter dated March 12, 1996, the Commission advised the parties as to the documents it was proposing to place in the record as exhibits regarding legislative history as to the issue raised by the City. In said letter, the Commission asked the parties to state their position as to said exhibits on or before March 20, 1996, and to further advise the Commission as to whether there were any additional exhibits the parties would like to have placed in the record. The Union did not state any objection to receipt of the proposed Commission exhibits and did not propose that any additional exhibits become part of the record. The City objected to receipt of the Commission exhibits and did not propose any additional exhibits for inclusion in the record. Having considered the City's objection, the Commission concludes it is appropriate to receive those exhibits into the record and hereby does so

By letter dated March 14, 1996, the Union filed a written statement of position in opposition to the City's motion to dismiss.

Having considered the matter and being fully advised in the premisses, the Commission makes and issues the following

ORDER

The motion to dismiss the petitions for interest arbitration is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 12th day of April, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Commissioner

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

No. 28694
No. 28695
No. 28696

Chairperson James R. Meier did not participate.
CITY OF MONONA

MEMORANDUM ACCOMPANYING ORDER
DENYING MOTION TO DISMISS

POSITION OF THE PARTIES

The City

Because the three units in question are not school district professional employe units, the City moves to dismiss the Union's interest arbitration petitions.

In support of its position, the City argues the following:

> The phrase in section 6 am, "under this subdivision or under subd. 5s" seems to be the sole basis (other than WERC's belief that the legislature intended to pass a different statute) for the WERC position that interest arbitration is available to units other than school district professional employee units.
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> The argument, as stated by attorney Rice, is that the underlined words above are surplusage, unless they relate to units other than 5s units. The words are not surplusage.
>
> Subdivision 5s grants a right to arbitrate things relating to the period before July 1, 1993. The right to arbitrate pre-July 1 matters is explicitly granted, "under subdivision 6". Subdivision 5s grants another right to arbitration, to units "consisting of" licensed professionals: that is the right to arbitrate noneconomic issues after agreement on economic issues. Note that the right to arbitrate noneconomic issues is not a right "under subdivision 6", rather, it is a right under subdivision 5s.
>
> Thus, the words in section 6 am, "under this subdivision" are necessary to cover pre-1993 disputes in 5s units, and are not surplusage.

The underlined phrase also relates to situations where, as stated in 5s, economic issues in a unit of school district professional employees exist, but the employer does not make a qualified economic offer. There is no provision in 5s which authorizes arbitration for situations where the employer of a 5s unit does not make a qualified economic offer, and the parties do not reach economic agreement; the grant of a right to interest arbitration in those situations is covered under 6.

Moreover, Monona reserves the view that interest arbitration violates the state and federal constitutions.

Inasmuch as WERC has already taken a contrary position on these issues, we see no point in further elaboration of the argument in this forum.

We have read Judge Brady's decision in City of New Lisbon v. AFSCME Local 40, Juneau County Case No. 95-CV-247 (March 1, 1996) (copy enclosed). However, the judge did not address our specific argument. Even if he did, we agree with the WERC's view as restated in Peter Davis' letter dated February 23, 1996, that circuit court decisions are only binding on the parties to that case. The city of Monona was not a party to the matters before Judge Barry (sic).

The Union

The Union asserts that interest arbitration under Sec. 111.70(4)(cm)6, Stats., continues to apply to City of Monona employes represented by the Union.

In support of its position, the Union argues in pertinent part:

Contrary to the assertions of the City of Monona, interest arbitration clearly continues to apply to cities including the City of Monona following recent amendments to Section 111.70, Stats. This City's argument that the WERC's position in City of New Lisbon v. AFSCME Local 40 is unsupported by statutory language is without merit. Judge Brady's decision in City of New Lisbon is clearly correct. Judge Brady's decision should be considered and indeed followed in this case, for the issue involved is exactly the same as it was in City of New Lisbon despite the difference of parties. The issue is one of law, not of fact, and is not fact dependant for resolution. Even if Judge Brady's decision is not considered by

the WERC, however, it is clear that the City's motion to dismiss must be denied.

The City's argument must fail. Upon close examination of the statute, it is clear that Section 111.70(4)(cm)(5s) relates only to issues which are subject to arbitration (as the subsection title indicates) and does not grant or deny any party the right to arbitrate. Section (5s) limits the issues that school districts must arbitrate. Section 111.70(4)(cm)(6) deals with and explains which parties are entitled to engage in the arbitral process, and does not limit arbitration to school district professional employees. Rather, Section 111.70(4)(cm)(6) indicates that arbitration is available to both school district professional employees and to other municipal employees:

> Prior to the close of the investigation each party shall submit in writing to the Commission its single final offer containing its final proposals on all issues in dispute that our subject to interest arbitration under this subdivision **or** under subd. (5s) in collective bargaining units to which subd. (5s) applies.

The Union further asserts that the continued applicability of interest arbitration to the City bargaining units is consistent with the legislative history and with the general declaration of policy set forth by the legislature in Sec. 111.70(6), Stats. In that regard the Union argues that a sweeping change to eliminate binding interest arbitration for all but professional school district employes would substantially disrupt labor peace and stability which the Wisconsin Legislature has sought to establish and maintain for many years.

Given all the foregoing, the Union asks the Commission to deny the City's motion to dismiss.

DISCUSSION

Because the interest arbitration petitions in question were filed after the July 29, 1995, effective date of 1995 Wisconsin Act 27, we think it clear that petitions are governed by the 1995 Wisconsin Act 27 version of Sec. 111.70(4)(cm), Stats. 1/

1/ 1995 Wisconsin Act 27 generally took effect on July 29, 1995. Non-statutory Section 9320 of 1995 Wisconsin Act 27 provides in pertinent part as follows:

> (2i) LOCAL GOVERNMENT INTEREST ARBITRATION FACTORS. The treatment of sec. 111.70(4)(cm)5. and 7., 7g. and 7r. of the statutes first applies with respect to petitions for arbitration filed under sec. 111.70(4)(cm)6. of the statutes on the effective date

In consolidated civil actions for declaratory and injunctive relief involving interest arbitration petitions filed pursuant to Sec. 111.70(4)(cm)6, Stats., (City of New Lisbon, Case No. 95-CV-247 and Village of Necedah, Case No. 95-CV-269), the Commission filed a brief attached hereto as Appendix A and incorporated herein by this reference. In that brief, the Commission generally took the position that Sec. 111.70(4)(cm)6, Stats., as amended by 1993 Wisconsin Act 16 and by 1995 Wisconsin Act 27 was ambiguous as to its application, but that the legislative history surrounding the statute established that said ambiguity should be resolved by a determination that interest arbitration continues to apply to municipal employers other that school districts.

On March 1, 1996, Juneau County Circuit Court Judge John W. Brady issued a decision which stated as follows:

> It is my conclusion that s. 111.70(4)(cm)6, Stats., is ambiguous because a reasonable persons (sic) could disagree as to its meaning which is capable of being understood by reasonably well informed persons in either of two or more senses. See Madison Teachers' Inc. v. Madison Metropolitan School District, 197 Wis. 2d 731, 748, 541 N.W.2d 786 (Ct. App. 1995).
>
> A legislative intent to limit interest arbitration solely to collective bargaining units consisting of school district professional employees does not "leap out" at the reader. Section 111.70(4)(cm)6, Stats., may be read as having application solely to collective bargain units which qualify for interest arbitration under subd. 5s. in those units to which that subdivision applies. However, the comma-bound phrase in the statute may also be read as though it were in parentheses and therefore means that those collective bargaining units consisting of school district professional employees referred to in subd. 5s. which have not made qualified economic offers are also subject to interest arbitration.
>
> The fact that the parties disagree on the meaning of s. 111.70(4)(cm)6, Stats., does not demonstrate that any ambiguity exists and a court must look to the language of the statute. Madison Teachers, Inc. at 478. The issue is one of law and the court is not to look to the legislative history to create an ambiguity and should give effect to the plain language of the statute.

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of this subsection.

Section 9320(2)(i) persuades us that 1995 Wisconsin Act 27 is not retroactive in its application to interest arbitration petitions filed prior to its effective date of July 29, 1995.

> The statute, 111.70(4)(cm)6, Stats., is confusing and was not written in accordance with ordinary rules of grammar. That is to say, in my view, the intent and purpose of the statute could have been made manifest by different punctuation and by the inclusion of different or additional words to expand or limit the comma-bound phrase.
>
> A plain reading of the statute in question does not make clear precisely what the comma-bound phrase is intended to modify. A reasonable person can guess and surmise what is intended to be modified by reading other parts of s. 111.70, Stats., and can engage in a detailed grammatical analysis, (as was impressively done in the affidavit of Professor Charles T. Scott, attached to the Amicus Curiae brief of the Wisconsin Counties Association), but if a reasonable reader is required to go to such lengths, the statute is ambiguous.
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> If a statute is ambiguous then resort may be had to the legislative history. E.G., Association of State Prosecutors v. Milwaukee County, 189 Wis. 2d 291, 301, 525 N.W. 2d 768 (Ct. App. 1994); and Gosse v. Protective Life Insurance Company, 182 Wis 2d at 106. The legislative history in this case in the form of the affidavit of Robert F. Lyons provided by the Union establishes that if (sic) the legislature had no intention to limit in any way the application of interest arbitration provisions to other municipal employees. Since plaintiffs do not in any way challenge the assertion that the legislative history clearly establishes that the legislature did not intend to change the interest arbitration provisions insofar as they applied to other municipal employers, no further recitation of those facts in support of that conclusion is required.
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> Therefore, based on my conclusion that s. 111.70(4)(cm)6, Stats., is ambiguous and that the legislative history clearly establishes the legislatures' (sic) intent that the plaintiff municipalities remain subject to the binding arbitration provisions of that statute, the plaintiffs' complaints are dismissed.

Like Judge Brady, we are persuaded that the legislative history clearly establishes that the statutory ambiguity should be resolved in a manner which establishes that interest arbitration under Sec. 111.70(4)(cm)6, Stats., does apply to municipal employe bargaining units other than school district professional employes. The documentation of the legislative history in the record in this case overwhelmingly establishes this legislative intent. Thus, consistent with our brief in City of New Lisbon/Village of Necedah and Judge Brady's decision, we conclude it is appropriate to deny

the City's Motion to Dismiss.

Dated at Madison, Wisconsin, this 12th day of April, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Commissioner

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Chairperson James R. Meier did not participate.