STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN COUNCIL NO. 40
OF COUNTY AND MUNICIPAL EMPLOYEES,
AFSCME, AFL-CIO

To Initiate Arbitration Between
Said Petitioner and

IOWA COUNTY

Case 84
No. 52908 INT/ARB-7697
Decision No. 28697

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, for the Union.

Brennan, Steil, Bastin & MacDougall, S.C., by Mr. Howard Goldberg, 433 West Washington Avenue, Suite 100, P.O. Box 990, Madison, Wisconsin 53701-0990, for the County.

ORDER DENYING MOTION TO DISMISS

On July 17, 1995, Wisconsin Council No. 40 of County and Municipal Employees, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission seeking interest arbitration pursuant to Sec. 111.70(4)(cm)6, Stats., as to a dispute between AFSCME and Iowa County as to the terms of a new collective bargaining agreement. The parties thereafter engaged in an unsuccessful effort to voluntarily resolve their dispute. During that effort, by letter dated December 1, 1995, the County advised the Commission that it did not believe the interest arbitration procedure set forth in Sec. 111.70(4)(cm) 6, Stats., was applicable to Iowa County.

On February 27, 1996, the County advised the Commission that its December 1, 1995, letter should be deemed a Motion to Dismiss the interest arbitration petition. By letter dated March 5, 1996, AFSCME submitted its written response to the Motion. By letter dated March 6, 1996, the County replied. By letter dated March 7, 1996, AFSCME responded. By letter dated March 11,

1996 the County replied. By letter dated March 13, 1996, AFSCME responded.

By letter dated March 11, 1996, the Commission advised the parties as to documents it was proposing to place in the record as exhibits regarding legislative history. 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.

Neither party objected to receipt of the Commission's proposed exhibits into the record or proposed receipt of additional exhibits. The Commission hereby receives the proposed exhibits into the record.

Having considered the matter and being fully advised of the premises, the Commission makes and issues the following

ORDER

The motion to dismiss the petition 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

Chairperson James R. Meier did not participate.

IOWA COUNTY

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO DISMISS

POSITIONS OF THE PARTIES

The County's Motion to Dismiss

The County's Motion to Dismiss states in pertinent part:

> Statutory Framework.
>
> Sec. 111.70(4)(cm) sets forth the statutory framework for the "peaceful settlement of disputes." Subd. 1 and subd. 2 pertain to the bargaining process. Subd. 3 pertains to the mediation of disputes, and subd. 4 provides the commission or "any other appropriate agency" with the authority to resolve grievances by use of binding arbitration. Subd. 5 itemizes a number of "voluntary impasse resolution procedures" that the employer and the union might use to resolve the impasse. In order to implement these procedures, all parties must agree in writing if they are to be applicable. The procedures itemized under this subsection are (i) strikes, and (ii) binding interest arbitration. Subd. 5s pertains only to a collective bargaining unit consisting of school district professional employees. That subsection provides that if the employer submits a qualified economic offer ("QEO"), then no economic issues are subject to interest arbitration under subd. 6. This subsection goes on to state that upon the making of a QEO, and upon the parties entering into a stipulation as to those provisions, interest arbitration under subsection 6 would be applicable for the non-economic issues still at issue. It is implicit in this subsection that all issues, both economic and non-economic, would be subject to interest arbitration under subsection 6 if the employer fails to provide a QEO. Subd. 6 pertains to the imposition of mandatory binding interest arbitration. It is the application of this subsection which is the subject of the current litigation pending in Fond du Lac County and Juneau County, as well as before the commission. This will be discussed in more detail later on in this letter. Subd. 7 lists the factors that arbitrators may consider when handling all arbitration matters

described above. Subd. 8 authorizes to (sic) commission to adopt rules for the conduct of arbitration proceedings under subd. 6. Subd. 9 makes it clear that the arbitration procedures described in Chapter 788 are not applicable here, and that the above subjection (sic) matter does not apply to labor disputes involving law enforcement and fire fighting personnel.

Mandatory Interest Arbitration.

Subd. 6 is the statute that gives the commission the authority to compel a municipal employer or a union to participate in binding interest arbitration proceedings. In recent years, this statutory provision was changed. Prior to 1993, this subsection clearly applied to all municipal employers as defined in the chapter, other than law enforcement and fire fighting personnel.

In 1993, the legislature created new rules pertaining to professional employees in school districts which are found in subd. 5s described above. At that same time, the legislature expressly amended subd. 6 so that its terms only pertained to school district professional employees.

In the first paragraph of subd. 6, the following changes were made:

> "if a dispute relating to one or more issues, qualifying for interest arbitration under subd. 5s in collective bargaining units to which subd. 5s applies, has not been settled..."

From this language, it is clear that the legislature changed the mandatory interest arbitration statutes so that they only applied to: (i) disputes relating to permitted issues under subd. 5s, and (ii) only those collective bargaining units to which subd. 5s applies. There is no other provision found in subd. 6 which indicates that other types of bargaining units must submit to this process if they do not wish to do so.

It is our understanding that none of the bargaining units involved in the Fond du Lac County case, the Juneau County case, the City of New Lisbon case, or the Village of Necedah case, referred to in your November 21st letter, are composed of municipal employees for which subd. 5s applies.

In many ways, the analysis used by the Court of Appeals in the recent case entitled Madison Teachers, Inc. v. Madison Metropolitan School District, (case 93-3323), decided on October 19, 1995, is helpful in resolving the legal issue in this matter. In that case, the Court of Appeals was asked to interpret the applicability of subd. 5s to a mixed unit composed of school district professional employees as well as others. I hasten to add that the issue, which is the subject of this letter, was not discussed by that court. At page 15, the court made it very clear that it was only deciding the issue at bar (i.e. the applicability of 5s to a mixed bargaining unit):

> *"The sole issue before us is the meaning of the disputed phrase in Sec.111.70(4)(cm)4s, and that meaning does not bind a future court or WERC when deciding whether a particular bargaining unit is entitled to collective bargaining under MERA. We decide appeals on the narrowest possible basis."*

The Court of Appeals went through the usual analysis that courts go through when they are asked to interpret the meaning of statutes. They first need to determine if the relevant words in the statute are clear and unambiguous. If the words are clear and unambiguous, then the court will not go to the legislative record to attempt to discern the intent of the legislature. However, if the words are reasonably subject to more than one meaning, then the courts will resort to a statutory construction which makes a finding of legislative intent. Even if the legislative intent is known, the court will not implement that intent if the words of the statute are clear and unambiguous. In Madison Teachers, Judge Sundby stated, in his dissent, that it was well publicized that the legislature intended to substitute the QEO for final and binding arbitration for teachers. Yet, the majority opinion ignores this well publicized legislative intent because the words of the statute were clear and unambiguous. At page 27, the majority states:

> *"But we have not interpreted Sec. 111.70(1)(b), STATS., to exclude mixed units from Sec. 111.70(4)(cm)5s. We have held only that Sec. 111.70(4)(cm)5s excludes mixed units. The plain meaning of that statute has evinced the legislative intent. We cannot ignore that intent even if it results in a differentiation between various districts. The*

> *legislature must have foreseen that differentiation, because the legislature chose to limit the application of the QEO provisions in Sec. 111.70(4)(cm)5s to a 'collective bargaining unit consisting of school district professional employees...'"*

The majority even tacitly acknowledges that the applicable statutory language may not accurately reflect the intent of the legislature. However, at page 19, the court states:

> *"Given these circumstances, for us to conclude that Sec. 111.70(4)(cm)5s, STATS., does not mean what it says would be judicial legislation at its worst. ...we must assume that the legislature expressed its intent in those very words. To nullify that intent on the basis of a supposedly unfulfilled purpose would exceed our judicial function, in the absence of extraordinarily clear and convincing evidence that the legislature failed to express what it meant. We cannot rewrite the statute to cover the district's desired construction of it. If the statute requires curative action, the remedy is with the legislature, not the courts."*

Applying these concepts to this case, it is my opinion that the words added to subd. 6 clearly and unambiguously limit that statute to school units only. If anything, the words to be construed here are less ambiguous than the words under construction by the court in the Madison Teachers case. Further, the added words make no sense if they are to be construed as merely applying to teaching units in addition to all other units. I say this because that language would not be necessary to achieve this result. The language in the subd. 5s makes it clear that issues qualified for interest arbitration are to be handled pursuant to subd. 6. It is redundant to say this again in subd. 6 if the intent was to add these types of disputes to other types of bargaining units. Further, there is no reason to even have voluntary interest arbitration under subd. 5, with the requirements that the parties must first agree in writing, etc., if either side can simply compel the other to participate in mandatory interest arbitration under subd. 6.

I have heard it said that this is nothing but a legislative drafting error,

and the legislature never intended to eliminate mandatory interest arbitration for non-school units. I have not conducted any type of legislative history review, but I feel that it cannot be said, categorically, that the legislature did not intend to exclude mandatory interest arbitration from units that are not composed of school district employees. Rather, it is probable that the conclusion must be reached that the legislature intended exactly what it said. I say this because the changes made to subd. 6 clearly were intentional and, at the same time that the legislature amended subd. 6, it also adopted sunset legislation which would have done away with the compulsory interest arbitration for all bargaining units as of July 1, 1995. Further, when the legislature rescinded the sunset clause in the 1995 session, it made a lot of other changes to the law. It easily could have expanded subd. 6 to apply to all types of bargaining units if that was its intent, but it did not. I suspect it was never discussed. In all events, the fact that it did not do so is compelling.

I have also heard it said that if this interpretation of the statutes is adopted, then collective bargaining will be finished in Wisconsin. So far, it has been my experience that the employers that I represent do not feel that way. All of my employer clients are desirous of obtaining settlement and are willing to do what they can (within reason) to reach agreement. This is definitely true in Iowa County. It has been my experience that the intransigence from unions during bargaining has, in many instances, been based on the premise that municipal employers would rather give too much by way of wages and benefits because they wish to avoid the costs associated with arbitration. If anything, it is my belief that collective bargaining will go smoother if mandatory interest arbitration is eliminated. In all events, this issue should be left to the legislature to review and resolve, not the commission. The commission did not create the problem, and if the legislature feels that they made a mistake, then they certainly know how to correct it.

The Response of AFSCME

AFSCME responded to the Motion to Dismiss as follows:

> The applicable statute in this case is subdivision 111.70(4)(cm)6, Wis. Stats. That subdivision provides as follows:
>
> > 6. 'Interest arbitration.' a. If in any collective

> bargaining unit a dispute relating to one or more issues, qualifying for interest arbitration under subd. 5s. in a collective bargaining unit to which subd. 5s applies, has not been settled after a reasonable period of negotiation and after mediation by the commission under subd. 3. and other settlement procedures, if any, established by the parties have been exhausted, and 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, either part, (sic) or the parties jointly, may petition the commission, in writing, to initiate compulsory, final and binding arbitration, as provided in this paragraph. At the time the petition is filed, the petitioning party shall submit in writing to the other party and the commission its preliminary final offer containing its latest proposals on all issues in dispute. Within 14 calendar days after the date of that submission, the other party shall submit in writing it (sic) preliminary final offer on all disputed issues to the petition (sic) party and the commission. If a petition is filed jointly, both parties shall exchange their preliminary final offers in writing and submit copies to the commission at the time the petition is filed.

The language which the County relies upon in support of its motion to dismiss is contained in the first sentence of the above-quoted provision. The County argues in its December 1, 1995 letter on page two that the phrase "qualifying for interest arbitration under subd. 5s. in a collective bargaining unit to which subd. 5s applies" means that the legislature has limits (sic) interest arbitration to "disputes relating to permitted issues under subd. 5s" and limits arbitration to "only those collective bargaining units to which subd. 5s applies."

Subdivision 5s provides for limits on the access to interest arbitration to units of school district professionals.

The County argues at page 4 of its December 1 letter that "the words added to subd. 6 clearly and unambiguously limit that statute to school units only." However, in two cases involving the

same issues present here, City of New Lisbon, Case No. 95 CV 247, and Village of Necedah, Case No. 95 CV 269, Juneau County Circuit Judge John W. Brady ruled as follows:

> It is my conclusion that s. 111.70(4)(cm)(6, (sic) 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.
>
> * * *
>
> 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.

Finding the statute ambiguous, Judge Brady resorted to legislative history to find the meaning of the disputed phrase. According to Judge Brady, "the legislative history clearly establishes the legislature's intent that the plaintiff municipalities remain subject to the binding arbitration provisions of that statute..."

Shortly after Judge Brady issued his ruling, Judge William McMonigal issued a bench decision in Juneau County, Case No. 95 CV 214, in which he denied the County's Motion for Judgment on the Pleadings. That case, like Necedah and New Lisbon, involved in (sic) a case involving the same issue as that in the instant case. Judge McMonigal also found that the statute at issue was ambiguous. While in Juneau County the Judge has not yet ruled on the issue of legislative history, given the ruling of Judge Brady and the evidence of legislative history presented by the defendants in Necedah and New Lisbon, there can be little doubt about the outcome of that mater.

> In light of the rulings in Juneau County Circuit Court, there can be little doubt that the County's arguments in the instant matter must fail. The Union respectfully requests that the Commission deny Iowa County's Motion to Dismiss.

The County Response

The County responded by letter dated March 6, 1996, as follows:

> It seems to me that a great deal of effort is being made to obfuscate the plain meaning of the words set forth in the first sentence of Sec. 111.70(4)(cm)6. Prior to the recent legislation, the interest arbitration statute applied to all municipal collective bargaining units, with the exception of law enforcement and fire fighters. The new legislation added words which clearly modified the former language. The new language makes it clear that the issues subject to interest arbitration are only those issues that qualify for that procedure under subd. 5s {i.e. Sec. 111.70(4)(cm)5s}, and it only applies to those bargaining units "to which 5s applies."
>
> The new phrase which the legislature inserted into the statute reads "qualifying for interest arbitration under subd. 5s. in a collective bargaining unit to which subd. 5s applies." It should not be disputed that the word "qualifying" is intended to modify the previous word "issues," and the words "in a collective bargaining unit to which subd. 5s applies" means "a collective bargaining unit consisting of school district professional employees."
>
> The Union argues that these new words are only intended to include the school unit employees in the interest arbitration process like everybody else. Such a construction is unreasonable because the legislature expressly stated in subd. 5s, that these units are entitled to interest arbitration under subd. 6. That being the case, it would not be necessary to amend subd. 6 so as to say this again.
>
> I personally feel that the new language is clear and concise. It is not ambiguous, nor capable of more than one meaning. The effect of the new language is to limit interest arbitration, under subd. 6, only to school units. It is frustrating to sit and watch the Unions twist this clear language in such a way so as to accomplish their political ends. No doubt Mr. White is correct when he predicts that this will be the end result. Your Commission, the Attorney General, and unions

have all advocated this result. Hopefully, an appellate court will have the courage to say that plain words have plain meaning. I respectfully request that the Commission grant Iowa County's motion to dismiss, or, in the alternative, hold this matter in abeyance until such time as the appeals are concluded or the legislature has otherwise acted.

The Reply of AFSCME

AFSCME replied to the County's March 6, 1996, letter as follows:

> First, if the word "qualifying" is intended to modify the word (sic) previous word "issues" in the manner suggested by the County, then there would have been no need for the phrase "in a collective bargaining unit to which subd. 5s applies." Indeed, the County's interpretation renders the latter phrase surplusage.
>
> A second flaw in the County's reasoning is found by examining the statute in its context. Thus, the County's analysis requires that one ignore paragraph (am) of subd. 6 which provides in part:
>
> > 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 are subject to interest arbitration under *this subdivision* or under subd. 5s in collective bargaining units to which subd. 5s. applies.
>
> (Emphasis added.)
>
> According to the County's interpretation of the statute, interest arbitration is the required method of dispute resolution only in a collective bargaining unit subject to subd. 5s and only under the circumstance permitted by subd. 5s. If this is the proper interpretation of 111.70(4)cm(6), (sic) then what is meant by the phrase quoted above, "subject to interest arbitration under this subdivision or under subd. 5s..."? What arbitration is available under "this subdivision"?
>
> The County has no answer. The reason, of course, is that there is no answer that is consistent both with the statute and the County's interpretation of the statute.

> Finally, Mr. Goldberg states in his March 6 letter that "The Union argues that these new words are only intended to include the school unit employees in the interest arbitration process like everybody else." I have no idea where Mr. Goldberg came up with this notion. There is no such argument in my letter of March 5. This is not the Union's argument. The Union's argument is that the legislature placed the "new" words into the statute in order to *prevent* bargaining units consisting of school district professionals from having access to interest arbitration unless the conditions of subd. 5s are met.
>
> The Union assumes that Mr. Goldberg had his tongue firmly in his cheek when he wrote his remarks about Unions twisting "this clear language" to accomplish "political ends." My only response is that two circuit court judges, elected from counties that are hardly strong-holds of the labor movement, have examined the statute and have found the statute ambiguous. For the County to hope that "an appellate court will have the courage" to find for the County strikes us as an implication that the two judges who found otherwise somehow lack this courage. Such remarks are insult to the integrity of Judges Brady and McMonigle and have no place in this debate.
>
> There is no reason to hold this matter in abeyance. We have waited long enough. The Union respectfully requests that Iowa County's Motion to Dismiss be denied, and order that the final offer process be concluded as soon as possible.

The County Response

The County responded to AFSCME's March 7, 1996, reply as follows:

> Mr. White argues that mandatory interest arbitration must apply to all governmental bargaining units because paragraph (am) of subd. 6 refers to "interest arbitration under this subdivision or under subd. 5s...." In essence, he argues that if mandatory interest arbitration is only for subd. 5s bargaining units, then this language is superfluous. He asks "What [other] arbitration is available under 'this subdivision'?" He then states that the County has no answer to this question because, he concludes, there is no answer. Of course, it would have been nice if he would have asked the County this question before concluding that the County has no answer. In fact, there is a very simple answer to this question.

> Subd. 6 clearly contemplates mandatory interest arbitration only for those subd. 5s bargaining units that qualify, and it also contemplates interest arbitration for all other bargaining units that voluntarily elect to participate in the interest arbitration process under subd. 5. Subd. 6 sets forth all of the procedures that are to be followed if interest arbitration is invoked. So, if a County were to agree to voluntarily submit its labor dispute to interest arbitration under subd. 5, then it would be required to proceed under subd. 6. This is a plain reading of the statutes; it certainly provides an answer to Mr. White's question. In response, I would ask Mr. White what statutes, other than subd. 6, are to be used if the municipal employer agrees to participate in voluntary interest arbitration under subd.5?
>
> Mr. White's comments about my insulting those circuit judges who have (apparently) ruled on this issue is irrational. As I stated in my letter to you, I have not even been provided with copies of those decisions, so I am unable to comment on them, one way or another. However, from my perspective, I am aware of the political ramifications of this subject matter, and I feel confident that powerful labor organizations, such as AFSCME, will use their considerable influence in an attempt to obtain a favorable result for their members. As I stated before, it is my hope that the appellate courts will look at this dispute in a fair and forthright way, and only interpret the words and not the political consequences. In my humble opinion, this problem was created by the legislature, and the legislature, not the courts, should be asked to resolve it.

DISCUSSION

The County's Motion asks that we dismiss the AFSCME petition for interest arbitration or, in the alternative, hold said petition in abeyance pending resolution of the statutory issue by the appellate courts of Wisconsin.

We are persuaded that it is inappropriate for us to hold the matter in abeyance. At present, the statutory dispute raised in this proceeding is not pending before any Wisconsin appellate court. If the dispute reaches the appellate courts, there is no guarantee that the appellate courts will issue a published decision. Further, even if a published decision is issued, such a decision is likely many months or perhaps several years away. Given the foregoing, it is apparent that to hold this matter in abeyance would deprive these parties of a timely understanding of their respective rights as they seek to bargain a 1996-1997 collective bargaining agreement. Under such circumstances, we are

persuaded it is appropriate for us to proceed to decide the merits of the County's Motion to Dismiss.

Because the interest arbitration petition in question was filed before the July 29, 1995, effective date of 1995 Wisconsin Act 27, we think it clear that the petition is governed by the 1993 Wisconsin Act 16 version of Sec. 111.70(4)(cm), Stats. 1/

In consolidated civil actions for declaratory and injunctive relief involving interest arbitration petitions filed prior to the effective date of Act 27 (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 the statutory language in question was ambiguous but that the legislative history surrounding the statute established that the ambiguity should be resolved by a determination that interest arbitration continues to apply to municipal employers other than 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

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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 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.

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.

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.

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.
>
> 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 County'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.