STATE OF WISCONSIN
CIRCUIT COURT
JUNEAU COUNTY

CITY OF NEW LISBON,

Plaintiff,

vs.

WISCONSIN COUNCIL 40, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,

and

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Defendants.

DECISION
CASE NO. 95 CV 247
[WERC is using the following electronic file name: 95-CV-269C1.doc]
[NOTE: This document was re-keyed by WERC. Original pagination has been retained.]

VILLAGE OF NECEDAH,

Plaintiff,

vs.

WISCONSIN COUNCIL 40, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,

and

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Defendants.

CASE NO. 95 CV 269

INTRODUCTION

The above referenced cases have been consolidated.

Plaintiff municipalities seek a declaratory judgment holding that as municipal employers

they are not subject to the binding arbitration provisions of s. 111.70(4)(cm)6, part of the Municipal Employment Relations Act (MERA) part of subch. IV, of Ch. 111 Stats. Plaintiffs originally sought a temporary injunction prohibiting defendant Wisconsin Employment Relations Commission (WERC) from enforcing the provision for binding arbitration pending the granting of a declaratory judgment, however plaintiffs have now moved for judgment on the pleadings. Defendant, Wisconsin Counsel 40, American Federal of State, County and Municipal Employees, AFL-CIO (Union) has moved to dismiss the complaints on the ground that plaintiffs cannot succeed on the merits and that no basis for temporary injunction or declaratory judgment exists.

As indicated s. 111.70(4)(cm)6, Stats., is the key statute and its interpretation determines the outcome of this case. That statute in pertinent part provides:

> "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, 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 party, 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 its preliminary final offer on all disputed issues to the petitioning 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."

Plaintiffs assert that the statute is unambiguous and that the phrase "qualifying for interest

arbitration under subd. 5s. in a collective bargaining unit to which subd. 5s. applies," limits the imposition of binding arbitration to collective bargaining units consisting of school district professional employees as referred to and described in s. 111.70(4)(cm)5s., Stats. Plaintiffs argue that the clause set off in commas controls the scope of subd. 6 and that the "qualifying" language limits the application of binding arbitration to collective bargaining units of school district professional employees. Plaintiffs thus conclude that the statute is clear, that s. 111.70(4)(cm)6, Stats., applies only to such school district professional employees, and that plaintiffs, as municipal employers who did not employ such persons, are not required to submit to binding arbitration.

The Union first takes the position that s. 111.70(4)(cm)6, Stats., is unambiguous in that the statute states that it applies to "any" collective bargaining unit, and not only to ones consisting of school district professional employees. The Union says that the comma-bound clause refers to the word "dispute," and that therefore it is the "dispute" that must "qualify" for interest arbitration under subd. 5s. The Union further argues that the qualifying phrase is limited to those disputes which arise "in a collective bargaining unit to which subd. 5s. applies." The Union suggests that the plaintiffs' reading of the statute is too narrow and ignores other provisions of the same paragraph.

The position of the WERC is that the statute referred to is ambiguous because it is capable of being understood by reasonably well informed persons in either of two or more senses. WERC's position is summarized in the following part of a paragraph from its brief:

> "The language of the interest arbitration provision, sec. 111.70(4)(cm)6, Stats., reasonably could be read to mean, as the City and the Village contend, that the interest arbitration provision only applies to disputes involving one or more issues "qualifying

> for interest arbitration under subd. 5s [i.e., noneconomic issues where a school district has submitted a qualified economic offer] in a collective bargaining agreement to which subd. 5s applies [i.e., a collective bargaining unit of school district professional employees." The statute also reasonably could be read to mean that the interest arbitration provision applies to all disputes involving one or more issues relating to wages, hours and conditions of employment, but that in a collective bargaining of school district professional employees, the interest arbitration provision only may be applied to disputes involving issues which qualify for interest arbitration under sec. 111.70(4)(cm)5s., Stats.

DECISION

It is my conclusion that s. 111.70(4)(cm)6, Stats., is ambiguous because a reasonable persons 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 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 Grosse 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 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' intent that the plaintiff municipalities remain subject to the binding arbitration provisions of that statute, the plaintiffs' complaints are dismissed.

Dated at Mauston, Wisconsin, this 1st day of March, 1996.

BY THE COURT

John W. Brady /s/

JOHN W. BRADY
Circuit Judge