

JOURNAL OF THE SENATE

THURSDAY, May 20, 1976.

The chief clerk makes the following entries under the above date.

PETITIONS AND COMMUNICATIONS

**State of Wisconsin
Claims Board**

May 14, 1976

**Glenn Bultman
Senate Chief Clerk
State Capitol
Madison, Wisconsin**

Dear Mr. Bultman:

Enclosed is a copy of the report and recommendation of the State Claims Board covering a decision made on March 8, 1976.

The Board is preparing the bill on the recommended award and will submit it to the joint committee on Finance for legislative introduction.

This report is for the information of the Legislature. The Board would appreciate your acceptance and spreading of it upon the Journal to inform the members of the Legislature as to the nature of the claim which will come before it for consideration.

Sincerely,
EDWARD D. MAIN
Secretary

**BEFORE THE
CLAIMS BOARD OF WISCONSIN**

**In re: The claims of Maurice VanSusteren, 5910 Driftwood Drive,
Madison, Wisconsin.**

Prior to August 28, 1972, the claimant was chief of the examiner section in the Bureau of Legal Services for the Department of Natural Resources with principal duties as a hearing examiner. On August 28, 1972, L.P. Voight, Secretary of the Department of Natural Resources, by John Beale, Deputy Secretary, removed the claimant as chief of the examiner section and also as a hearing examiner, transferring the claimant to a

JOURNAL OF THE SENATE

newly created legal research section and making him the acting chief thereof. Claimant complained to C. K. Wettengel, Director of the Bureau of Personnel, that the action taken was unlawful, illegal, void and contrary to state statutes. Claimant's allegations were sustained by C. K. Wettengel, by the Personnel Board on appeal by Secretary Voight, and the the Circuit Court of Dane County, also on appeal by Secretary Voight, all as shown by the decisions of the respective reviewing authorities. Claimant incurred legal expenses and charges sustaining his allegations while following the only procedure and remedy available to him under the statutes. These legal expenses amounted to \$23,565.33.

Claimant also was denied a merit increase for the period of July 1, 1974 to June 30, 1975, for reasons other than merit contrary to sec. 16.086 (5)(1), Wis. Stats., and Administrative Code, Personnel 5.03 (6), (a) and (c). Claimant incurred legal expenses in grievance and arbitration proceedings which resulted in a successful award. These legal expenses amounted to \$4,484.60.

The specific issue for decision before the Claims Board is whether or not its broad grant of authority under sec. 16.007 (5), Wis. Stats., should result in the recommendation of payment of attorney fees and costs for the successful pursuit of personnel matters such as those involved here.

THE BOARD CONCLUDES:

Three members of this Board conclude the claimant should be reimbursed for only those legal fees and expenses concerned with the appeal to Circuit Court of the failure of the Personnel Board to hold a hearing on the failure of the Director of the Bureau of Personnel to hold a hearing. This amounts to 108.1 hours for legal services. The Board also concludes that such services should be reimbursed at the rate of \$45 per hour, commensurate with the rate charged by private counsel hired by the State for said matter. This amounts to a recommendation for payment of \$4864.50 of the first claim.

It should be noted that member Kleczka would recommend payment at the reduced rate of \$45 per hour for all but the last 170.5 hours of the first claim, eliminating from payment only those matters concerning the appeal to the Personnel Board following the decision of the Director returning VanSusteren to the position of hearing examiner.

JOURNAL OF THE SENATE

It should be further noted that member Hubbard would recommend payment of the entire first claim.

Four members of the Board recommend denial of payment of the second claim in full. Member Hubbard, being a member of the Wisconsin Attorneys Association, disqualified himself from voting on the second claim which related to an arbitration award under a grievance procedure in the collective bargaining agreement between the Department of Natural Resources and the Wisconsin State Attorneys Association.

(Hubbard, dissenting on first claim), It should be a part of the policy of the State of Wisconsin to make whole any state employee who has suffered from an unjustified or improper personnel action. Legal representation resulted in a substantial fee for the time expended and costs incurred in pressing for the favorable disposition of the claimant's allegations. The legal costs incurred by the claimant in pursuing his legal remedy amounted to a total of \$23,565.33. To hold that the claimant or any other person in his situation must be forced to bear such an expense as the price of vindicating his rights would result in a mockery and sham of what the legislature has provided by way of a statutory remedy for relief in such personnel matters. Such rights become meaningless when they are not affordable, and when the person successfully pursuing such rights cannot be made whole. The need for competent counsel often becomes the greatest in personnel matters. The mere fact that the claimant in this instance happened to be an attorney in no way should detract from the necessity of hiring legal counsel to represent him in pursuing his rights. There is no practical relief provided if an employee is unable to stand up for his rights because of the staggering cost of the prospective fees involved, or, if he should pursue his legal rights, will be left with a legal bill which to virtually all state employees would be financially catastrophic. Failure to award legal fees and costs would frustrate the public purpose behind remedies provided to state employees in such matters. Every person has a basic right to make a living, and in the process of making that living, not to be treated arbitrarily by his employer. If any remedy to preserve the rights of a state employee is to have meaning, the state employee must be put in a position to make his rights enforceable. Often the enforceability of legal rights depend upon the affordability of competent legal counsel.

JOURNAL OF THE SENATE

(Riemer, dissenting on first claim). The decision whether to award attorney's fees in connection with any dispute involving the State is a matter best left to the dispute - deciding body (e.g. the court), as guided by the common law or by legislation, and is not the sort of decision, because of its potential widespread applicability, which it is appropriate for the Claims Board to make.

Dated at Madison, Wisconsin, this 14th day of May, 1976.

GERALD D. KLECZKA
Senate Finance Committee

GEORGE MOLINARO
Assembly Finance Committee

DAVID RIEMER
Representative of Governor

BARBARA YAFFE
Representative of Secretary of
Administration

ALLAN P. HUBBARD
Representative of Attorney
General

State of Wisconsin
Department of State

May 17, 1976.

To the Honorable, the Senate

Senators:

I have the honor to transmit to you pursuant to s. 13.67 (2), the names of the registered lobbyists for the period beginning on April 12, 1976, and ending on May 14, 1976.

Yours very truly,
DOUGLAS LAFOLLETTE
Secretary of State

JOURNAL OF THE SENATE

Name, Address and Occupation of Lobbyist -- Name and Address of Employer -- Subject of Legislation Code Number -- Date of Employment.

Lehman, Mary H., 201 E. Washington Ave., Room 497, Madison, Wisconsin 53701 -- Governor's Committee on Migrant Labor, 201 E. Washington Ave., Room 497, Madison, Wisconsin 53701 -- 01, 04, 10, 17 -- May 12, 1976.

Please note the following cancellations:

John C. Fritschler, Jr., Wisconsin Family Court Commissioners Association, Tavern Hosts of Wisconsin, Wisconsin Chiropractic Association, as of May 1, 1976.

Suzanne S. Havens, Northeastern Wisconsin Consumer Fisheries Association, as of May 6, 1976.

Kirby Hendee, Wisconsin Merchants Federation, Manitowoc County, Kewaunee County, State Bar of Wisconsin, as of May 12, 1976.

Paul R. Holmquist, Aid Association for Lutherans, as of April 19, 1976.

Paul L. Jonjak, Northeastern Wisconsin Consumer Fisheries Association, as of May 6, 1976.

Donald K. Mickelson, Wisconsin Professional Policemen's Association, as of May 1, 1976.

James M. Orr, Communication Workers of America, Local 5530, as of April 1, 1976.

Jerold E. Ring, Dow Chemical, Michigan Division, as of May 1, 1976.

Legislative Subject Identification

Code	Subject
01	<i>Agriculture, horticulture, farming & livestock</i>
02	<i>Amusements, games, athletics and sports</i>
03	<i>Banking, finance, credit and investments</i>
04	<i>Children, minors, youth & senior citizens</i>
05	<i>Church & Religion</i>
06	<i>Consumer Affairs</i>

JOURNAL OF THE SENATE

- 07 *Ecology, environment, pollution, conservation, zoning, land & water use*
- 08 *Education*
- 09 *Elections, campaigns, voting & political parties*
- 10 *Equal rights, civil rights & minority affairs*
- 11 *Government, financing, taxation, revenue, budget, appropriations, bids, fees & funds*
- 12 *Government, county*
- 13 *Government, federal*
- 14 *Government, municipal*
- 15 *Government, special districts*
- 16 *Government, state*
- 17 *Health services, medicine, drugs and controlled substances, health insurance & hospitals*
- 18 *Higher education*
- 19 *Housing, construction & codes*
- 20 *Insurance (excluding health insurance)*
- 21 *Labor, salaries and wages, collective bargaining*
- 22 *Law enforcement, courts, judges, crimes & prisons*
- 23 *Licenses & permits*
- 24 *Liquor*
- 25 *Manufacturing, distribution & services*
- 26 *Natural resources, forests and forest products, fisheries, mining & mineral products*
- 27 *Public lands, parks & recreation*
- 28 *Social insurance, unemployment insurance, public assistance & workmen's compensation*
- 29 *Transportation, highways, streets & roads*
- 30 *Utilities, communications, television, radio, newspapers, power, CATV, & gas*
- 31 *Other*

CHIEF CLERK'S REPORT

The chief clerk records:

Senate Bill 12
Senate Bill 34
Senate Bill 136
Senate Bill 274
Senate Bill 423
Senate Bill 447

JOURNAL OF THE SENATE

Senate Bill 475

Senate Bill 531

Correctly enrolled and presented to the Governor on May 14, 1976.

The chief clerk records:

Senate Bill 57

Senate Bill 66

Senate Bill 179

Senate Bill 189

Senate Bill 193

Senate Bill 215

Senate Bill 388

Senate Bill 459

Senate Bill 473

Senate Bill 483

Senate Bill 600

Senate Bill 628

Senate Bill 667

Senate Bill 683

Senate Bill 716

Senate Bill 753

Senate Bill 754

Senate Bill 778

Correctly enrolled and presented to the Governor on May 17, 1976.

The chief clerk records:

Senate Bill 45

Senate Bill 500

Correctly enrolled and presented to the Governor on May 18, 1976.

The chief clerk records:

Senate Bill 139

Correctly enrolled and presented to the Governor on May 19, 1976.

JOURNAL OF THE SENATE

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor
Madison, Wisconsin

May 14, 1976.

To the Honorable, the Senate:

The following bills, originating in the senate, have been approved, signed and deposited in the office of the Secretary of State:

Senate Bill	Chapter No.	Date Approved
12 -----	284 -----	May 14, 1976
34 -----	285 -----	May 14, 1976
136 -----	286 -----	May 14, 1976
274 -----	287 -----	May 14, 1976
423 (partial veto) -----	288 -----	May 14, 1976
447 -----	289 -----	May 14, 1976
475 -----	290 -----	May 14, 1976
531 -----	291 -----	May 14, 1976

Sincerely,
PATRICK J. LUCEY
Governor

State of Wisconsin
Office of the Governor
Madison, Wisconsin

May 14, 1976.

To the Honorable, the Senate:

I have approved Senate Bill 423 as Chapter 288, Laws of 1975, and deposited it in the office of the Secretary of State.

The bill is desirable legislation which will strengthen the role of the Motor Vehicle Division of the Department of Transportation in the regulation of motor vehicle salvage dealers. I have exercised the partial veto in one instance to remove from the bill a requirement that the rule which the Department of Transportation adopts to implement this legislation be subject to prior approval by the Senate Commerce Committee and the Assembly Environmental Quality Committee.

JOURNAL OF THE SENATE

I strongly believe that such prior review of administrative rules violates the separation of powers doctrine which is basic to our system of government. A majority of a single committee should not be in the position of acting as the final arbitrator of whether or not a particular administrative rule is reflective of legislative intent. Moreover, such provisions often delay the implementation of vitally important programs.

Sincerely,
PATRICK J. LUCEY
Governor

State of Wisconsin
Office of the Governor
Madison, Wisconsin

May 18, 1976.

To the Honorable, the Senate:

The following bills, originating in the senate, have been approved, signed and deposited in the office of the Secretary of State:

Senate Bill	Chapter No.	Date Approved
57 -----	325 -----	May 18, 1976
66 -----	326 -----	May 18, 1976
179 -----	327 -----	May 18, 1976
189 -----	328 -----	May 18, 1976
193 -----	329 -----	May 18, 1976
215 -----	330 -----	May 18, 1976
388 -----	331 -----	May 18, 1976
459 -----	332 -----	May 18, 1976
473 -----	333 -----	May 18, 1976
483 -----	334 -----	May 18, 1976
600 -----	335 -----	May 18, 1976
628 -----	336 -----	May 18, 1976
667 -----	337 -----	May 18, 1976
683 -----	338 -----	May 18, 1976
716 -----	339 -----	May 18, 1976
753 -----	340 -----	May 18, 1976

JOURNAL OF THE SENATE

754 ----- 341 ----- May 18, 1976

778 ----- 342 ----- May 18, 1976

Sincerely,
PATRICK J. LUCEY
Governor

State of Wisconsin
Office of the Governor
Madison, Wisconsin

May 18, 1976.

To the Honorable, the Senate:

I am returning Senate Bill 45 without my approval.

The bill authorizes the Department of Natural Resources to give preference in the issuance of deer party permits to groups including persons who own or rent and occupy 50 or more acres of land in the area they wish to hunt. In addition, it requires that the land not be posted against public hunting during the effective period of the permit.

The provisions of the bill repeal and recreate s. 29.107 of the statutes, the same section of the law which was created by Chapter 89, Laws of 1975. Chapter 89 established a system of granting deer hunting party permits which gives a preference to resident applicants who were unsuccessful in the previous year. If Senate Bill 45 were signed, that system would be eliminated in favor of a landowner preference.

Discussions with the author of the bill indicate that it was not the intention of the Legislature to repeal the current statutory preference for applicants who were unsuccessful the previous year. The present preference system has much to recommend it on its merits and it does not have the administrative problems which would be created by the provisions of Senate Bill 45. Moreover, I am informed by the Revisor that it is not possible to reconcile the provisions of Senate Bill 45 with current law.

JOURNAL OF THE SENATE

The subject of deer hunting party permits deserves a thorough review to determine whether or not the preferences established in Chapter 89 and Senate Bill 45 are compatible. If they are, they should be combined into a single system which can serve the best interest of our state's hunters while minimizing the administrative expense of the Department of Natural Resources.

Sincerely,

PATRICK J. LUCEY

Governor

State of Wisconsin

Office of the Governor

Madison, Wisconsin

May 19, 1976.

To the Honorable, the Senate:

I am returning Senate Bill 500 without my approval.

Senate Bill 500 was passed in the closing days of the spring session of the Legislature. It provides increased benefits for unemployment compensation recipients and increases the assessment of employers for payments into the state's unemployment compensation fund.

In the wake of the Legislature's action in passing Senate Bill 500, it became clear that the financial impact of the bill upon the businesses of our state was greater than it had to be in order to keep the unemployment compensation fund solvent. For that reason, I withheld action on Senate Bill 500 and called the Legislature back into special session on May 18 to consider a new bill. Yesterday, the Legislature passed Special Session Assembly Bill 1, a bill agreed to by the Unemployment Compensation Advisory Council and introduced at my request. The new bill

JOURNAL OF THE SENATE

substantially reduces the negative impact on our state's businesses, improves benefits, and retains all of the needed reforms in Senate Bill 500. Therefore, Special Session Assembly Bill 1 has been signed and Senate Bill 500 is being returned without my signature.

Sincerely,
PATRICK J. LUCEY
Governor

MOTIONS UNDER SENATE RULE 96

A Certificate of Commendation by Senator Dorman and Representatives Ferral, Rooney and Dandeneau for QUEEN MARGARETHE II of Denmark on her visit to Racine.

A Certificate of Commendation by Senator Krueger and Representative Donoghue for MARTIN LOFTUS on his retirement as Mayor of the City of Tomahawk.

A Certificate of Congratulations by Senator Martin and Representative Lasee for the WASHINGTON HIGH SCHOOL CHESS TEAM on capturing the 1976 U. S. High School Chess Championship.

A Certificate of Congratulations by Senators Murphy and Risser for ROLLA J. MCMAHON on his election to presidency of National Association of Savings and Loan Supervisors.

A Certificate of Commendation by Senator Hollander for MARK d. TOHULKA on his exemplary high school career.

Read and adopted.