Eighty-Third Regular Session

WEDNESDAY, November 29, 1978.

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

PETITIONS AND COMMUNICATIONS

State of Wisconsin Department of State

November 14, 1978.

To the Honorable, the Senate

Senators:

I have the honor to transmit to you pursuant to s. 13.67, that the following lobbyist has cancelled his registration for the duration of the 1977-78 legislative session.

Yours very truly,
DOUGLAS LAFOLLETTE
Secretary of State

Consigny, Thomas L.; Wisconsin Power and Light Company; as of November 1, 1978.

State of Wisconsin Claims Board

November 15, 1978.

Don Schneider
Senate Chief Clerk
State Capitol
Madison, Wisconsin 53702
Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on September 25, 1978.

The amounts recommended for payment under \$1000 on claims included in this report have, under the provisions of s. 16.007, Wisconsin Statutes, been paid directly by the Board.

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The Board is preparing the bill(s) on the recommended award(s) over \$1,000, and will submit such to the Joint Finance Committee 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.

Sincerely, EDWARD D. MAIN Secretary

BEFORE THE CLAIMS BOARD OF WISCONSIN

The Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin, on September 25, 1978, upon the following claims:

1.	Thomas Janssen	
2.	Ida Miller	426.41
3.	Leonard LeMay & Sons	13,107.09
4.	John Hughes	20,000.00
5.	Beverly Turben	219.55
6.	Gundersons Clearners & King's Dry Cleaners	986.08
7.	Jack Woodland	270.92
8.	Sheryl Legreid	80.50
9.	Jerome Johnson	1,966.12
10.	Bruce Finn	100,000.00
11.	Clifford Wills	1,030.56
12.	Karl Gartung, d/b/a BOOX/Books	2,400.00

In addition, the following claims were considered and decided without a hearing at an executive session on October 4, 1978:

13.	Hooman Koohyar	20,192.75
14.	Charles Stierman	1,292.00
15.	Sheri Markley	30.00
16.	Marthajo (Klutterman) Gottschalk	40.00
17.	Royal Peterson	143.40
18.	June Madden	23.07
19.	Anton Wilczek	84.24
20.	Mr. & Mrs. Joseph Gudowicz	400.00
21.	Mrs. Marvin Schoenborn	25.00
22.	Ella Pagel	22.00
23 .	Harold Van Ryen	20.00
24.	Hector Acosta	12,800.00

25.	Estate of Charlotte Weiss	167.00
26.	Lois Steinbach	241.30
27.	John Schaefer	25.00
28.	Bernard Buchmann	8.32
29.	Donna Thill	124.80
30.	Village of Greendale	326.92
31.	Estate of Louise Haese	3,261.00
32.	John Golliher	245.10
33.	Inez Wick	213.20
34.	United Security Insurance Company	159.24

THE BOARD FINDS:

1. Thomas Janssen

Milwaukee. \$1.687.50 Thomas Janssen. claims reimbursement of legal fees incurred from May 30, 1974, to May 25, 1977, for what appeared to be a jurisdictional dispute between the Wisconsin Association of Science Professionals (the union which now represents claimant) and the Wisconsin State Employees Union (the union which previously represented claimant). Claimant is representative of a group of state employes classified as public health sanitarians who were successful in obtaining an order from the Wisconsin Employment Relations Commission which excluded them from the security and public safety collective bargaining unit and included them in the professional-science collective bargaining unit. The State of Wisconsin, as their employer, took a neutral position in the matter. Attorneys for the sanitarian employes also appeared as attorneys for the Wisconsin Association of Science Professionals in the proceedings before the WERC. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles.

2. Ida Miller

Ida Miller, Elroy, claims \$426.41 for an inheritance tax refund which would have been due to the estate of her deceased husband based upon the subsequent decision in the Kersten case. No attempt had been made to pursue available statutory appeal procedures to question the department of revenue's policy and have the matter held in abeyance pending the outcome of the Kersten decision. The Board's policy is not to give retroactive effect to court decisions in situations such as the instant case present. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles.

3. Leonard LeMay & Sons, Inc.

Leonard LeMay & Sons, Inc., Kenosha, Wisconsin, claims \$13,107.09 which previously had been assessed for delinquent sales and use taxes as the result of a compromise entered into between the claimant and the department of revenue. The original assessments totalled \$29,702. Claimant did not distinguish between sales of motorized vehicles and nonmotorized vehicles, failing to impose the sales tax on the latter category. Claimant agreed to compromise the matter rather than pursuing statutory appeal procedures available to Although there may have been misunderstandings by the claimant concerning the application the of the sales and use tax law to nonmotorized vehicles because of the similarity of licensing requirements for both motorized and nonmotorized vehicles, there is not sufficient evidence that the claimant was misled by employes of the department of transportation which would warrant this Board to set aside the agreed compromise. The Board concludes the claim is not one for which the state is legally liable nor one which the state should assume and pay on equitable principles.

4. John Hughes

John Hughes, Reeseville, claims \$20,000 for damages resulting from claimant being held as a hostage at the state prison on July 22, 1976, along with thirteen other persons. Claimant was in the prison performing services for the Westra Construction Company with another co-employe who was also taken hostage. The other twelve hostages were prison guards and other state employes. Group threats were made by prisoners, but no individual threats were made to claimant. No hostages suffered physical harm. Claimant suffered a personality change and received medical treatment, all of which was covered by insurance except for \$120 unreimbursed out-of-pocket expenses. Claimant did not lose time from work. There is no showing of negligence by state employes which caused claimant's damages. The Board concludes the claim is not one for which the state is legally liable, nor one which the statte should assume and pay on equitable principles except for the \$120 unreimbursed expenses.

5. Beverly Turben

Beverly Turben, Madison, claims \$219.55 for damages resulting from the loss of her son's clothes from a group home which is an independent contractor with the state. Her son had escaped from the group home in Japuary, 1978, and telephones a request that his clothes be placed on the back porch for him to pick up. It is not clear what eventual disposition was made of the clothes. Claimant asserts the home was negligent for not marking her son's clothes. Nothing

would have prevented claimant from marking the clothes; and under any circumstances, if the home had been negligent, its negligence could not be imputed to the state. There is no showing of negligence by state employes which caused claimant's damages. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles.

6. Gunderson's Cleaners & King Dry Cleaners

Gunderson's Cleaners and King's Dry Cleaners and Launderers, Menasha, claims \$986.08 for damages to its truck tires and other expenses related to the furnishing of services to the state on July 13-17, 1977, during the strike. Claimant received \$136.09 from his insurance carrier for truck tire damages. Consistent with the Board's policy not to pay for strike-related damages unless it occurred on state property or at pickup points from which state employes were transported to work, the claim is denied. Claimant should pursue normal channels available resulting from acts of vandalism; and, if appropriate, claimant should approach the department of health and social services for its charges in fulfilling whatever contract it had with the state.

7. Jack Woodland

Jack Woodland, Oshkosh, claims \$270.92 for damages to his car on January 21, 1978, at the entrance to the Southeast Dorms Courtyard in Madison. A collapsible lane barrier went through the car's floorboard. Claimant has no insurance. A portion of his damages includes charges for his own labor. The Board concludes that the portion of the claim for parts, paint, materials and hardware amounting to \$110.70, including tax, should be paid on equitable principles, and the balance of the claim is denied.

8. Sheryl Legreid

Sheryl Legreid, Madison, claims \$80.50 for medical expenses not reimbursed by her insurance carrier resulting from her falling down at a party at Wisconsin Center in Madison while performing as a pom-pom girl on December 8, 1977, as an invited guest. The Board concludes the claim should be paid on equitable principles.

9. Jerome Johnson

Jerome Johnson, rural Eau Claire, claims \$1,966.12 for property damage to the interior of his home on October 2, 1977, caused by a wild deer which became trapped in claimant's home. Claimant's insurance did not cover this type of loss. A wild deer jumped through a window in the home, smashing the window and causing extensive damages to carpeting, drapes, the television set, walls, lamps, a glass

table top and pictures. The deer ran off the highway, apparently having suffered a broken leg from a car accident. The crazed animal proceeded to jump through the window and tear the house apart, splattering blood everywhere before being shot in the kitchen by an off-duty deputy sheriff. Even though legal title to all wild animals in Wisconsin is vested in the state, the state is not legally liable for these damages which extend beyond the scope of sec. 29.595, Stats. However, because of the most unique and unusual circumstances related to this unprecedented claim, and the fact that claimant was completely without fault, the Board concludes that \$1,000 of the total amount claims should be paid on equitable principles, and the balance of the claim denied, noting that charges for claimant's own labor and depreciation on replaced damaged personal property would account for a substantial reduction of the amount claimed.

10. Bruce Finn

Bruce Finn, Lodi, claims \$100,000 for damages resulting from an auto accident on December 9, 1976, 3 miles west of Cambridge on highways 12-18 in a car owned and operated by a state employe on assignment. Claimant was an off-duty passenger, without permission to accompany the driver of the vehicle, and was reprimanded by the state as his employer. The car was not owned by the state and the fact that the driver was reimbursed for his travel mileage expenses does not constitute ownership by the state within the meaning of sec. 345.05(2)(a), Stats. Claimant should pursue whatever remedies may be available against the driver's insurance carrier. claimant's reference to 54 Op. Att'y Gen. 209 (1965) supports the Board's conclusion that the state cannot be held liable for damages to others merely because it reimburses employes for expenses on state business. The state and its employes can be sued only in the manner provided by the Legislature. The case of Loby v. Joint School District No. 2, 42 Wis.2d 253, 166 N.W. 2d 809 (1969), does not establish the state's liability here. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles (Hubbard not participating).

11. Clifford Wills

Clifford Wills, Monona, claims \$1,030.56 for services rendered to the state as acting secretary of the Department of Veterans' Affairs from May 20 to August 15, 1977. The amount claimed is in addition to the amount received by him as deputy secretary, which position he occupied from June, 1966, up to May 20, 1977. The amount claimed is the difference in the amount received as deputy secretary and the

designated salary for the secretary for the period he served as acting secretary. Claimant indicated that at the time he performed these services it was without an expectation that he receive higher pay. There are other instances when state employes serve in "acting" capacities without receiving increased pay, and the Board opposes establishing such a precedent, concluding that the claim could not be distinguished from other similar circumstances. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles (Roberts and Hubbard dissent).

12. Karl Gartung

Karl Gartung, d/b/a BOOX/Books, Milwaukee, claims \$2,400 for business losses attributed by him to a state highway construction project in the area of his business from May, 1977, to April, 1978. Any business losses believed to have been caused by a delay in construction by the contractor hired by the state are the responsibility of the contractor and its insurance carrier. There is no showing of negligence by the state. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles.

13. Hooman Koohyar

Hooman Koohyar, Shorewood, claims \$20,192.75 for damages incurred on September 17, 1976, at Engelman Field at UWM. Claimant has been reimbursed \$1,931.97 for medical expenses by his insurance carrier. The balance of the claim is for damages for pain and suffering and partial disability. Claimant was warming up for soccer practice. He jumped up to grab the upper iron bar of the goal post and the entire goal fell upon him causing injury to his ankle. Claimant alleges the goal post should have been anchored down. The field is posted for use by permit only, and claimant had no obtained prior permission to use the field. Moreover, the goals are not designed for the activity in which the claimant was engaged, and his negligent conduct was the most contributing cause of the accident. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles.

14. Charles Stierman

Charles Stierman, Madison, claims \$1,117.00 for the difference between resident and nonresident tuition for the 1977-78 fall semester at the Madison campus, plus \$175 legal fees for representation at a rehearing before the nonresident tuition appeals committee which denied claimant his resident status. Claimant

alleges a rehearing was required because the committee failed to provide him with findings of fact and conclusions of law at the initial hearing. Claimant owned an automobile registered in Illinois for the twelve months next preceding the fall semester of 1977-78, and did not have it transferred until March 10, 1977.

In addition, claimant did not obtain a Wisconsin operator's license until April 18, 1977. If he had been a Wisconsin resident, these transfers should have occurred prior to September, 1976. There is other evidence to the effect that claimant did not attempt to establish Wisconsin residency until after his Illinois guaranteed student loan was not renewed. Also, evidence relating to Wisconsin residency subsequent to September, 1977, has no bearing upon a determination of residency as of September, 1977, such as an offer of employment received by claimant in December, 1977. The Board finds claimant was not a resident of Wisconsin for tuition purposes for the fall 1977-78 semester. The Board concludes that neither claim is one for which the state is legally liable, and that neither claim is one for which equitable relief is appropriate. Both claims are denied.

15. Sheri Markley

Sheri Markley, Madison, claims \$30 for damages incurred on October 18, 1977, at Mendota Mental Health Institute. Claimant is a volunteer worker who had no insurance to cover the loss of her glasses which were broken when a patient she was holding grabbed them and threw them onto the floor. The Board concludes the claim should be paid on equitable principles.

16. Marthajo Gottschalk

Marthajo (Klutterman) Gottschalk, Chippewa Falls, claims \$40 for damages to her watch incurred on January 20, 1978, at Northern Center. Claimant's watch was damaged while she was trying to control a destructive resident. The claimant's request for \$40 is based upon the original cost of the watch in 1972. The Board concludes the claim in the reduced amount of \$25, based on the fact that the watch was six years old, should be paid on equitable principles.

17. Royal Peterson

Royal Peterson, Irma, claims \$143.40 damages for a loss incurred on April 25, 1978, near Irma. Two residents on escape status from the Lincoln Hills School forced their way into claimant's home, damaging and stealing claimant's property. There is no evidence that the Department of Health and Social Services failed to exercise reasonable care in holding the juveniles and in notifying authorities immediately after discovering their escape. The Board concludes the claim is not one for which the state is legally liable nor one which the

state should assume and pay on equitable principles (Member Fox dissents).

18. June Madden

June Madden, Union Grove, claims \$23.07 in damages to her automobile incurred on May 3, 1978, at the Southern Wisconsin Center. While her car was legally parked, a resident caused damage to her windshield wiper. The damage was inflicted by a resident under the care and control of the Department of Health and Social Services. The Board concludes the claim should be paid on equitable principles.

19. Anton Wilczek

Anton Wilczek, Chippewa Falls, claims \$84.24 for damages to the rear bumper of his pickup truck incurred on June 11, 1978, in the parking lot at Northern Wisconsin Center. The claimant does not indicate whether or not the loss is covered by his insurance carrier. The damage was caused by a resident at Northern Wisconsin Center. If the claimant is able to demonstrate to the satisfaction of the Board that this loss is not covered by his insurance carrier, the Board concludes that the claim should be paid on equitable principles.

20. Mr. & Mrs. Joseph Gudowicz

Mr. and Mrs. Joseph Gudowicz, Abrams, Wisconsin, claim \$400 incurred on February, 1978, at their home when the transportation department cut down trees on their property. The Department of Transportation acknowledges responsibility for the damages caused to claimants' property. However, the most proper measure of damages would be the salvage value of the damaged trees, which the Board finds to be \$200. The Board concludes that the claim should be paid in the reduced amount of \$200.

21. Mrs. Marvin Schoenborn

Mrs. Marvin Schoenborn, Schofield, claims \$25 for a pair of slacks which were damaged on May 18, 1978, at the wayside near the junction of highways 17 and 70, west of Eagle River. After sitting on the picnic tables claimant found green paint spots on her slacks which could not be removed. There were no signs posted warning claimant of the wet paint. Wet paint signs which had been placed in the vicinity apparently had been removed prior to the incident by unknown persons. The Board concludes the claim should be paid on equitable principles.

22. Ella Pagel

Ella Pagel, Wausau, claims \$22 for damages to her paid of slacks on May 18, 1978, at the picnic table at the wayside located near the

intersection of highways 70 and 17, west of Eagle River. Claimant's slacks were ruined by wet paint. Signs which had been posted apparently were removed by unknown persons. The Board concludes the claim should be paid on equitable principles.

23. Harold Van Ryen

Harold Van Ryen, Sun Prairie, claims \$20 for damages incurred on March 9, 1978, at the State Office Building at 3502 Kinsman Boulevard, Madison. The premises were broken into by persons unknown who forced open the front door, safe and all locked cabinets. In addition to other items which were stolen, claimant had \$20 of his own personal money in a money bag inside a carrying case in one of the cabinets. Claimant's money was used as additional change when state funds also available for that purpose ran low. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles.

24. Hector Acosta

Hector Acosta, Milwaukee, claims \$12,800 for a wage loss incurred in June 1976 at the University of Wisconsin-Milwaukee, Claimant was neither laid off nor fired from his position with the university. Claimant had a fixed-term contract which was not renewed by the university when it reached its expiration date on June 30, 1976. Claimant received proper notice of nonrenewal on March 31, 1976. Claimant was not entitled to lay-off rights since his employment was not terminated during his appointment term. His rights in this regard are limited to those under unemployment compensation law. Claimant collected \$4,884 in unemployment compensation. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles.

25. Estate of Charlotte Weiss

Estate of Charlotte Weiss claims \$167 for clothing items which were misplaced and lost by employes of the University of Wisconsin Hospitals on or about January 26, 1978. The Board concludes the claim should be paid on equitable principles.

26. Lois Steinbach

Lois Steinbach, Chicago, Illinois, claims \$241.30 for damages incurred on May 20, 1978, at the University of Wisconsin-Platteville, While attending a wedding reception at the university, claimant feel off a terrace, breaking a bone in her left foot and injuring her right knee. The claim includes \$130.20 for medical expenses related to the injury which were not covered by insurance, plus a wage loss of

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\$111.10. Claimant was aware that the room where the accident occurred was terraced, and signs indicating such were posted. Claimant had been going up and down the terraces many times that evening prior to the accident. There is an insufficient showing of causal negligence on the part of the state and its employes, and the Board concludes the claim is not one for which the state is legally liable. However, the Board concludes that payment of unreimburses medical expenses in the amount of \$130.20 should be paid on equitable principles.

27. John Schaefer

John Schaefer, Brookfield, claims \$25 for damages to his car incurred on March 17, 1968, at the University of Wisconsin-Milwaukee Civic Center campus parking lot. While exiting the parking lot, a parking gate closed prematurely on the trunk of claimant's car. The gate had been malfunctioning irregularly for several days prior to this incident. The Board concludes the claim should be paid on equitable principles.

28. Bernard Buchmann

Bernard Buchmann, Milwaukee, claims \$8.32 for tire damage to his car incurred on March 13, 1978, at the University of Wisconsin-Milwaukee Union parking lot. One of claimant's tires was punctured by spikes near the entrance to the lot. Investigation by parking lot personnel disclosed that three spikes were out of alignment. The Board concludes the claim should be paid on equitable principles.

29. Donna Thill

Donna Thill, River Falls, Claims damages tof \$124.80 to her stereo speaker on December 29, 1977, in her dormitory room at University of Wisconsin-River Falls. A hot water pipe broke and caused leaking water to fall on her wood speaker. The Board concludes the claim should be paid on equitable principles.

30. Village of Greendale

Village of Greendale claims \$326.92 based upon an allocation of shared income taxes. The tax-sharing formula was drastically revised effective with taxable year 1971. The revised formula did not provide for the unallocated revenue category that existed prior to the change in the formula. Statutory authority no longer exists for payment of claims of this type. Approximately \$30,000 of unaudited claims from various municipalities have been received tby the Department of Revenue between November, 1971, to the end of 1975. Legislative intent appears to be met by denying claims of this type, since the Legislature did not provide the necessary authority or

funds as a part of its 1971 revision to the law. Accordingly, the Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles.

31. Estate of Louise Haese

Estate of Louise Haese claims \$3,261 for a refund of an overpayment of Wisconsin inheritance taxes. Petitions to construe the will in this estate were filed with the probate court and subsequently appealed to the Wisconsin Supreme Court. The decision by the Wisconsin Supreme Court as to the proper distribution of the estate was not made until the time had expired for amending the Wisconsin inheritance tax return. Until the Wisconsin Supreme Court decision, the estate was unable to ascertain the proper distribution of the assets. The Department of Revenue recommends payment of the claim, and this Board concludes that the claim should be paid on equitable principles.

32. John Golliher

John Golliher, Madison, claims \$245.10 for damages incurred on April 19, 1978, at the GEF-I parking entrance. The entry door malfunctioned and closed on top of claimant's car crushing the hood. Considerable difficulty had been experienced with that particular unit in the past, but appropriate repairs have been made to insure its safe operation. The Board concludes the claim should be paid on equitable principles.

33. Inez Wick

Inez Wick, Madison, claims \$213.20 for damages to her automobile incurred on March 6, 1978, while claimant was exiting the parking facility at GEF-1. A malfunctioning garage door fell on top of claimant's car. All except \$100 of the claim is covered by the claimant's insurance carrier. The Board concludes that that portion of the claim which is not covered by insurance should be aid on equitable principles.

34. United Security Insurance Company

United Security Insurance Company claims \$159.24 for reimbursement of a payment made to one of its insured as a result of an accident occurring on March 3, 1978, at the GEF-I parking entrance. A malfunctioning automatic door caused damage to the insured's car. A long-standing policy of this Board, is to deny payment of subrogation claims made by insurance carriers. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles.

THE BOARD CONCLUDES:

1. The claims of the following claimants should be denied:

Thomas Janssen
Ida Miller
Leonard LeMay & Sons
Beverly Turben
Gunderson's Cleaners and King's Dry Cleaners
Bruce Finn
Clifford Wills
Karl Gartung d/b/a/BOOX/Books
Hooman Koohyar
Charles Stierman
Royal Peterson
Harold Van Ryen
Hector Acosta
Village of Greendale
United Security Insurance Co.

2. Payment of the following amounts to the following claimants is justified under sec. 16.007, Stats.:

John Hughes	
John Hughes	\$ 120.00
Jack Woodland	110.70
Sheryl Legreid	80.50
Jerome Johnson	1,000.00
Sheri Markley	30.00
Marthajo (Klutterman) Gottschalk	
June Madden	25.00
Anton Wilczek (only if alaiment at the	23.07
Anton Wilczek (only if claimant establishes he had	
no insurance coverage)	84.24
Mr. and Mrs. Joseph Gudowicz	200.00
Mrs. Marvin Schoenborn	25.00
Ella Pagel	22.00
Estate of Charlotte Weiss	167.00
Lois Steinbach	
John Schaefer	130.00
Remard Bushman	25.00
Bernard Buchmann	8.32
Donna Thill	124.80
John Golliher	245.10
Inez Wick	100.00
	100.00

THE BOARD RECOMMENDS:

Payment of \$3,261.00 for the refund of an over-payment of inheritance taxes in the Estate of Louise Haese as the result of a decision of the Wisconsin Supreme Court involving said estate, cited at 80 Wis.2d 285 (1977).

Dated at Madison, Wisconsin, this 15th day of November, 1978.

GERALD D. KLECZKA Senate Finance Committee

VIRGIL D. ROBERTS
Assembly Finance Committee

THOMAS P. FOX Representative of Governor

EDWARD D. MAIN
Representative of Secretary of
Administration

ALLAN P. HUBBARD Representative of Attorney General

MOTIONS

MOTIONS UNDER SENATE RULE 97

A certificate of commendation by Senator Morrison for DEAN MARJORIE WALLACE on her retirement,

A certificate of congratulations by Senators Chilsen and Krueger, and Representatives Schmidt and Donoghue for THE ANTIGO RED ROBINS on winning the WIAA State Football Championship.