

Eighty-Seventh Regular Session

WEDNESDAY, July 2, 1986

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

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Claims Board

June 26, 1986

To the Honorable the Senate

Enclosed is the report of the State Claims Board covering claims heard on June 12, 1986.

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.

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

The Claims Board conducted a hearing on September 30, 1985, on the claims of Renee Foiles, Steven Short, Mary Brennell and Lester Rada in the amount of \$60,060.00, under s. 775.11, Stats. Claimants were represented at the hearing by Attorney Richard Graylow. Attorney Paul Harris appeared at the hearing on behalf of the Department of Health and Social Services. On June 12, 1986, the claims were considered and decided by the Board in Executive Session as follows:

FINDINGS OF FACT

1. Claimants Foiles, Short, Brennell and Rada were state employees at all times herein material.
2. Charges were filed against all claimants under s. 940.29, Stats.
3. A trial was held on the charges filed against claimant Lester Rada and the jury returned a verdict of not guilty as to the charges filed under s. 940.29, Stats.
4. Upon the jury's verdict, the court found claimant Lester Rada not guilty of the charges.
5. The state prosecutor stipulated to the dismissal of the charges against claimants Foiles, Short and Brennell and upon said stipulation, the court dismissed the complaints of the charges under s. 940.29, Stats., against said claimants with prejudice.
6. All claimants engaged the law firm of Lawton & Cates to defend them in connection with the charges filed under s. 940.29, Stats.

7. All claimants also engaged the law firm of Lawton & Cates to represent them in connection with unemployment compensation claims and arbitration matters all related to or emanating from the charges filed under s. 940.29, Stats., against all claimants.

8. The law firm of Lawton & Cates billed each of the claimants for services rendered as follows:

LESTER RADA

Unemployment Compensation: Travel, 4.0 hours, Hearing, 9.5 hours, Preparation, 5.0 hours (18.5 hours); Arbitration: Preparation, 4.0 hours (4.0 hours); Criminal Defense: Investigation, preparation and research, 394.0 hours, Trial and Court time, 82.0 hours, Travel time, 80.0 hours (556.0 hours) - TOTAL - 578.5 hours.

RENEE FOILES

Unemployment Compensation: Travel, 4.0 hours, Hearing, 4.0 hours, Preparation, 2.0 hours (10.0 hours); Arbitration: Preparation, 4.0 hours (4.0 hours); Criminal Defense: Investigation, preparation and research, 152.0 hours, Trial and Court time, 8.0 hours, Travel, 32.0 hours (192.0 hours) - TOTAL - 206.0 hours.

MARY BRENNELL

Unemployment Compensation: Travel, 4.0 hours, Hearing, 1.0 hours, Preparation, 2.0 hours (7.0 hours); Arbitration: Preparation, 1.0 hour (1.0 hour); Criminal Defense: Investigation, preparation and research, 25.0 hours, Trial and Court time, 3.0 hours, Travel time, 32.0 hours (60.0 hours) - TOTAL - 68.0 hours.

STEVEN SHORT

Unemployment Compensation: Travel, 4.0 hours, Hearing, 4.0 hours, Preparation, 2.0 hours (10.0 hours); Arbitration: Preparation, 4.0 hours (4.0 hours); Criminal Defense: Investigation, preparation and research, 94.5 hours, Trial and Court time, 8.0 hours, Travel, 32.0 hours (134.5 hours) - TOTAL - 148.5 hours.

9. Claimants and Respondent, Department of Health and Social Services, stipulated that \$60.00 per hour was reasonable for attorneys fees.

10. One of the attorneys furnishing representation to claimants testified that the unemployment compensation hearings were utilized as discovery in preparation for the defense of the charges filed under s. 940.29, Stats.

CONCLUSIONS OF LAW

1. Claimant, Lester Rada, was found not guilty of charges filed under 2. 940.29, Stats. and should therefore be reimbursed by the state for reasonable attorneys fees in the defense of the criminal action against him.

2. The claim of Lester Rada is authorized by s. 775.11, Stats.

3. Claimant Lester Rada should be reimbursed by the state for attorneys fees in the amount of \$33,360.00

4. The charges submitted by the law firm of Lawton & Cates for representation in connection with the arbitration matter and unemployment compensation

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claim of claimants were not attorneys fees for defending the action involving the charges filed under s. 940.29, Stats.

5. Claimants Foiles, Short and Brennell were not found not guilty of charges filed under s. 940.29, Stats., and therefore, their claims are not authorized by s. 775.11, Stats.

RECOMMENDATION TO THE LEGISLATURE

It is the recommendation of the Claims Board that the Legislature enact law appropriating the amount of \$33,360.00 to Lester Rada.

Members Wilker and Colas dissent in the decision to deny the claims of Foiles, Short and Brennell.

Dated at Madison, Wisconsin this 24th day of June, 1986.

GARY R. GEORGE
Senate Finance Committee

MARLIN D. SCHNEIDER
Assembly Finance Committee

JUAN B. COLAS
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of
Administration

WILLIAM H. WILKER
Representative of Attorney
General

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin on June 12, 1986, upon the following claims:

Claimant	Amount
Dona & Jose Relacion	\$500,894.00
M.M.C. Enterprises, Inc.	3,004.00
LaVerne Shanley	648.20
Wayne & Bonnie Kohl	10,000.00

In addition, the following claims were considered and decided without hearings:

Kathleen Falk	\$45.20
Lois Siefkes	362.00
Jeanne Russell	44.00
Gladys Zimmer	960.00
Donelle Walters	1,039.61
Larry Brick	334.95
Clarence Ligocki	685.65
Walter Sherman	820.56
General Casualty Co.	4,331.62
Betty Havron	665.18
Duane Fenske	162.00
Theodor Von Uhl	404.88
Ron Stearney	150.00

THE BOARD FINDS:

1. Dona & Jose Relacion of Wauwatosa claim \$500,894.00 for compensation for injuries allegedly sustained by Dona at the State Fair Park on August 8, 1985. Dona was pushing a stroller through the gravel on the infield parking lot at the Park. Claimants allege the gravel was not properly compacted causing the stroller to sink into the gravel. Dona fell while attempting to pull the stroller out, sustaining injuries to the tendons and ligaments in her right arm, hand and shoulder. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable.

2. M.M.C. Enterprises, Inc. of Keokuk, Iowa claims \$3,004.00 for payment of delivery and rental for two grain sampling probes from October 2, 1984 to March 27, 1985, according to an alleged verbal agreement between claimant and the Department of Agriculture, Trade and Consumer Protection (DATCP). The verbal agreement was never confirmed in writing. A condition for purchasing the probes was that they pass USDA standards for official corn sampling. On October 2, 1984, claimant delivered two probes to Milwaukee for testing. On March 4, 1985, the DATCP advised claimant that the probes had passed the USDA test, however, the state could not purchase claimant's probes because the state inspection service was going to be done by a private firm. On March 27, 1985, claimant picked up their probes from Milwaukee. The Board concludes this claim should be paid in the reduced amount of \$1,000.00 based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the DATCP appropriation s. 20.115(3)(h), Stats.

3. LaVerne Shanley of Lancaster claims \$648.20 for damages resulting from the construction on state highway 81 during the summer of 1984. On August 28, 1984, the Department of Transportation negotiated an agreement with claimant to pay him \$1,000.00 for the loss of a large maple tree and to construct a wall across the front area of his house for protection against motor vehicle accidents. Claimant is dissatisfied with the wall constructed by the Department of Transportation and has added a cement cap to the wall. The Board concludes there is no showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

4. Wayne & Bonnie Kohl of Fremont claim \$10,000.00 for damages resulting from the construction on state highway 10 from Fremont to the east county line in Waupaca County during 1982. In 1983, claimants contacted the Department of Transportation concerning water ponding on their property, located adjacent to the recently constructed highway. Claimants also allege contamination of their well water as a result of the highway construction. To correct the water ponding problem, the Department of Transportation has landscaped the field and installed a culvert under the

property entrance east of claimant's property. Although there is no proof of any negligence on the part of the state, its officers, agents or employes, the damage to claimants' well apparently occurred at the same time as the Department of Transportation construction; therefore, the Board concludes the claim should be paid in the reduced amount of \$1,000.00 based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the Department of Transportation appropriation s. 20.395(3)(cq), Stats.

5. Kathy Falk of Madison claims \$45.20 for replacement of a radio, stamps and money allegedly stolen from her desk on March 3 or 4, 1986 at the Loraine Building where she is employed by the Public Intervenor's Office. The Board concludes there is insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. (Member Wilker dissents)

6. Lois Siefkes of Seattle, Washington, claims \$362.00 for dental expenses to repair a fracture to one of her teeth. On June 23, 1985, claimant, a housing manager at the University of Washington, was attending the opening banquet of a housing conference at the University of Wisconsin-Milwaukee and allegedly injured her tooth while eating. The Board concludes there is no showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

7. Jeanne Russell of Madison claims \$44.00 for replacement of her contact lens which was lost while she was performing her duties as an employe of the Wisconsin Conservation Corps on January 23, 1986. Claimant was poked in the eye by a branch while she was piling brush during the University of Wisconsin Arboretum project. The Board concludes under authority of s. 16.007(6m), Stats., payment should be made from the Wisconsin Conservation Corps appropriation s. 20.399(1)(a), Stats. As a result of the policy established in November, 1985, the Claims Board will no longer pay for claims of this type unless there is proof that the employe was wearing eyeglass safety equipment.

8. Gladys Zimmer of Green Bay claims \$960.00 for homestead credit for 1984. Claimant failed to file her claim form within the time required by statute. Claimant had filed for homestead credit in previous years, however, in 1983, because of some stock she received from her husband's estate, she did not file for homestead credit. The Department of Revenue sends homestead credit claim forms to individuals who filed for the credit the previous year. When claimant did not receive the homestead credit form in 1984, she assumed that she was not eligible for the credit. Claimant discovered this error in February, 1986. Section 71.09(7)(dm), Stats., states that "No claim with respect to property taxes accrued or rent constituting property taxes accrued shall be allowed

or paid unless such claim is filed with the Department of Revenue on or before December 31 of the year following the year for which the claim is filed". The Board concludes this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

9. Donelle Walters of Green Bay claims \$1,039.61 for loss of wages as a result of the Department of Industry, Labor & Human Relations' failure to process her wage claim. On July 27, 1984, claimant filed a wage claim against the Top Shelf Lounge in Green Bay alleging nonpayment of overtime premium pay during 1982-83. In 1985, when claimant inquired about the status of her claim, she was advised by the Department that her claim had been closed on August 2, 1985. There is no record that the overtime claim was ever referred for assignment to an auditor according to usual procedure of the Department. There is a two-year statute of limitations on collecting unpaid wages. The Board concludes the claim should be paid in the reduced amount of \$356.30, based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the Department of Industry, Labor & Human Relations appropriation s. 20.445(1)(a), Stats.

10. Larry Brick of DePere claims \$334.95 for uninsured damages to his car allegedly incurred while the car was parked on the property of the Oneida State Farm on January 2, 1986. There were no witnesses as to how the damage actually occurred. The Board concludes there is insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

11. Clarence Ligocki of Milwaukee claims \$685.65 for the insured damages to his car allegedly incurred while the car was parked in the lot at the Milwaukee State Office Building on August 22, 1985. There were no witnesses as to how the damage actually occurred. The Board concludes there is insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

12. Walter Sherman of Northbrook, Illinois, claims \$820.56 for uninsured damages to his home in Westfield, incurred on August 15, 1985, by four juveniles on escape status from the Lincoln Hills School. The juveniles forced entry into claimant's home, vandalizing the property. Claimant's insurance company has paid \$4,331.62 of the property damages. The Board concludes the claim should be paid in the reduced amount of \$400, based on equitable principles. The Board further concludes under authority of 16.007(6m), Stats., payment should be made from the Department of Health and Social Services appropriation s. 20.435(3)(hm), Stats.

13. General Casualty Company of Sun Prairie claims \$4,331.62 subrogation damages. Its insured Walter

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Sherman, submitted a claim to the insurance company for damages to his home which were incurred on August 15, 1985, by four juveniles on escape status from Lincoln Hills School. Consistent with a long-standing policy of this Board concerning subrogation claims, the Board concludes the claim is not one which the state should assume and pay based on equitable principles.

14. Betty Havron of Union Grove claims \$665.18 for medical expenses incurred as a result of an injury she allegedly sustained on March 31, 1985, when she slipped and fell down the steps while exiting Atherton Hall at the Southern Wisconsin Center. Claimant, although off duty when this incident occurred, is an employe of the Center and resides in the Atherton Hall employe apartment building. Claimant's insurance has paid \$191 of her medical expenses. The Board concludes there is insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

15. Duane Fenske of Marinette claims \$162.00 for replacement of his eyeglasses which were lost while he was working as a Department of Natural Resources conservation warden on July 25, 1985. Claimant was engaged in law enforcement activities on a Department of Natural Resources' boat in the waters of Green Bay, when the wind blew his glasses into the water. The Board concludes the claim should be paid in the reduced amount of \$81, based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats. As a result of the policy established by the Claims Board in November, 1985, this type of claim will no longer be paid unless there is proof that the employe was wearing eyeglass safety equipment.

16. Theodore Von Uhl of La Crosse claims \$404.88 for the difference between his 1985 property taxes and the amount of tax that would have been due for 1985 if his land had been properly entered in the woodland tax program by the Department of Natural Resources. Claimant submitted two applications under the woodland tax program. Claimant's application for entry of lands in the Town of Hale was processed by the Department but the application for entry of lands in the Town of Pigeon was inadvertently stapled to the other application and not processed. The error was discovered too late to enter the lands for 1985. The Board concludes the claim should be paid on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

17. Ron Stearney of Shawano claims \$150.00 for loss of 25 chickens allegedly killed by a wild fox on January 16, 1986. Even though legal title to all wild animals in Wisconsin is vested in the state pursuant to s. 29.01(1), Stats., mere ownership does not create legal liability for

damages done by wild animals. The Board concludes there is no showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

THE BOARD CONCLUDES:

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

Dona & Jose Relacion
LaVerne Shanley
Kathleen Falk
Lois Siefkes
Gladys Zimmer
Larry Brick
Clarence Ligocki
General Casualty Co.
Betty Havron
Ron Stearney

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

M.M.C. Enterprises, Inc.	\$1,000.00
Wayne & Bonnie Kohl	1,000.00
Jeanne Russell	22.00
Donelle Walters	356.30
Walter Sherman	400.00
Duane Fenske	81.00
Theodor Von Uhl	404.88

Dated at Madison, Wisconsin this 24th day of June, 1986.

GARY R. GEORGE
Senate Finance Committee

MARLIN D. SCHNEIDER
Assembly Finance Committee

JUAN B. COLAS
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of
Administration

WILLIAM H. WILKER
Representative of Attorney
General

State of Wisconsin
Wisconsin Housing and
Economic Development Authority

June 30, 1986

To the Honorable the Legislature

I am pleased to transmit to you the following report:
**CREDIT RELIEF OUTREACH PROGRAM
MONTHLY REPORT**

I would appreciate your including this letter in the Journal for the information of the membership. Additional copies of this report are available upon request from the Wisconsin Housing and Economic

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Development Authority (WHEDA), 131 West Wilson, Suite 300, or by calling (608) 266-7884.

Best Wishes,
ED JACKAMONIS
Executive Director

SENATE CLEARINGHOUSE ORDERS

Clearinghouse Rule 86-26

AN ORDER to create ETF 10.75 and 10.78, relating to guardianship requirements and acceptance of durable power of attorney for the release of information and payment of benefits from the Wisconsin retirement system.

Submitted by Department of Employee Trust Funds.
Report received from agency, June 27, 1986.

Referred to committee on Judiciary and Consumer Affairs, July 2, 1986.

Clearinghouse Rule 86-49

AN ORDER to renumber NR 11.041 (2); to amend NR 10.01 (3) (e) 9 e and (4) (e) 2 (intro.) and 10.28; to repeal and recreate NR 10.01 (3) (e) (intro.) and 1 to 6; and to create NR 10.06 (6) (jm) and 11.042, relating to hunting and trapping regulations.

Submitted by Department of Natural Resources.

Report received from agency, June 30, 1986.

Referred to committee on Energy and Environmental Resources, July 2, 1986.

Clearinghouse Rule 86-97

AN ORDER to repeal ETF 10.63 (1) (c) and chapter Grp 25, relating to state income continuation insurance.

Submitted by Department of Employee Trust Funds.
Report received from agency, July 1, 1986.

Referred to committee on Labor, Business, Veterans Affairs and Insurance, July 2, 1986.

The committee on Education and Government Operations reports and recommends:

Clearinghouse Rule 86-47

AN ORDER to amend ETF 10.01 (1m) (a); and to create ETF 10.03 (7), relating to reporting creditable service to the Wisconsin retirement system for on-call, standby, extracurricular or other nonstandard hours.

Submitted by Department of Employee Trust Funds.
No action taken.

JOSEPH J. CZARNEZKI
Chair

The committee on Labor, Business, Veterans Affairs and Insurance reports and recommends:

Clearinghouse Rule 86-57

AN ORDER to amend Ins 17.28 (3) (c) 1 to 9 and (6) (intro.), (a) to (d), (e) 1 and (f) to (k); to repeal and

recreate Ins 17.01 (title), (1), (4) and (5) (e) and 17.28 (4) and (7); and to create Ins 17.28 (3) (bm), relating to health care provider fees for the patients compensation panels and patients compensation fund.

Submitted by Office of the Commissioner of Insurance.

Modifications accepted, no further action taken.

JEROME VAN SISTINE
Chair

The committee on Tourism, Revenue, Financial Institutions and Forestry reports and recommends:

Clearinghouse Rule 86-28

AN ORDER to create chapter Tax 18, relating to determination of the value and equalized value of agricultural land.

Submitted by Department of Revenue.

No action taken.

LLOYD H. KINCAID
Chair

State of Wisconsin
Revisor of Statutes Bureau

July 1, 1986

Donald J. Schneider
Senate Chief Clerk
Dear Mr. Schneider:

The following rules have been published and are effective:

Clearinghouse Rule 85- 88 effective July 1, 1986.
Clearinghouse Rule 85-161 effective July 1, 1986.
Clearinghouse Rule 85-184 effective July 1, 1986.
Clearinghouse Rule 85-186 effective July 1, 1986.
Clearinghouse Rule 85-193 effective July 1, 1986.
Clearinghouse Rule 85-201 effective July 1, 1986.
Clearinghouse Rule 85-207 effective July 1, 1986.
Clearinghouse Rule 85-210 effective July 1, 1986.
Clearinghouse Rule 86- 6 effective July 1, 1986.
Clearinghouse Rule 86- 15 effective July 1, 1986.
Clearinghouse Rule 86- 19 effective July 1, 1986.
Clearinghouse Rule 86- 22 effective July 1, 1986.
Clearinghouse Rule 86- 23 effective July 1, 1986.
Clearinghouse Rule 86- 38 effective July 1, 1986.
Clearinghouse Rule 86- 39 effective July 1, 1986.
Clearinghouse Rule 86- 40 effective July 1, 1986.
Clearinghouse Rule 86- 68 effective July 1, 1986.

Sincerely,
GARY L. POULSON
Assistant Revisor