STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WILMOT TEACHERS ASSOCIATION and JOY COVELLI,	:	
Complainants,	:	Case IX No. 28278 MP-1233
vs.	:	Decision No. 18820-B
WILMOT UNION HIGH SCHOOL DISTRICT,	:	
Respondent.	:	

Appearances:

Mr. Bruce Meredith, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P.O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of the Complainants.

Mr. Karl L. Monson, Representative, Wisconsin Association of School Boards, 122 West Washington Avenue, Madison, Wisconsin 53703, appearing on behalf of the Respondent.

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT AND CONCLUSION OF LAW AND MODIFYING EXAMINER'S ORDER

Examiner Sherwood Malamud having issued his Findings of Fact, Conclusion of Law and Order in the above-entitled matter on July 29, 1982, wherein he determined that Respondent Wilmot Union High School District violated Article IX of the collective bargaining agreement by refusing to pay Complainant Covelli, hereinafter referred to as Complainant, ten days sick leave pay, thereby committing a prohibited practice within the meaning of Sec. 111.70(3)(a)5 of the Municipal Employment Relations Act, hereinafter referred to as MERA; and Respondent Wilmot Union High School District having on September 2, 1982, timely filed a petition for Commission review of said decision; and the parties having filed briefs in the matter, the last of which was received April 22, 1983, and the Commission having reviewed the record in the matter including the petition for review and the briefs filed by the parties, and being satisfied that the Examiner's Findings and Conclusions should be affirmed and that the Examiner's order should be modified;

NOW THEREFORE, it is

ORDERED

1. The Examiner's Findings of Fact and Conclusion of Law and Order are affirmed and adopted as the Commission's Findings, Conclusion and Order except as the Order is expanded in 2, below.

2. In addition to the remedy ordered by the Examiner, the Respondent District, its officers and agents, shall also pay interest at a rate of 12% per year 1/ on the monetary amounts due and owing to Complainant under the

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1/ The applicable interest rate is the Sec. 814.04(4), Stats., rate in effect at the time the complaint was initially filed with the agency. The instant complaint was filed on June 26, 1981, at a time when the Sec. 814.04(4), Stats., rate in effect was "12% per year." Sec. 814.04(4), Wis. Stats. Ann. (1983).

Examiner's order from the date(s) 2/ of the District's wrongful failure(s) to pay those monies to Complainant in or about November, 1980, through the date of the District's full compliance with the monetary requirements of the Order as modified herein. 3/

Given under our hands and seal at the City of Madison, Wisconsin this 1st day of December, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Gary L. Covelli, Commissioner

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Marshall L. Gratz, Commissioner

2/ The date(s) we refer to here is (are) the date(s) on which the District paid Complainant a paycheck from which the District had deducted pay for the absences for which the Examiner held she was entitled to sick leave pay under the agreement. This (these) paycheck issuance date(s) was (were) presumably sometime in November or December, 1980.

3/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in
(Continued on Page three)

3/ (Continued)

the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT AND CONCLUSION OF LAW AND MODIFYING EXAMINER'S ORDER

BACKGROUND:

In its complaint initiating this proceeding, the Association alleged that the District's denial of sick leave pay to Joy Covelli, hereinafter referred to as Complainant 4/, violated the parties' collective bargaining agreement in violation of Sec. 111.70(3)(a)5 of MERA. The District responded that it had complied with the collective bargaining agreement despite its refusal to grant Complainant sick leave benefits, as she had neither been sick, nor had she properly followed procedures for requesting sick leave.

Complainant received word October 7, 1980 5/ that her mother was dying. The next morning, October 8th, she telephoned Supervisor of Instruction Russ Clouse to report that she had not slept all night and would not be at work that day. She was eventually granted sick leave for October 8th. That day, she drove the hour and forty-five minute trip to Batavia, Illinois to see her mother. She returned to school October 9th but experienced difficulty concentrating on her teaching. That afternoon she made arrangements with Clouse to be absent until her mother died. Clouse urged her to speak with District Administrator Gene Olson to clarify the question of pay for this absence. Complainant, who had been crying, told Clouse that she did not want to see Olson at that time. Clouse informed Olson of Complainant's absence, but the status of Complainant's pay was not determined before her return November 3rd, after her mother's death.

A few days after November 3rd, Olson briefly discussed the matter with Complainant. The record is unclear regarding that first discussion, but the next day Olson told Complainant that she would be docked for part of her absence. Complainant insisted she was entitled to full pay, referred to an occurrence regarding another teacher, and offered to make up lost days during the summer. A day later, Olson reported that the District had no need for summer work. Complainant insisted she was entitled to pay as sick leave and told Olson she would obtain a doctor's certificate for the lost time. The doctor attending Complainant's mother sent the District a letter dated December 31, 1980, which read in material part as follows:

> This letter is in reference to the thirteen and half days abscence (sic) of Mrs. Covelli from her teaching duties during the month of November, 1980.
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> Mrs. Covelli was in Batavia, Illinois caring for her mother, Mrs. C____ H____ who was in the terminal stage of cancer. Waiting for her mother to die is not conducive to good mental and emotional health and puts even the strongest person under a tremendous amount of stress. Add to the prolonged suffering of Mrs. H____ the further loss of Mrs. Covelli's father only a short time prior to the loss of her mother added a still greater strain on her emotional well being. It would have at best most difficult to deal with classroom situations during this very trying and sad time.
>
> It is my opinion that this time away from teaching was necessary not only for Mrs. Covelli but extremely necessary for her mother who needed the support of her daughter in her final days.

When Complainant's pay was docked, the Association grieved the action. The District paid Complainant some two and a fraction days' pay in accord with the contractual emergency leave provision but did not pay her any sick leave for the

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4/ Commissioner Gary L. Covelli is not related to Complainant Covelli.

5/ Unless otherwise specified, all dates herein refer to 1980.

period of her October 10-31 absence. At a grievance meeting in February, 1981, the Association presented a second letter from the doctor, this one dated February 6, 1981, which read in pertinent part as follows:

> This letter is in reference to the thirteen and half (sic) days absences of Mrs. Covelli from her teaching duties during the month of November, 1980.
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> Mrs. Covelli was in Batavia, Illinois, with her mother, Mrs. C____ H____, who was in the terminal stage of cancer. Waiting for her mother to die is not conducive to good mental and emothional (sic) health and puts even the strongest person under a tremendous amount of stress. Add to the prolonged suffering of Mrs. H____, the further loss of Mrs. Covelli's father only a short time prior to the loss of her mother added a still greater strain to her emotional well being. Mrs. Covelli was extremely emotionally disturbed and could not have taught or counseled during this very trying and sad time in her life.
>
> It is my opinion that this time away from teaching was necessary for Mrs. Covelli's mental well being.

The District has continued to refuse to pay Complainant sick leave benefits, and the instant complaint was ultimately filed on June 26, 1981. The collective bargaining agreement contained no provision for final and binding grievance resolution other than resort to a prohibited practice complaint proceeding.

THE EXAMINER'S DECISION:

In his discussion, the Examiner first addressed the District's argument that Complainant failed to follow procedures for requesting sick leave. He found that although she did not follow Clouse's suggestion to speak with Olson on October 9th regarding the nature of her leave, Complainant gave the District adequate notice of her absence. The Examiner agreed with the District that teachers are entitled to sick leave only for their own illness. The Examiner held that while Complainant's offer to work during the summer manifested her belief that such work was necessary in order to be paid for the missed days, the offer of work was not proof that she was not sick during her absence. The Examiner determined that she did not sleep, cried a great deal and was generally very distraught during the disputed period.

Finding no illness definition or other standards for sick leave administration in the language of the agreement, the Examiner applied the standard for granting sick leave that was used by the District as regards grievant's absence on October 8th. On the morning of that day, Complainant called in and reported to Clouse that she had had a sleepless night and was unable to teach. On that basis alone she was deemed ill and granted sick leave. Using that example as a standard, the Examiner concluded that Complainant was also ill and entitled to sick leave for the entirety of the disputed period. While the Examiner noted that Complainant had supplied doctor's verification letters when requested to do so by the District, the Examiner did not rely on the doctor's letters to reach his conclusion that Complainant had in fact been ill.

The Examiner ordered the District to make Complainant whole by paying her ten days pay for the uncompensated portion of her absence October 10-31. The Examiner's decision did not make any provision for interest, as was consistent with the Commission's policy in effect at that time as stated in Madison Metropolitan School District. 6/

THE PETITION FOR REVIEW:

The Petition for Review does not allege a specific error of fact or law. It does, however assert that the District did not violate the collective bargaining agreement by denying Complainant sick leave benefits because she asked merely for leave without specifying any type of leave.

6/ 16471-D (5/81), Note 9, infra.

MERITS OF THE GRIEVANCE

THE DISTRICT'S POSITION:

The District asserts that Complainant is not entitled to sick leave because she failed to follow District practice requiring her to specifically request sick leave prior to her absence. It reasons that a decision allowing an employe to retrospectively request sick leave would cause sick leave to eventually subsume all other kinds of leave, paid and unpaid. Secondly, the District finds the doctor's letter insufficient evidence of illness, and asserts that Complainant was not in fact sick during the disputed period.

THE ASSOCIATION'S POSITION:

The Association concurs with the Examiner's conclusion that, under the District's own standard for sick leave use, Complainant was entitled to sick leave during the disputed period. The Association also points out that Clouse and Olson both testified the District generally accepted teachers' own reports of illness and offered no evidence of rejecting such teacher claims. The Association also points out that since Complainant has historically used few sick leave days, her self-report has credibility. It adds that if Complainant were only interested in financial expediency, she would not have resigned to take a less remunerative job after her grievance was denied. Finally it argues that Complainant's offer to perform summer work was not an admission that she was not entitled to sick pay, but rather was the effort of a conscientious employe to informally resolve a dispute.

DISCUSSION:

In deciding whether Complainant was sick, the Examiner properly interpreted the parties' agreement in light of available evidence concerning the history of its administration. The agreement language contained no expressed standards for determining illness, and the evidence indicated that the District historically had generally accepted employes' self-reports of illness as a satisfactory basis for payment of sick leave benefits. While Clouse testified that he occasionally did check on teachers' self-reports of illness, he offered no specific examples, and the record provides no indication of the standards by which he selected instances for further checking or the consequences of such further checks. Since the record contained no other reliable basis than that utilized by the Examiner for determining the nature of the District's sick leave administration practices under the agreement language involved, the Examiner reasonably and appropriately rested his analysis on a standard based on the clear and undisputed fact that the District had recently granted Complainant sick leave for October 8th based solely on Complainant's self-report that she had a sleepless night and could not teach. It was on that basis that the Examiner concluded, and we concur, that Complainant was actually sick over her mother's illness. Contrary to the District's contention, the Examiner did not rely on the doctor's letters in concluding that the Complainant was sick.

Turning to the District's argument that Complainant failed to follow procedures for specifying sick leave prior to her absence, the Commission recognizes that the District has legitimate concerns at stake. Indeed, sick leave requests after the fact interfere with the District's need to make alternative arrangements for instruction and could easily lead to sick leave abuse. Also the District has an understandable interest in timely notification of sick leave use so that it can seek timely verification of illness.

Here, Complainant promptly notified the District when she met with Clouse on October 9th and made provisions to be gone until her mother died. There was no evidence that Complainant's failure to talk to District Administrator Olson to settle the question of the type of leave came from a desire to defraud the District. Rather, she was extremely distraught and unable to talk to the District Administrator after talking to the Supervisor of Instruction. Her highly agitated emotional state when arranging for leave is a unique and significant fact in this case.

Furthermore, both Clouse and Olson, as agents of the District, knew that the leave issue remained unsettled. During her absence Complainant phoned the District almost every other day to talk to the other business education teacher or the school secretary, and on one occasion, Clouse. At those times the District had an opportunity to insist that she talk to Olson regarding the leave.

Finally, the District did not have written guidelines requiring teachers to formally request the type of leave prior to their leave, or informing teachers that failure to do so would waive their rights to sick leave.

The totality of the facts under these unusual circumstances persuades the Commission that this teacher, who was ill within the meaning of the collective bargaining agreement, should not be denied sick leave benefits for her failure to request said benefits prior to her leave. Accordingly, we have affirmed the Examiner's Findings and Conclusions. We have also affirmed the Examiner's Order except that we have modified it to provide for interest as noted below.

INTEREST ON BACK PAY

Subsequent to the Examiner's decision, the Association requested that the parties be granted an opportunity to brief the question of interest on back pay in light of the Supreme Court's March 1, 1983, decision in Anderson v. LIRC 7/ ordering interest on back pay from the date of a discriminatory discharge that violated the Wisconsin Fair Employment Act (hereinafter referred to as WFEA). The Commission granted that request and both parties submitted additional briefs on the question.

POSITION OF THE ASSOCIATION:

The Association contends that the rationale for awarding back pay under WFEA is equally applicable to proceedings under MERA. The Association emphasizes the Supreme Court's stated view that the pre-judgment interest obligation is not an additional penalty for the wrong, but is simply the time value of the use of the money. The Association also points out that under both MERA and WFEA, back pay remedies involve amounts of money that are sufficiently determinable to require pre-decision interest under the general Wisconsin case law rules, especially in light of the Supreme Court's discussion in Nelson v. Travelers Insurance Co. 8/

The Association argues, however, that the seven percent per annum rate of interest applied by the Supreme Court in Anderson is too low for the instant time period beginning in November, 1980. Instead, the Association suggests, the Commission should adopt an interest rate approach such as those of the Internal Revenue Service or National Labor Relations Board that periodically adjust the applicable rate to the prevailing interest rate conditions.

POSITION OF THE DISTRICT:

The District argues that Anderson v. LIRC is not controlling and that pre-decision interest ought not be ordered by the Commission. A decision under the WFEA is distinguishable from a MERA case in that the policy underlying WFEA emphasizes that the discriminatees be made whole, whereas MERA's overall purpose is to encourage voluntary settlements through collective bargaining. If the Commission were to award pre-decision interest in cases of an alleged violation of contract as here, the result would be to encourage labor organizations to opt for prohibited practice litigation rather than voluntarily agreed-upon grievance and arbitration procedures for the resolution of their contract grievance disputes. Since that result would run counter to the underlying purpose of MERA, the Commission should not deviate from its policy of not ordering pre-decision interest except where the parties have explicitly agreed to it in their collective bargaining agreement.

The District did not take a position on the appropriate rate of interest to be ordered in the event the Commission ordered pre-decision interest in the matter.

7/ Anderson v. State of Wisconsin, Labor and Industry Review Commission, 111 Wis. 2d 245 (1983).

8/ 102 Wis. 2d 159 (1981).

DISCUSSION:

We have expanded the Examiner's order to include interest on the back pay ordered by the Examiner, which interest is to be paid at the applicable statutory rate (more fully discussed below) not only for the period beginning on the date of the Examiner's decision, but rather for the full period beginning on the date (circa mid-November, 1980) when the District's prohibited practice first deprived Complaint of sick leave pay that the Examiner ordered the District to pay her.

While our previous policy has been one of not ordering interest on money remedies under Sec. 111.07(4), Stats., for periods prior to a decision that the back pay involved is due and owing, 9/ we are modifying that policy herein to conform to that required of administrative agencies by the Supreme Court in Anderson v. LIRC 10/ and by the Court of Appeals in Madison Teachers v. WERC. 11/

Given those appellate court decisions, we must reject the District's contentions that the Commission should not order pre-decision interest in fashioning remedies pursuant to its Sec. 111.07(4), Stats., authority.

Although Anderson v. LIRC arose under the Wisconsin Fair Employment Act, the Sec. 111.36(3)(b), Stats., language conferring remedial authority upon LIRC closely parallels that in Sec. 111.07(4), Stats., conferring remedial authority upon the WERC under MERA, the Wisconsin Employment Peace Act, and the State Employment Labor Relations Act. The Supreme Court's rationale approving the objective of achieving make-whole relief by compensating those adversely affected by prohibited conduct for the time value of money applies for Sec. 111.07(4), Stats., remedies as well as to those issued pursuant to Sec. 111.36(3)(b) of the Wisconsin Fair Employment Act. Notably, the Supreme Court cited not only fair employment cases but also a labor relations case arising under the National Labor Relations Act for the proposition that "prejudgment interest on back pay awards has been accepted as an appropriate remedy under federal law" notwithstanding the absence of an express statutory provision for interest on back pay. 12/

The Madison Teachers v. WERC case, of course, involved a remedial order issued pursuant to Sec. 111.07(4), Stats.

In both Anderson v. LIRC and Madison Teachers v. WERC, the Courts held inter alia, that the administrative agency involved had erred by not ordering interest as regards a period including the time from the beginning of the back pay period to the date of the initial decision holding that the back pay involved was due and owing. Each Court held that the agency involved had improperly failed to apply the general rule in Wisconsin that pre-judgment interest is available as a matter of law on fixed and determinable claims or where there is a reasonably certain standard of measuring damages. 13/ In each case the Court treated employment-related back pay as sufficiently determinable under the Wisconsin rule standards, above, to entitle the affected complainant to interest from the respective date of

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9/ Madison Schools, 16471-D (5/81), aff'd in part, rev'd in part sub nom, Madison Teachers Incorporated et al. v. WERC, et al., ____ Wis. 2d ____ (Ct. App. IV, No. 82-579, 10/25/83).

10/ Judy Lynn Anderson v. State of Wisconsin, Labor and Industry Review Commission, 111 Wis. 2d 245 (1983).

11/ Madison Teachers v. WERC, Note 9, supra.

12/ 111 Wis. 2d 245 at 258 (1983), citing, Isis Plumbing & Heating Co., 138 NLRB 716 (1962), rev'd on other grounds, 322 F.2d 913 (CA 9, 1963).

13/ Anderson v. LIRC, supra, slip. op., 111 Wis. 2d at 258-59, citing, Nelson v. Travelers Insurance Co., 102 Wis. 2d 159, 167-68 (1981). Madison Teachers v. WERC, supra, slip. op. at 7-8, citing, Murray v. Holiday Rambler, Inc., 83 Wis. 2d 406, 438 and First Wisconsin Trust Co. v. L. Wiemann Co., 93 Wis. 2d 258, 276.

each instance of loss of a monetary benefit due to the respondent's statutory violation. 14/ Each Court thereby applied interest not only to the period after a decision was issued to the effect that back pay was due and owing in the circumstances, but also to the period of time before any such decision had been issued.

Neither of the Courts' opinions specified in full the nature and derivation of the rate of interest that the Court was ordering. However, we are satisfied that an application of the Sec. 814.04(4), Stats., interest on verdict rate in effect at the time the complaint was initially filed with the administrative agency is consistent with the outcome and rationale expressed in both of those cases, and is necessary and appropriate as an element in WERC money remedies under Sec. 111.07(4), Stats., in order for our agency to comply with the requirements of those appellate decisions. 15/

In Madison Teachers v. WERC, the Court of Appeals directed the trial court to modify the Commission's remedial order to include interest on back pay "at the statutory rate" from and after the date the respondent's prohibited practice began causing the employe the monetary loss involved. The Court of Appeals did not specify the specific statutory rate to be applied either in percentage terms or by reference to a specific statutory provision. The Sec. 814.04(4), Stats., rate is a "statutory rate". It was one of two statutory interest rates expressly referred to in the Commission decision at issue 16/, and its application herein appears in no way inconsistent with the outcome or rationale of the Court of Appeals decision in Madison Teachers v. WERC.

In Anderson v. LIRC, the Supreme Court expressly concluded that the agency should have imposed pre- and post-decision interest at a rate of "seven per cent per annum." Although the Supreme Court did not specifically explain the derivation of that interest rate, specification of that particular rate conclusively establishes that the Supreme Court was not applying the statutory "legal rate of interest" provided for in Sec. 138.04, Stats., either to the full back pay period or to the pre-decision period since that rate has, from 1974 to the present, remained at $5.00 per $100 outstanding per year. 17/ Hence, although we have found no previous Wisconsin case in which pre-judgment interest was ordered at higher than the "legal rate of interest" specified in Sec. 138.04, Stats., Anderson v. LIRC provided for a higher rate in both the pre- and post-decision periods involved in that case. Finally, although the Sec. 814.04(4), Stats., rate was changed from "7% per annum" to "12% per annum" in Chapter 271, Laws of 1979, Sec. 3, effective May 11, 1980, that Act expressly made that change applicable only to legal actions initiated after the effective date of that legislation. 18/

14/ Notably, in Anderson the Supreme Court was dealing with back pay liability that had potentially been increasing over a period of several years. The Court applied interest to the entire back pay period including a period after an offer of reinstatement that the Supreme Court held was not sufficient to terminate the accrual of back pay. 111 Wis. 2d at 260.

15/ Section 814.04(4), Stats. (1980), reads as follows:

> (4) INTEREST ON VERDICT. Except as provided in s. 807.01(4), if the judgment is for the recovery of money, interest at the rate of 12% per year from the time of verdict, decision or report until judgment is entered shall be computed by the clerk and added to the costs.

16/ The other was the Sec. 815.05(8), Stats., rate applicable after entry of judgment.

17/ Wis. Stats. Ann., Sec. 138.04.

18/ Chapter 271, Laws of 1979, provides in pertinent part as follows:

> Section 5. Applicability
>
> The treatment of creation of sections ... 814.04(4) ... of the statutes apply only to actions commenced on or after the effective date of this act.

Thus, the uniform seven percent per annum specified by the Supreme Court in its 1983 decision in Anderson v. LIRC is entirely consistent with the Sec. 814.04(4), Stats., rate of "7% per annum" in effect at the time the complaint in that matter was initially filed with the administrative agency on January 15, 1974. 19/

Accordingly, we conclude that the interest rate to be applied to monetary awards under Sec. 111.07(4), Stats., is the single and uniform rate provided for in Sec. 814.04(4), Stats., in effect when the complaint was filed with the agency. While the objective of making whole the affected party for the time value of money might be better served by the application of the rate that varies with money market conditions during the period a back pay amount is unpaid, the Supreme Court's order in Anderson v. LIRC mandated treatment of the applicable interest rate as singular and uniform through the period of its application. The Supreme Court's further comment in that case that it chose "... the alternative of awarding pre-judgment interest, rather than increasing the award to present value, because the calculation of pre-judgment interest is far less complicated and would not require expert testimony" 20/ suggests that the Court may have taken ease of application into account in deciding upon the appropriate interest rate and mode of application thereof. In that regard, we note that the Sec. 814.04(4), Stats., rate is both readily known from the outset of the proceeding and unchanging after the complaint has been filed initiating the proceeding. Its use is therefore entirely consistent with ease of application considerations.

We note that the Court of Appeals expressly held in Madison Teachers v. WERC, "(t)he fact that interest was not demanded in the complaint is of no consequence." 21/ The instant complaint was filed on June 26, 1981, at a time when the Sec. 814.04(4), Stats., rate was "12% per year." We have therefore ordered interest on the back pay in this case at that rate. The facts before us in the instant case do not appear to require a detailed formula for determining the net back pay to which the interest rate shall be applied over time. 22/

Dated at Madison, Wisconsin this 1st day of December, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Gary L. Covelli, Commissioner

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Marshall L. Gratz, Commissioner

19/ Sec. 814.04(4), Stats. (1975), reads as follows:

> INTEREST ON VERDICT.
>
> When the judgment is for the recovery of money, interest at the rate of 7% per annum from the date of the verdict, decision or report until judgment is entered shall be computed by the clerk and added to the costs.

20/ 111 Wis. 2d 245 at 259, n.9.

21/ Slip. op. p. 8, citing, Bigley v. Brandau, 57 Wis. 2d 198, 208 (1973).

22/ Cases involving lengthy periods of accumulating back pay/benefit obligations would present additional questions about how to compute net back pay and how to apply the applicable rate of interest. Under the National Labor Relations Board formula, for example, monetary losses and applicable setoffs are netted for each calendar quarter and interest accrues commencing with the last day of each calendar quarter of the back pay period on the amount due and owing for each quarterly period and continuing until compliance with back pay is achieved, see, F.W. Woolworth Company, 90 NLRB 289 (1950) and Isis Plumbing, 138 NLRB No. 97 (1962). Whether in a given case a method of calculation based on net back pay for the entire period or by calendar year, school year or some other time period is appropriate will be determined on the circumstances of the case involved.