

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MS. SAMELLA WILLIAMS and	:	
THE WISCONSIN STATE EMPLOYEES	:	
UNION (WSEU), AFSCME,	:	
COUNCIL 24, AFL-CIO,	:	
	:	Case 257
Complainants,	:	No. 40486 PP(S)-144
	:	Decision No. 25805-A
vs.	:	
STATE OF WISCONSIN,	:	
	:	
Respondent.	:	

Appearances:

Lawton & Cates, S.C., Attorneys at Law, 214 West Mifflin Street, Madison, Wisconsin 53703-2594, by Mr. Richard V. Graylow, appearing on behalf of the Complainants.

Ms. Renae Bugge, Employment Relations Specialist, Department of Employment Relations, State of Wisconsin, 137 East Wilson Street, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Ms. Samella Williams and the Wisconsin State Employees Union (WSEU), AFSCME, Council 24, AFL-CIO, hereinafter the Complainants, filed a complaint of unfair labor practice with the Wisconsin Employment Relations Commission on March 10, 1987, alleging that the State of Wisconsin, hereinafter the Respondent, had committed unfair labor practices within the meaning of Sec. 111.84(1)(a), (1)(c), (1)(d), Wis. Stats., by refusing and continuing to refuse to abide by the terms of a settlement agreement. Thereafter, the matter was held in abeyance pending settlement discussions between the parties. Hearing was scheduled for April 25, 1988 and, thereafter, indefinitely postponed pending resolution of a companion complaint case involving Joyce Caravello. On December 1, 1988, the parties advised the Commission that they were ready to proceed to hearing on the complaint. The Commission appointed Coleen A. Burns, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07(5), Wisconsin Statutes. A hearing was held in Madison, Wisconsin on February 15, 1989, at which time the parties were given full opportunity to present their evidence and arguments. Both parties filed post hearing briefs, the last of which was filed on May 31, 1989, at which time the record was closed. The Examiner, having considered the evidence and arguments of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Wisconsin State Employees Union, AFSCME, Council 24, hereinafter referred to as the Union or Complainant, is a labor organization within the meaning of Sec. 111.81(12), Stats., and has its principal offices at 5 Odana Court, Madison, Wisconsin.
2. That the State of Wisconsin, hereinafter referred to as the Respondent or Employer, is an employer within the meaning of Sec. 111.81(8), Stats., and is represented by its Department of Employment Relations which has its offices at 137 East Wilson Street, Madison, Wisconsin.
3. That at all times material hereto, Complainant Samella Williams has been represented by the Union for purposes of collective bargaining and has been an employe within the meaning of Sec. 111.81(7), Stats.

No. 25805-A

4. That on July 2, 1984, Samella Williams was discharged from the Department of Transportation (DOT) an agent of the Respondent; thereafter, the discharge was grieved; on December 20, 1984, Samella Williams, Cindy Manlove, acting on behalf of the Union, and Eloise Anderson, acting on behalf of the Respondent, executed a settlement agreement, resolving the Samella Williams discharge grievance; the settlement agreement, which is final and binding upon all parties, provides as follows:

Whereas the grievant, Samella Williams, and the Wisconsin State Employees Union have filed a grievance alleging a violation of Article III, Article IV, Section 9 and Article XI, Sections 1 and 7 of the Agreement between

the parties, have processed this grievance through the contractual grievance procedure and appealed the matter to arbitration on August 16, 1984, the parties hereby agree that the above entitled matter has been settled in all respects on the following basis:

1. The grievant's discharge will be reduced to a disciplinary suspension without pay from July 2, 1984 to August 2, 1984.
2. The grievant will suffer no loss of seniority.
3. The grievant shall not appeal to arbitration the disciplinary suspension.
4. The union and the grievant shall withdraw any and all charges, claims, complaints, grievances, suits (including discrimination) and appeals against the employer and/or D.O.T. arising out of events of the discharge prior to and up to the execution of the settlement agreement.
5. The employer agrees to pay back wages minus deductions in the amount of \$4,162.46 and restore all benefits as of August 2, 1984.

and that the settlement agreement also reflected an understanding that the settlement did not constitute a precedent for any other case.

5. That between the time of her discharge on July 2, 1984 and the negotiation of the December 20, 1984 settlement agreement, Samella Williams, for reasons of financial necessity rather than legal necessity, withdrew monies from her Wisconsin Retirement System account, which account is administered by the Respondents' Department of Employee Trust Funds; prior to entering into the December 20, 1984 settlement agreement, Union Representative Manlove informed Employer Representative Anderson that Williams had withdrawn monies from her retirement account; at the time the parties agreed to the settlement of December 20, 1984, it was understood that Williams would be required to restore the monies to her retirement account; while the parties discussed that the monies would be repaid via payroll withholding in amounts between ten to twenty-five percent of Williams' biweekly payroll, it is not evident that the parties reached any agreement on the specific amounts to be repaid by Williams; and that the settlement agreement of December 20, 1984 is silent with respect to the issue of the repayment of retirement monies by Williams.

6. The Department of Transportation (DOT) returned the Grievant to her position in the Division of Motor Vehicles on December 26, 1984; that on or about January 15, 1985, DOT issued Williams a check in the amount of \$4162.46 and restored all benefits which Williams had lost due to her unemployment between August 2, 1984 and December 26, 1984; on or about March 19, 1985, Ardis Sullivan, an employe in the payroll department of DOT, received a letter from Steve DeLong, an employe of the Department of Employee Trust Funds (ETF), which provided as follows:

The December 20, 1984, arbitration award which reinstated Ms. Williams to a position results in the requirement that the employer repay the separation benefit paid by the Wisconsin Retirement System to Ms. Williams in October, 1984, (Wisconsin Statute 40.25 (5)).

The Department of Transportation must pay the benefit in full plus interest which results in an amount of \$4,227.47 to the Department of Employee Trust Funds on or before May 15, 1985. If this payment is not received on or before that date we will secure the amount due as provided by Wisconsin Statutes 40.06 (2).

This reinstatement provides immediate eligibility for all Wisconsin group insurances.

Thank you in advance for your cooperation in this matter.

thereafter, DOT paid the \$4,227.47, restoring Williams' retirement account to its predischarge level; thereafter, Williams repaid DOT in the amount of \$4227.47 through payroll withholding; the payroll withholding schedule was initiated on April 28, 1985, and the entire amount was repaid by July 5, 1987; all of the monies were repaid through payroll withholding, except for a cash payment made in October of 1986; and that at the end of the calendar year 1986, there was an unpaid balance of \$965.86.

7. On or about June 6, 1986, Union Representative Cindy Manlove, wrote a letter to Gerald Knobeck of the DOT payroll office, which stated as follows:

I am writing to you regarding the issue of the charging of interest on the monies being paid to the Department by Ms. Janice Shands and Mrs. Samella Williams. In discussion with Ardis Sulllivan (sic) earlier this week I was told that the Department intends to charge interest to both employees and that the rate and amount will be determined at a later date. I asked Ms. Sullivan to please state the Department's intent in writing. She then asked me to make my request in writing to you. I am therefore asking that the Department inform the above mentioned employees, in writing, of their intent to charge interest on these monies.

I am also informing you, at this time, that if the Department of Transportation continues to pursue this issue, we will be filing an Unfair Labor Practice.

If you have any questions on this, please feel free to contact me at 414-769-0220. I would appreciate hearing from you regarding this request as soon as possible.

on or about June 12, 1986, Gerald Knobeck forwarded the following letter to Ledell Zellers of the Employee Trust Fund Department, which letter stated as follows:

Would your office prepare an Employee Trust Funds Department formal opinion of what authority, by state statute, an employer has for charging interest on retirement pay-backs. This occurs when an employe is terminated, withdraws his/her retirement funds, and through the appeal process is rein-stated. The employe does not have adequate funds available to repay the retirement funds. The employer is then required to repay these funds within 60 days to assure the employe proper retirement credit.

As stated previously, by what authority does the employer have for charging interest on the outstanding funds. This formal opinion is needed for DOT to re-act to various appeals on the issue.

Thank you for your assistance. If you have any questions regarding this request, please call me at 266-2572.

on or about June 20, 1986, Ledell Zellers forwarded the following letter to Gerald Knobeck:

I received your letter of June 12 requesting information regarding the authority that allows an employer to charge interest on amounts an employe owes following a pay-back to the retirement system by the employer. This information is in s. 40.25 (5) of the statutes (copy enclosed).

The last sentence in s. 40.25 (5) (b) states that an employer may charge interest at a rate not in excess of the current year's assumed rate on any amount unpaid at the end of any calendar year after the year of reinstatement.

Thus, interest can be charged if the amounts are not repaid by the end of the calendar year following the year of reinstatement.

For example, if an employe was reinstated to a position through the appeal process effective in July of 1985, interest not in excess of the assumed rate can be charged on any unpaid amount still owed the employer after the end of 1986.

The "assumed rate" of interest is defined in s. 40.02 (7) of the statutes. This rate is presently 7.5 percent.

I hope this information answers the question in your recent letter.

on or about June 30, 1986, Gerald Knobeck forwarded the following letter to Williams:

SUBJECT: INTEREST CHARGES ON PAY-BACK RETIREMENT MONIES

Ms. Cindy Manlove's letter, dated June 6, 1986, requested the Department of Transportation to advise you, in writing, regarding interest charges on the unpaid balance of pay-back retirement monies. This issue is covered by s. 40.25(5) of the Wisconsin Statutes. The statute states that an employer may charge interest, not in excess of the current years assumed rate (7.5%), on any amount unpaid at the end of each calendar year after the year of reinstatement. The "assumed rate" of interest is defined in s. 40.02(7) of the Wisconsin Statutes. As stated above, the rate is 7.5%. Attached is a copy of the pertinent portion of the Statutes. Also enclosed is a copy of a letter from The (sic) Department of Employee Trust Funds providing their interpretation of the statute.

It is the Department of Transportation's intent to charge the assumed rate of interest. At the end of each calendar year, the interest liability will be determined and added to the unpaid balance. The first interest charge will be based on the December 31, 1986 account balance.

Enclosed you will find a statement that provides a history of the beginning balance and dates of payments made through the B-14 payroll (Pay Period ending June 21, 1986). Your account balance as of the B-14 Payroll is \$2,896.70.

We will be adjusting the deduction amount on the A-17 Payroll (Pay Period ending August 2, 1986). The deduction amount will be 10% of the current gross income (A-17 Payroll) to conform to s. 40.25(5)(b) which states the employer shall deduct no less than 10% nor more than 25% of the employe's earnings payment.

If you have any questions on the above concepts or procedures, you may contact my office. Telephone 608/266-2572.

thereafter, DOT assessed Williams a one time interest charge of \$121.12, calculated at 12.54% interest on the 1986 calendar year balance of \$965.86; thereafter, DOT discovered that the interest had been incorrectly calculated at the current "effective rate" of interest i.e., 12.54%, instead of at the "assumed rate" of interest, i.e., 7.5%; thereafter, DOT recalculated the interest due on the 1986 calendar year balance of \$965.86 to be \$72.44; that the difference between the \$121.12 and the \$72.44, i.e., \$48.68, was credited towards the remaining balance; and that as a result of this credit, Williams was required by DOT to pay an interest charge of \$72.44 and did in fact pay an interest charge of \$72.44.

8. That the \$72.44 interest charge was not paid to ETF and was not required to be paid by ETF to reestablish Williams retirement account as of August 2, 1984; that the \$72.44 interest charge was assessed by DOT and retained by DOT pursuant to DOT's understanding of its rights under Sec. 40.25(5), Wis. Stats., which at all times material hereto has provided as follows:

(5)(a) Rights and creditable service forfeited under sub. (3) or s. 40.04(4)(a)3 shall be reestablished if the participant receives the benefit resulting in the forfeiture after being discharged and is subsequently reinstated to a position with the participating employer by court order, arbitration award or compromise settlement as a result of an appeal of the discharge.

(b) The full amount of the benefit paid, plus interest at the effective rate, shall be repaid to the Wisconsin retirement system by the employer of an employe whose rights and creditable service are reestablished under par. (a) within 60 days after the effective date of the employe's reinstatement. The amount repaid by the employer under this paragraph shall be deducted by the employer from any payment due the employer as a result of the resolution of the appeal or, if that amount is insufficient, the balance shall be deducted from the employe's earnings except the amount deducted from each earnings payment shall be not less than 10% nor more than 25% of the earnings payment. If the employe terminates employment the employer shall notify the department of the amount not yet repaid, including any interest due, at the same time it notifies the department of the termination of employment, and the department shall repay to the employer the balance of the amount due from retentions made under s. 40.08(4). The employer may charge interest at a rate not in excess of the current year's assumed rate on any amount unpaid at the end of any calendar year after the year of reinstatement.

9. That on March 10, 1987, the Union filed a complaint of unfair labor practice with the Wisconsin Employment Relations Commission wherein it was alleged that Respondent has violated Sec. 111.84(1)(a), (1)(c) and (1)(d), Wis. Stats., by violating two settlement agreements, one of which involved Joyce Caravello and the second of which involved Samella Williams; thereafter, the Williams matter was severed from the Caravello matter; and that hearing on the instant complaint, involving the Samella Williams settlement agreement, was held on February 15, 1989.

10. That the repayment of the \$4,227.47 by Williams to DOT is not governed by the terms of the settlement agreement of December 20, 1984; and that DOT's assessment of an interest charge in the amount of \$72.44 is not contrary to any provision of the settlement agreement of December 20, 1984.

Based upon the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That neither the Respondent, nor its agent DOT, violated the settlement agreement of December 20, 1984 by requiring Samella Williams to pay an interest charge on the retirement fund pay-back in the amount of \$72.44.

2. That Respondent has not been shown to have committed any violation of Sec. 111.84(1)(a), (1)(c), and/or (1)(d), Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER 1/

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

IT IS ORDERED that the Complaint filed herein be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 3rd day of August, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Coleen A. Burns, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

Complainants argue that Respondent has violated the terms of a final and binding grievance settlement agreement, in violation of Sec. 111.84(1)(a), (1)(c) and (1)(d), Wisconsin Statutes. Respondent denies that it has violated the settlement agreement or any provision of SELRA.

POSITIONS OF THE PARTIES

Complainant

The Wisconsin Employment Relations Commission (WERC) has subject matter jurisdiction to hear and resolve complainants alleging failure to comply with settlement agreements. (Department of Employment Relations, WERC Dec. No. 25281-B 10/88.) Although raised as a defense by the State in these proceedings, presumably in light of the foregoing authority, the Employer is no longer alleging that the WERC lacks subject matter jurisdiction to hear and decide the instant complaint.

The Settlement Agreement does not place any responsibility for "pay-back" on Ms. Williams. The Settlement Agreement is conspicuously silent on such "pay-back". If the State wanted to compel the "pay-back", it should have made a proposal to that effect prior to the consummation of the Settlement Agreement, which it did not.

It is much too late to complain about errors and omissions created and caused by its own conduct. The State's belated attempt to redraft the Settlement Agreement should and must be rejected. Conspicuous by omission in the State's argument is any reference to Secs. 111.81(8) and 111.93(3), Wisconsin Statutes. The rights conferred and duties imposed by the Settlement Agreement, belong to the State and the DER, not the Department of Employee Trust Funds (ETF). Section 111.93(3) creates and identifies a single entity as the State, there is no reference to ETF. Section 111.815(2), Wisconsin Stats., places the collective bargaining responsibilities for the State and the Executive Branch of government in DER. If ETF wanted to provide for interest, or interest pay-back, it was required by statute to seek said concessions through DER. It did not. ETF now seeks to enforce rights which are not a part of the Settlement Agreement and, which simply can not be permitted at this late date.

Respondent

Retirement is a benefit accorded to all represented employes by the parties collective bargaining agreement. Upon reinstatement, Samella Williams was immediately covered by the terms of the collective bargaining agreement including, Article 13, Section 13, which provides that "the employer agrees to continue in effect the administration of the Wisconsin Retirement System as provided under Chapter 40 of the Wis. Stats. and the appropriate Adm. Code rules of the Employee Trust Funds Board". The Employers interpretation of the collective bargaining agreement, Chapter 40 of the Statutes, and ETF's administrative rules lead to the restoration of Samella Williams retirement account and to the Employer's decision to charge interest on the outstanding balance owed to the Employer.

At the time of the execution of the Settlement Agreement, DOT was unaware of the fact that Samella Williams had taken the separation benefit. If the Department had known of the separation benefit, it would have been required by Wis. Stat. 40.02(5)(a) to restore the account and to deduct the amount repaid from the back-pay issue to the Complainant under the terms of the Settlement Agreement. However, DOT did not learn of the pay-out until four months after the Settlement Agreement was implemented. After DOT repaid the amount of the separation benefit pursuant to Wisconsin Statute 40.25, the withholding schedule was established in accordance with Wisconsin Statute Section 40.25(5)(b).

Prior to making the decision to charge interest on the outstanding balance at the end of 1986, DOT consulted with ETF to ensure that they were in compliance with state statutes and administrative code provisions. As demonstrated by the testimony of Elizabeth Derleth, Director of the ETF Bureau of Membership and Coverage, the interest charge was handled in a manner which is consistent with ETF advice and other similar cases. The ETF manual which describes the procedure for making an employe whole on reinstatement, is available to Union Representatives and employes.

The Complainants negotiated and accepted a Settlement Agreement specifically making Samella Williams whole. Samella Williams knew she had received a separation benefit and, therefore, had the opportunity to negotiate alternative reinstatement terms. She did not elect to do so. Complainant had sufficient notice of the potential interest charge and opportunity to pay the account in full prior to December 31, 1986, thereby avoiding any interest payment. Alternatively, the Complainant could have negotiated settlement agreement terms to avoid the necessity of repaying the separation benefit or to avoid the interest charge. Absent negotiated terms to the contrary, the Employer was correct in administering the Settlement Agreement consistent with the terms of the collective bargaining agreement, Chapter 40 of the statutes, and ETF's administrative rules.

Potential liability of the Employer is much greater than that demonstrated by the facts of this case. For example, an employe discharged after many years of service could easily take a separation benefit of more than \$25,000. When the employe is reinstated, the employing agency is obligated to repay the separation benefit to the employe's account. Since these payments are not budgeted, it decreases the employing agency's ability to meet budgeted services and expenses. It could take years for an employe to repay the Employer when withholding is administered at only 10% of the employes earnings. The annual interest payment charged to the employe is the only incentive for the employe to repay the Department on a timely basis. This nominal annual interest charge is, in fact, the only penalty an employe pays for what amounts to a large personal loan from the Employer. In the Complainant's case, the Employer in effect, gave the employe a \$4,227 loan for a period of 28 months. For the use of this money, the employe was charged a mere \$72.44.

The Department of Transportation has reinstated the Complainant and made her whole in accordance with the terms of the Settlement Agreement negotiated by the parties. The Complainant does not dispute the Employer's application of Wisconsin Statute 40.25(5) to the repayment procedure except when that application requires the employe to make a nominal interest payment on the debt. The Employer has significant public policy interest in maintaining the authority to charge the statutory interest payment on the employes outstanding debt. The interest charge is reasonable, statutorily authorized, and consistent with the terms of the parties collective bargaining agreement, the State Employment Relations Act and the parties Settlement Agreement. The Complaint is without merit and, therefore, should be dismissed in its entirety.

DISCUSSION

Jurisdiction

On March 10, 1987, the Union filed a complaint of unfair labor practices in which it alleged that the Employer violated Sec. 111.84(1)(a), (1)(c) and (1)(d), Wis. Stats., by violating the terms and conditions of two final and binding grievance settlement agreements, one of which involved Joyce Caravello and the second of which involved Samella Williams. Pursuant to the request of the State, and the concurrence of the Union, the Samella Williams complaint was severed from the Joyce Caravello complaint.

Prior to the severance, the Employer filed a Motion to Dismiss alleging, inter alia, that the Commission lacked jurisdiction to hear and decide the allegation of a breach of a grievance settlement agreement. The Motion was denied on April 19, 1988 and the State was advised that it had the right to reassert the Motion to Dismiss at hearing. The Employer did not reassert the Motion to Dismiss at hearing on the Williams' complaint, nor has it raised any jurisdictional argument in post-hearing brief. Accordingly, the Examiner considers the Employer to have abandoned its claim that the Commission lacks jurisdiction to hear and determine the instant dispute. As the Union recognizes, the Commission has previously asserted jurisdiction to determine an allegation that the Employer committed an unfair labor practice within the meaning of SELRA by violating the terms of a grievance settlement agreement. 2/

Merits

The testimony of Union Representative Manlove demonstrates that, at the time the parties negotiated the settlement agreement of December 20, 1984 (Settlement Agreement), both the Union Representative responsible for negotiating the Settlement Agreement, Cindy Manlove, and the Employer

2/ State of Wisconsin, Dec. No. 25281-B (Burns, 10/88).

representative responsible for negotiating the Settlement Agreement, Eloise Anderson, were aware of the fact that Samella Williams had withdrawn monies from the Wisconsin Retirement System. Union Representative Manlove's testimony also demonstrates that, at the time that the parties reached the settlement, it was understood that Williams would have to repay retirement monies. While Manlove recalled that there was a discussion concerning the fact that the retirement monies would be repaid pursuant to payroll withholding, in an amount between 10 and 25 percent of William's biweekly pay, Manlove did not claim that the parties reached any agreement on the specific amounts to be repaid by Williams. Nor is such an agreement reflected in the Settlement Agreement.

As the Union argues, the Settlement Agreement does not place any responsibility for the repayment of retirement monies upon Williams. Conversely, however, as the Union does not argue, the Settlement Agreement does not relieve Williams of any responsibility for the repayment of retirement monies. The reason being that the Settlement Agreement is silent on the issue of Williams' responsibility to repay the retirement monies which she withdrew from the Wisconsin Retirement System. The Settlement Agreement addresses only the Employer's obligation to restore benefits. Specifically, Paragraph Five of the Settlement Agreement states as follows:

5. The employer agrees to pay back wages minus deductions in the amount of \$4,162.46 and restore all benefits as of August 2, 1984.

As the record demonstrates, the Employer did issue Williams a check in the amount of \$4,162.46 and restored all her benefits as of August 2, 1984. The Union does not argue and the record does not demonstrate that the Employer has failed to comply with Paragraph Five of the Settlement Agreement.

In summary, it is evident that, at the time the parties entered into the Settlement Agreement, it was understood that Williams would have a responsibility to repay monies into her retirement account. The parties, however, did not address this repayment in the terms of the Settlement Agreement. As the Union argues, the Settlement Agreement is "conspicuously silent" with respect to the pay back of these retirement monies. However, contrary to the argument of the Union, this silence does not serve to restrict the Employer's right to charge the interest in dispute herein. Rather, this silence demonstrates that the repayment of the retirement monies is not governed by the Settlement Agreement. Accordingly, the Examiner rejects the Union's assertion that the Employer, or its agent DOT, violated the Settlement Agreement when DOT required Williams to pay \$72.44 in interest on the 1986 calendar year balance of the retirement monies which Williams owed to DOT. 3/

As the Employer argues, such a conclusion is not inconsistent with the "make whole" principle underlying the Settlement Agreement. The reason being, that the Employer is generally considered to be responsible for restoring only those wages and benefits which were lost as a result of the Employer's conduct.

For the reasons discussed below, the Examiner is persuaded that, to the extent that Williams may have been "damaged" by the payment of the \$72.44 interest charge, the damage is attributable to conduct which was under the control of Williams.

3/ The Employer argues that the interest charge was consistent with the Employer's obligations under the parties' collective bargaining agreement, Chapter 40 of the Statutes, and ETF's administrative rules. However, the issue presented to the Examiner involves only an alleged breach of the settlement agreement. The Examiner makes no determination as to whether the Employer's conduct is consistent with the parties' collective bargaining agreement, Chapter 40 of the Statutes, or ETF's administrative rules.

The Examiner has no reason to doubt Williams' testimony that her discharge created a financial hardship which necessitated the removal of monies from her Wisconsin Retirement System account. Williams, however, had the legal option, if not the financial option, of leaving the monies in her retirement account. 4/ Moreover, under the provisions of Sec. 40.25(5)(b), Wis. Stats., which the Employer uses as its authority to assess the interest charge, Williams could have avoided any interest charge by paying DOT the entire \$4,227.47 by the end of the 1986 calendar year.

CONCLUSION

Contrary to the argument of Complainants, the record does not demonstrate that the Employer has violated the Settlement Agreement in violation of Sec. 111.84(1)(a), (1)(c) and/or (1)(d), Wis. Stats., by requiring Williams to pay the \$72.44 interest charge. Accordingly, the complaint of prohibited practices is dismissed in its entirety.

Dated at Madison, Wisconsin this 3rd day of August, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Coleen A. Burns, Examiner

4/ Se. 40.25(2), Wis. Stats.