

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL NO. 139, AFL-CIO,

Complainant,

vs.

TOWN OF SPIDER LAKE,

Respondent.

Case 3

No. 50818 MP-2880

Decision No. 28038-B

Appearances:

Mr. Warren Kaston, Legal Counsel, International Union of Operating Engineers, Local No. 139, AFL-CIO, on behalf of the Union.

Spears, Carlson, Lindsey and Anderson, by Mr. John P. Anderson, on behalf of the Town.

AMENDED FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Amedeo Greco, Hearing Examiner: I issued my decision in this matter on December 30, 1994, finding that Respondent Town of Spider Lake ("Respondent"), terminated Robert Kellogg in violation of Sections 111.70(3)(a)1 and 3, Stats. because of his concerted, protected activities.

Respondent was thus required in the Order to make Kellogg whole "by paying to him a sum of money, including all benefits, that he would have received had he not been suspended and terminated. . ." Said Order did not require Respondent to pay any interest on any money owed.

In the Memorandum Accompanying the Findings of Fact, Conclusions of Law and Order, I addressed the question of interest at p. 12 by ruling: "the Town shall make Kellogg whole by . . . paying him a sum of money at the applicable interest rate, including all benefits, that he would have earned from the time of his initial suspension and subsequent termination to the time of his reinstatement. . ."

No. 28038-B

Such interest - which is pegged to the interest rate provided for in Sec. 814.04(4), Stats., and is 12 percent because that was the rate in effect when the complaint was filed - is part of the standard make-whole remedy issued in these kinds of cases. See Wilmot Union High School District, Dec. No. 18820-B (WERC, 12/83), citing Anderson v. LIRC, 111 Wis.2d. 245, 258-59 (1983); Madison Teachers Inc. v. WERC, 115 Wis. 2d. 623 (Ct.App. IV, 10/83).

Lest there be any confusion over whether interest must be paid, I am hereby modifying the Order to expressly provide for the payment of interest pursuant to ERB. 12.08 which enables a Hearing Examiner "on his own motion. . ." to modify any decision and order within twenty days of its issuance.

As a result, paragraph 3,a, of the Order is hereby amended to read:

- C. Immediately reinstate Robert Kellogg to his former or substantially equivalent position and make him whole by paying to him a sum of money, at the applicable interest rate of twelve (12) percent per year, and all benefits that he would have received had he not been suspended and terminated, less any interim earnings or other compensation that he would not have received had he not been suspended and terminated.

Dated at Madison, Wisconsin this 18th day of January, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco /s/
Amedeo Greco, Examiner

