

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**WISCONSIN COUNCIL OF COUNTY AND  
MUNICIPAL EMPLOYEES #40, AFSCME,  
AFL-CIO, Complainant,**

vs.

**CITY OF NEW LISBON, Respondent.**

Case 9  
No. 54516  
MP-3230

**Decision No. 28935-B**

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Appearances:

**Mr. David White**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, appearing on behalf of Wisconsin Council of County and Municipal Employees #40, AFSCME, AFL-CIO.

Curran, Hollenbeck & Orton, S.C., Attorneys at Law, by **Mr. Fred D. Hollenbeck**, 111 Oak Street, P.O. Box 140, Mauston, Wisconsin 53948-0140, appearing on behalf of the City of New Lisbon.

**ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT  
AND CONCLUSIONS OF LAW AND AFFIRMING  
AND MODIFYING EXAMINER'S ORDER**

On July 3, 1997, Examiner Lionel L. Crowley issued Findings of Fact, Conclusions of Law and Order in the above matter wherein he concluded that Respondent City of New Lisbon had committed prohibited practices within the meaning of Secs. 111.70 (3)(a)3,4 and 1, Stats. As to these violations of the Municipal Employment Relations Act, the Examiner ordered Respondent to cease and desist therefrom and to take certain affirmative action including:

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- (2) Immediately offer to reinstate Hansen and make him whole with interest 2/ by paying him the appropriate wage rate of the Lineman classification from October 24, 1996, to the date of reinstatement, less any interim earnings and unemployment compensation, together with interest. Retain Hansen in the Lineman position for at least 30 days to allow him to successfully enroll in a Lineman's apprenticeship program. (footnote omitted).

The Examiner dismissed those portions of the complaint which alleged violations of Secs. 111.70 (3)(a)1, 2 and 5, Stats.

By letters dated July 17 and 21, 1997, Respondent advised the Examiner of the action it was taking to comply with his Order.

On July 23, 1997, Complainant timely filed a petition with the Wisconsin Employment Relations Commission seeking review of that portion of the Examiner's Order quoted above to the extent said Order does not make Hansen whole for lost fringe benefits.

The parties thereafter filed written argument in support of, and in opposition to, the petition, the last of which was received September 12, 1997.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

**ORDER**

- A. The Examiner's Findings of Fact are affirmed.
- B. The Examiner's Conclusions of Law are affirmed.
- C. The Examiner's Order is affirmed in all respects except for paragraph 2.b.(2) which is modified to read:

Immediately offer to reinstate Hansen and make him whole with interest 1/ in all respects including payment to him of the appropriate contractual wage rate for the Lineman classification from October 24, 1996, to the date of reinstatement, less any

interim earnings and unemployment compensation. Retain Hansen in the Lineman position for at least 30 days to allow him to successfully enroll in a Lineman's apprenticeship program.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

**CITY OF NEW LISBON**

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

The issue litigated by the parties on review is a narrow one. Complainant asserts the Examiner's "make whole" Order inadvertently failed to make reference to fringe benefits lost by Hansen and asks that we modify his Order to include such a reference. Complainant argues that fringe benefits are part of a conventional "make whole" remedy and that a review of the Examiner's decision makes it clear that he did not intentionally choose to omit fringe benefits from the scope of relief granted to Hansen. Respondent contends that Commission Examiners have great remedial discretion and that the Commission ought not disturb the remedial choice which the Examiner made.

First, we note that the Memorandum accompanying the Examiner's Order makes it clear that he intended to include fringe benefits within the scope of his "make whole" relief. Thus, at page 15 thereof he stated:

Additionally, Hansen has been ordered reinstated to his position as  
Lineman with back pay and benefits. . .

Second, our review of an Examiner decision is *de novo* 2/ and we thus possess full authority to modify an Examiner's remedial order to the extent we find a modification more appropriately fulfills the purposes of the Municipal Employment Relations Act. Complainant correctly argues that the conventional make whole remedy includes fringe benefits and we find no basis in this record for departing from that standard when remedying the violations of law committed by Respondent. Therefore, we have modified the Examiner's Order to make it clear that Hansen should be made whole in all respects.

Dated at Madison, Wisconsin this 8th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

**ENDNOTES**

1/ The applicable interest rate is the Sec. 814.04(4), Stats., rate in effect when the original complaint was filed on October 10, 1996, which was 12 percent.

2/ MILWAUKEE VTAE, Dec. No. 26459-G (WERC, 12/92).

