

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED ELECTRICAL, RADIO AND MACHINE  
WORKERS OF AMERICA,  
Complainant,  
  
and  
  
WINNESHIEK COUNTY,  
Respondent.

Case No. 8782

PUBLIC EMPLOYMENT  
RELATIONS BOARD  
2015 MAY - 8 AM 9:06

RECEIVED

PROPOSED DECISION AND ORDER

The Complainant, United Electrical, Radio and Machine Workers of America (UE or union) filed a prohibited practice complaint with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 20.11 and PERB rule 621-3.1(20). The complaint alleges that the Respondent, Winneshiek County, committed prohibited practices within the meaning of Iowa Code sections 20.10(1), 20.10(2)(a), (e) and (f) when the County changed the health insurance premium tier structure that had existed since 1987.

Pursuant to notice, an evidentiary hearing was held on October 15, 2014. UE was represented by Michael Hansen and the County was represented by Paul Greufe. Each party submitted post-hearing briefs on or before January 12, 2015. Having reviewed the record and arguments of the parties, I issue the following proposed findings of fact and conclusions of law.

FINDINGS OF FACT

The County is a public employer within the meaning of Iowa Code section

20.3(10)<sup>1</sup> and UE is an employee organization within the meaning of Iowa Code section 20.3(4). On April 19, 1996, PERB certified UE as the exclusive bargaining representative for a bargaining unit consisting of Winneshiek County secondary road employees. Since that time, the County and UE have been parties to multi-year collective bargaining agreements (CBAs) covering this unit of County employees.<sup>2</sup>

Among other terms, the parties negotiated insurance as a part of these CBAs. With regards to insurance in the first CBA, effective from July 1, 1997 through June 30, 1999, Article 13 of that agreement read:

ARTICLE 13

INSURANCE

Section 13.1

The County shall provide a group health and major medical insurance plan essentially equivalent to the plan in effect on July 1, 1996, but the county reserves the right, in its sole discretion to determine the provider of such plan.

Section 13.2

The County shall pay the full basic premium for all employees. Employees may elect, at their own expense, to cover the employee's dependent family members with dependent medical insurance.<sup>3</sup>

The insurance plan referred to in section 13.1 included fixed amounts for deductibles, co-pays, co-insurance and out-of-pocket maximums.<sup>4</sup> In each of the subsequent agreements including the one beginning July 1, 2014, the CBAs provided language identical to section 13.1.

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<sup>1</sup> All references are to the 2013 Code of Iowa.

<sup>2</sup> There has only been one instance when the parties did not have a multi-year contract; July 1, 2004 through June 30, 2005.

<sup>3</sup> County exhibit C-3, page 2 and Union exhibit 3, page 3.

<sup>4</sup> Union exhibit 11, page 2.

Section 13.2 pertained to the County's and employee's cost obligations for dependent health insurance which had a two tier premium structure based on single or family coverage. Family coverage encompassed the employee and one or more dependents which included spouse and/or children. The County contracted with an outside carrier who determined the premium amount on a fiscal year basis which began July 1 of each year. Since the first CBA, the County has paid the full cost of the premium for single coverage and employees with family coverage paid the full cost of the family premium. From FY97 through FY00, the premium rates for single and family were approximately the same. From FY01 through FY14, the premium amount the County paid for the single employee was identical to the premium amount paid by the employee for dependent (family) coverage with regard to the plan described in the CBA.

In FY10, without bargaining with UE, the County offered an additional health insurance plan; a family Health Savings Account (HSA) which included a higher deductible and out-of-pocket maximums. Employees could voluntarily select this plan for family coverage instead of the plan referenced in section 13.1 of the CBA. The union did not file a grievance or prohibited practice complaint with regards to the County's implementation of the family HSA.

In FY12, the County modified the HSA plan so that single employees could also select the County's HSA plan on a voluntary basis. Additionally, the County increased the deductibles for the HSA plan and the insurance plan referred to in the CBA. As a result of the change in deductibles, UE filed a

prohibited practice complaint<sup>5</sup> that was resolved with the County's agreement to reinstate the original deductibles.

During negotiations for what is now the current CBA, effective July 1, 2014 through June 30, 2017, both UE and the County made proposals as to insurance. However, neither party proposed changes with regards to the two tier premium structure. A tentative agreement was reached in January 2014 with no modifications to either section 12.1 or 12.2.<sup>6</sup> The parties did, however, add life insurance (section 12.3) and a section 129 plan (section 12.4). The insurance article provided in relevant part:

## ARTICLE 12

### INSURANCE

#### Section 12.1

The County shall provide group health and major medical insurance plan essentially equivalent to the plan in effect on July 1, 1996 but the county reserves the right, in its sole discretion to determine the provider of such plan.

#### Section 12.2

The County shall pay the full basic premium for all regular full-time employees. Employees may elect, at their own expense, to cover the employee's dependent family members with dependent medical insurance. The County shall continue its current practice of pay for medical insurance for regular full-time employees, but will increase its contribution to match any increase in the premium during the life of this Agreement.<sup>7</sup>

The tentative agreement was ratified by UE on February 10, 2014.

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<sup>5</sup> The testimony was confusing as to whether a prohibited practice complaint (ppc) and/or a grievance was filed as the parties interchanged the terms (ppc and grievance).

<sup>6</sup> Due to the deletion of Article 1 "Purpose", the various articles were renumbered and insurance became Article 12.

<sup>7</sup> Union exhibit 5, page 14-15.

Although it is unclear as to the timeframe, the County investigated the viability of modifying the current premium structure by adding tiers to the family premium structure (employee + spouse and employee + children). By subdividing the family premium, County employees would save money on their health insurance premiums since many of the employees either had a spouse who was covered by another employer or did not have children. The County recognized that adding additional tiers would “be more expensive” for the few who chose the family tier, but believed this modification would benefit “most employees.”<sup>8</sup>

On March 3, 2014, the County Board of Supervisors met. Even though it had not taken any action with regards to the tentative agreement with UE, the Board unanimously approved the health insurance renewals for FY15. The minutes do not reflect whether the insurance renewal included the modification of the premium structure from two to four tiers. A week later, on March 10, the Supervisors unanimously approved using a four tier premium structure for the insurance plan and the HSA with the County’s allocation to both the insurance plan and the HSA set at \$680 per month for single coverage.

Twenty-one days later, Paul Greufe, the County’s representative, emailed Michael Hansen, field organizer for UE to give him a “heads up” that the County was considering a change from a two tier to four tier premium structure. The March 31<sup>st</sup> email stated:

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<sup>8</sup> Union exhibit 9, page 4.

The Winneshiek County BOS is considering moving from a 2 tier plan to a 4 tier plan. The attached documents outline the differences in cost.

There is no financial impact to the County, as they will pay the exact same amount for either plan.

At this time, it is my understanding that only 18 county employees elect family coverage. With the addition in tiers, we hope that more employees will sign up to cover their families. It appears this move will help most employees, but it will be more expensive for a few.

This email is simply a “heads-up” that this change is being considered. Please review the attached documents and let me know if you think this would be of any concern to your membership.

In my opinion, the contractual language in place would allow the BOS to make this change, but we would prefer to not have to argue a case before PERB/arbitrator if avoidable.

The County needs to make a decision in the next few weeks, so please let me know your thoughts as soon as possible.<sup>9</sup>

On April 2<sup>nd</sup>, Hansen asked Greufe for the breakdown of bargaining unit members on both the insurance plan and the HSA. In response to that request, Greufe notified Hansen that two current members were using the “full family plan.”<sup>10</sup>

On April 14<sup>th</sup>, the County approved the tentative agreement. Also on that day, Hansen notified Greufe the union objected to the change in the premium structure from two to four tiers. Additionally, Hansen informed Greufe that:

“if the County elects to make these changes without further negotiations on this matter with Local 869, I’m authorized to file a PPC on their behalf. I would obviously prefer we set [sic] down and work this out between the parties.

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<sup>9</sup> Union exhibit 9, pages 1-2.

<sup>10</sup> Union exhibit 9, page 4.

Please let me know how you wish to proceed. Thanks,<sup>11</sup>

The County's representative did not respond to this email, nor did the County meet with the union with regard to the change in the tier structure.

On June 23, 2014, the County entered into a formal contract with the County's insurance carrier. Prior to July 1, 2014, 18 out of the 27 bargaining unit employees were enrolled in the insurance plan (17 single and 1 family) and 9 employees were enrolled in the HSA plan (8 single, and 1 family).

On July 1<sup>st</sup>, the four tier premium structure went into effect. The four tiers were (1) single, (2) family, (3) employee + spouse and (4) employee + children. This modification represented a deviation from the two tier premium structure.

Although the number of bargaining unit employees remained constant, the enrollees in the two plans changed. After July 1, 14 out of the 27 bargaining unit employees were enrolled in the insurance plan (11 single, 1 family and 2 employee + spouse) and 13 employees were enrolled in the HSA (11 single, 1 family, and 1 employee + spouse).<sup>12</sup>

The County continued to pay 100% of the single premium of \$680 per month. The monetary effect of subdividing the family tier into two additional tiers depended upon the plan (insurance or HSA) and tier the employee selected. With regards to the insurance plan, if the County had not made a change to the insurance tiers, an employee who elected "family" would have paid \$680 per month. Under the new tier structure, the two employees who

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<sup>11</sup> Union exhibit 9, page 4.

<sup>12</sup> County exhibit C-4.

elected “employee + children” each paid \$262 per month, or \$418 less in premiums per month, and the employee who elected “family” paid \$801 per month, or \$121 more in premiums per month. As to the HSA, if the County had not made a change to the insurance tiers, an employee who elected “family” would have paid \$325.66 per month. Under the new tier structure, the employee who elected “employee + children” paid \$41.97 per month, or \$283.69 less in premiums per month, and the employee who elected “family” paid \$454.53 per month, or \$128.87 more in premiums per month.<sup>13</sup>

Due to the change in tiers and the financial impact upon the premiums for those employees electing family coverage, the union filed the instant prohibited practice complaint on July 7, 2014.

#### CONCLUSIONS OF LAW

UE alleges that when the County changed the premium structure from a two tier to a four tier structure, it materially changed both the health insurance plan as well as the HSA and that the County’s failure to bargain with the union or to obtain the union’s consent prior to modifying the tier structure was a prohibited practice. The union claims that the County’s action amounted to a unilateral change in a mandatory subject of bargaining in violation of Iowa Code section 20.10(1) and sections 20.10(2)(a), (e) and (f). These sections of the Public Employment Relations Act (Chapter 20) provide:

1. It shall be a prohibited practice for any public employer, public employee, or employee organization to refuse to negotiate in

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<sup>13</sup> Union exhibit 9, page 2-3.

good faith with respect to the scope of negotiations as defined in section 20.9.

2. It shall be a prohibited practice for a public employer or the employer's designated representative to:
  - a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.
  - ...
  - e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this chapter.
  - f. Deny the rights accompanying certification granted in this chapter.

...

It is well established that an employer's implementation of a change in a mandatory subject of bargaining without fulfilling its required bargaining obligation may constitute a violation of Iowa Code sections 20.10(1), and 20.10(2)(a), (e), and (f). *AFSCME Iowa Council 61 & State of Iowa (Dep't of Corrections)*, 14 H.O. 8693 at 15; *AFSCME/Iowa Council 61 & Louisa Cnty.*, 2011 PERB 8146 at 10-11; *Mount Pleasant Educ. Ass'n & Mount Pleasant Cmty. Sch. Dist.*, 99 H.O. 5894 at 17.

In a unilateral change case, the complainant bears the burden of establishing that the employer committed a prohibited practice. *AFSCME Iowa Council 61*, 14 H.O. 8693. In order to prevail, a complainant must establish that (1) the employer implemented a change, (2) that the change was to a mandatory negotiable matter, and (3) that the employer had not fulfilled the applicable bargaining obligation before making the change. *AFSCME Iowa Council 61* 14 H.O. 8693; *Neil Kenneth Greenwald, Jr., & Muscatine Cmty. Sch. Dist.*, 12 H.O. 8535 at 6.

In this case, the issue is whether the County modified a mandatory subject of bargaining without first fulfilling its required bargaining obligations

when it implemented a different premium tier structure for both the insurance and HSA plans.

Did the employer implement a change?

In order to determine whether a change has occurred in the premium structure, UE must establish the “*status quo*”; what structure existed at the time of the alleged change. *AFSCME Iowa Council 61*, 14 H.O. 8693 at 17. UE alleges that the County implemented a change in the health insurance premium when it modified the current premium structure from two tiers (employee and family) to four tiers: (1) employee, (2) family (employee, spouse and children), (3) employee + spouse, and (4) employee + children. The County contends that although the CBA requires that the County maintain a single and family premium structure through the life of the contract, the CBA does not restrict the County from offering additional plans which an employee can voluntarily select. The County argues that the two additional tiers (employee + spouse and employee + children) were voluntary plan offerings. The additions of the two tiers (employee + spouse and employee + children) are not additional plans, as asserted by the County, but instead is a change to the structure of the current plans. Even the insurance documents do not list the tiers as additional plans.

The County also argued that UE could have limited the amount an employee paid toward family insurance by negotiating a limitation on premiums and that the structural change only adversely affected a small number of employees. These arguments are, however, not relevant to the

substantive question whether the County implemented a unilateral change in the family premium structure when it changed the tier structure from an all-inclusive tier to three tiers. See, e.g., *Pub. Prof'l & Maint. Emps., Local 2003 & Jones Cnty.*, 91 PERB 3794.

The evidence shows that the “*status quo*” premium structure consisted of two tiers; a single tier and a family tier. Since July 1, 1997, the beginning of the first CBA, the premium structure consisted of these two tiers with the family tier all inclusive; employee, spouse and/or children. On July 1, 2014, the “*status quo*” premium structure changed to four tiers. The single tier remained the same but the all-inclusive family tier was subdivided into: (1) employee + spouse, (2) employee + children and (3) family (employee, spouse, and children). Based upon the evidence presented, I conclude that UE has established the two tier premium structure was the *status quo* and the subdivision of the all-inclusive family premium structure into separate tiers for both the insurance plan and the HSA constituted a change.

Was the change to a mandatorily negotiable matter?

In order for a unilateral change to constitute a prohibited practice, the change implemented by the public employer must be to a mandatory subject of bargaining. UE argued that the cost obligation paid by employees for health insurance is a mandatory subject of bargaining. The County argued that while section 20.9 requires the County to negotiate with regards to health insurance, it is not required to negotiate the cost of insurance as the premium amount was established by an outside carrier.

Although the total premium amount paid by the employer and employees is not a mandatory subject of bargaining since the parties do not have control over the premium cost, it is well established that cost obligations or the amount employees contribute toward the insurance premium is within the subject of “insurance” listed within section 20.9. *Charles City Cmty. Educ. Ass’n and Charles City Cmty. Sch. Dist. Educ. Services Ass’n / ISEA & Charles City Cmty. Sch. Dist.*, 90 PERB 3764 at 46; *Sioux City Educ. Ass’n & Sioux City Cmty. Sch. Dist.*, 89 H.O. 3778 at 34. In this case, the amount paid by an employee for family coverage was determined by the premium tier structure. As a result, I conclude that because the premium tier structure is integrally related to the amount an employee contributes towards the insurance premium, it falls within the meaning of a section 20.9 mandatory topic of “insurance.” Thus the change to the premium tier structure implemented by Winneshiek County was a mandatorily negotiable matter.

Did the employer fulfill its bargaining obligation?

In order to determine whether the County has satisfied its bargaining obligation, UE must establish that the change was implemented by the County without the fulfillment of its bargaining obligation. *AFSCME Local 1068 & Howard Cnty.*, 01 H.O. 6234 at 9.

The bargaining obligation differs depending upon whether the mandatorily negotiable term is “contained in” or “not contained in” the CBA. If the modification is to a mandatory topic of bargaining that is “contained in” the CBA, then the employer must obtain the certified employee organization’s

consent prior to implementing the policy change. *AFSCME Iowa Council 61*, 14 H.O. 8693 at 22; *AFSCME/Iowa Council 61*, 11 PERB 8146 at 11; *Des Moines Cmty. Sch. Dist.*, 78 PERB 1122 at 3.

If the modification is to a mandatory topic of bargaining, but not “contained in” the parties’ collective bargaining, the employer can implement the change only after giving the certified employee organization notice and opportunity to bargain about it to impasse. *AFSCME Iowa Council 61*, 14 H.O. 8693 at 22; *Int’l Union of Operating Engineers, Local 234 & Chickasaw Cnty.*, 13 H.O. 8600 at 9, note 4; *Neil Kenneth Greenwald, Jr.*, 12 H.O. 8419 at 5; *Mount Pleasant Educ. Ass’n*, 99 H.O. 5894 at 22.

#### Insurance Plan bargaining obligation

The County’s insurance plan was negotiated by the parties as a part of the first CBA effective July 1, 1997. The terms of insurance are contained in sections 12.1 and 12.2 and include provisions on the premium tier structure, which the County changed. Thus, the premium tier structure was “contained in” the CBA. As a result, Winneshiek County was only permitted to implement a change in the premium tier structure if it obtained consent from the certified employee organization. However, the County did not obtain UE’s consent. In fact, when the County contacted UE’s bargaining representative, that representative clearly objected to the change. I therefore conclude that because Winneshiek County failed to obtain UE’s consent before initiating a change in the premium tier structure of the insurance plan as referenced and

contained in the parties' CBA, the County did not fulfill its bargaining obligation and committed a prohibited practice.

#### HSA bargaining obligation

The parties are in agreement that the HSA plan was a voluntary plan; an additional offering by the County and outside the CBA. Therefore, the premium tier structure of the HSA was a mandatorily negotiable matter not contained in the parties' CBA. Thus, to be lawfully implemented this change required that the County give UE notice of the contemplated mid-term change and opportunity to bargain about the change to impasse. Once the County provided notice of the change, UE bore the burden of requesting bargaining on the change. *See, e.g., Int'l Union of Operating Engineers, Local 234*, 13 H.O. 8600 at 9, note 4; *Teamsters Local Union No. 147 & City of Ottumwa*, 00 HO 6004 at 11.

Assuming without deciding whether the employer gave the union's representative timely notice of the change, the record establishes the employer did not give the union opportunity to negotiate the change to impasse. In an email dated April 14, 2014, the union's representative informed the County that they objected to the change but they would like to "work this out" and asked the County's representative how he would like to proceed. There was no response by the County's representative to this email, or any other opportunity to bargain before the County made the change. As a result, the County did not fulfill its bargaining obligation and committed a prohibited practice.

In summary, I conclude that Winneshiek County violated sections 20.10(1) and 20.10(2)(a), (e) and (f) by unilaterally modifying the premium tier structure of the insurance plan contained in the CBA without first negotiating with and obtaining the consent of UE. Further, I conclude that the County violated these same sections when it unilaterally modified the premium tier structure of the HSA without first giving the union an opportunity to bargain the change to the point of impasse.

### Remedy

The central purpose of remedial relief is to place the injured employees in the same economic position as they would have been in had there been no violation of the Act. *See, e.g. Chauffeurs, Teamsters & Helpers, Local Union No. 238 & Clayton Ctny.*, 01 H.O. 6216 at 8; *Sioux City Educ. Ass'n*, 89 H.O. 3778 at 48. Accordingly, a typical remedy in a case where an employer has unilaterally changed employee insurance costs would involve an order to return the employees' insurance costs to the preexisting level and to make the injured employees whole by requiring the employer to reimburse them for the increased costs they incurred due to the unlawful unilateral change. Such a remedy may not be appropriate in this case, however, because here there are other employees who benefited from the subdivided premium tier structure. Ordering a retroactive return to and continuation of the preexisting premium structure would require these employees to reimburse the County for the savings they have realized and to pay an increased premium going forward. In

this case, such a remedial order would result in the County receiving a financial windfall as a result of its commission of the prohibited practices because the County's cost under its agreement with the insurance provider will remain the same. PERB has consistently held that a properly structured remedy makes an employee whole but avoids undue financial burden or penalty or windfall for either party. *Steven Scott & State of Iowa (Dep't of Transportation)*, 13-MA-03 at 4; *Ken Morrow & State of Iowa (Dep't of Transportation)*, 13-MA-02 at 5; *Harrison & State of Iowa (Dep't of Human Services)*, 05-MA-04 at 5. I conclude that the most appropriate course of action is to require the parties to meet in an attempt to reach an agreement as to an appropriate remedy while retaining jurisdiction to conduct a hearing limited to the specifics of the remedy should the parties be unable to reach agreement.

Having concluded that the union has established the County committed the prohibited practices alleged in its complaint, I propose the entry of the following:

#### ORDER

IT IS HEREBY ORDERED that the County cease and desist from further violations of Chapter 20.

The portion of this proposed decision which concluded that the County committed prohibited practices will become final agency action pursuant to PERB rule 621-9.1 unless, within 20 days of the date below, a party aggrieved

by that portion of this decision files an appeal to the Board or the Board, on its own motion, determines to review the proposed decision.

To remedy the violations found, Winneshiek County and UE are hereby ORDERED to meet for the purpose of constructing an appropriate remedy. If such an agreement has not been reached within 20 days of the date below, a hearing will be held on the appropriate remedy.

This Administrative Law Judge retains jurisdiction to specify the precise terms of the remedy, and to enter whatever orders may be necessary or appropriate to address any remedy related matters which may arise. Should the parties fail to reach agreement upon the terms of an appropriate remedy within 20 days of the date below; a hearing will be scheduled and held within the following 30 days to receive evidence relevant to the precise terms of an appropriate remedy. Agency action on the appropriate remedy will not become final until the specifics of the parties' agreement are approved, or until the ALJ's proposed remedial order becomes final in accordance with PERB rule 621-9.1.

IT IS FURTHER ORDERED that Winneshiek County post the attached Notice to Employees, for 30 days from the date the portion of the proposed decision which concluded that the County committed prohibited practices becomes final, in the places customarily used for the posting of information to employees of the County.

DATED at Des Moines, Iowa, this 8th day of May, 2015.

*Susan M. Bolte*  
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Susan M. Bolte  
Administrative Law Judge

File original.

Copies to:

Paul Greufe  
2026 E. 31<sup>st</sup> Street  
Davenport IA 52807

Michael Hansen  
1211 North 5<sup>th</sup> Ave E  
Newton IA 50208

# **NOTICE TO EMPLOYEES**

## **Of WINNESHIEK COUNTY**

### **POSTED PURSUANT TO A DECISION OF THE PUBLIC EMPLOYMENT RELATIONS BOARD**

An Administrative Law Judge of the Iowa Public Employment Relations Board (PERB) has determined that Winneshiek County committed prohibited practices within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(a),(e) and (f). The violations occurred when the County unilaterally modified the premium tier structure of the insurance plan contained in the collective bargaining agreement without first negotiating with and obtaining the consent of United Electrical, Radio and Machine Workers of America (UE) and when the County unilaterally modified the premium tier structure of the HSA plan without first giving the union an opportunity to bargain the change to the point of impasse.

The sections of the Public Employment Relations Act (Chapter 20) found to have been violated provide:

1. It shall be a prohibited practice for any public employer, public employee, or employee organization to refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.
2. It shall be a prohibited practice for a public employer or the employer's designated representative to:
  - a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.
  - ...
  - e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this chapter.
  - f. Deny the rights accompanying certification granted in this chapter.

...

To remedy the violations of Chapter 20, the County has been ordered to cease and desist from continuing or future violations, to post this Notice of Employees, and to meet with the certified employee organization, UE, in order to fashion the remaining elements of an appropriate remedy for the County's unlawful actions.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This Notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

Any questions concerning this Notice or the County's compliance with its provisions may be directed to the Public Employment Relations Board, 510 East 12<sup>th</sup> Street, Suite 1B, Des Moines, Iowa 50319, 515/281-4414.