

2015 through June 30, 2016; and July 1, 2016 through June 30, 2017. I retained jurisdiction in order to specify precise terms of the remedy in the event the parties failed to agree upon a remedy.

Of the three years at issue, the parties agreed upon the remedy for the second and third years, but failed to reach agreement for the first year (July 1, 2014 through June 30, 2015). As a result of the parties' inability to agree upon an appropriate remedy for that year, an evidentiary hearing was held before me in Decorah on July 7, 2015. The purpose of the hearing was to receive evidence and arguments which would enable me to specify the precise terms of a remedy for the first year of the collective bargaining agreement; July 1, 2014 through June 30, 2015. UE was represented by Michael Hansen and the County was represented by Paul Greufe. Having reviewed the record and arguments of the parties, I issue the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

This case commenced with the filing of UE's complaint, which alleged that Winneshiek County had committed prohibited practices when the County unilaterally changed the health insurance premium tier structure that had existed since 1987. The County and employees' cost obligations for dependent health insurance was contained in section 13.2 of the CBA, and consisted of a two tier premium structure based on single or family coverage. Historically an outside carrier determined the annual premium amount and employees paid this amount, in monthly installments, beginning in June of each year. Single

coverage covered the employee and family coverage encompassed the employee and one or more dependents, which included spouse and/or children. Beginning in fiscal year (FY) 10, the County offered an additional health insurance plan; a family Health Savings Account (HSA), which included higher deductibles 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. In FY12, the County modified the HSA plan so that single employees could also select the County's HSA plan on a voluntary basis. The HSA premiums were based on the same two tier premium structure as the CBA insurance plan.

On July 1, 2014, the County deviated from the two tier premium structure to a four tier premium structure for both the CBA and HSA plans. The four tiers were (1) single, (2) family, (3) employee + spouse and (4) employee + children. The monetary effect of the County implementing, albeit illegally, the subdivision of the family premium structure into two additional tiers depended upon the plan (insurance or HSA) and tier the employee selected. Beginning in June 2014, employees who selected family coverage paid more per month in premiums than the monthly amounts they would have paid had the County not illegally subdivided the family premium structure. However, employees who selected employee + children or employee + spouse paid less per month in premiums than they would have paid for family coverage before the premium structural change. The monetary effect is outlined below:

Employees on Family Plan (paid more) ¹	Difference/month	Months	Total
Jeffrey Kuboushek	\$121.00	10	\$1,210.00
Brandon Stille	\$128.87	9	\$1,159.83
			\$2,369.83

Employees on E + kids or E + spouse (paid less) ²	Difference/month	Months	Total
Ronald Krivachek	\$324.00	12	\$ 3,888.00
Matthew Metille	\$283.69	3	\$ 581.07
Jeffrey Miller	\$324.00	12	\$ 3,888.00
Bradley Stevenson	\$212.55	12	\$ 2,550.60
Brandon Stille	\$212.55	3	\$ 637.65
			\$11,815.32

The parties agree that in FY15, two employees (Kuboushek and Stille) paid a total of \$2,369.83 more in premiums and 5 employees (Krivachek, Metille, Miller, Stevenson and Stille) paid \$11,815.32 less in premiums over that same period of time. Employee Stille was included in both calculations as he realized savings for the first three months, June, July and August, 2014, by electing the employee + spouse tier, but after switching back to the family tier he incurred premium costs for the final nine months, September, 2014 through May, 2015. This resulted in Stille paying \$522.18 more in premiums during FY15 than he would have had he elected family coverage under the two tier premium structure. There was no monetary effect upon the County as it

¹ County Exhibit #1 and Union Exhibit #6

² Union Exhibit #1. The caption in this exhibit was incorrect as it was captioned E + Family.

continued to contribute \$680 per month per employee. Employees with single coverage were also unaffected.

The parties disagree as to the appropriate remedy for the first year (FY15). UE maintains that two employees (Kuboushek and Stille) sustained “damages” during the 2014-15 contract year and as a result the union is seeking reimbursement to those two employees for a total of \$2,369.83. As to those employees, including Stille, who benefited from the additional premium tiers, it is the Union’s position that these employees should not be required to pay the County for any savings realized when the family premium structure was subdivided as these were the choices offered by the County.

The County has advanced several alternative remedies, all of which require the County to reimburse the two employees for the increased costs they incurred due to the unilateral change, but also require employees, including Stille, to compensate the County in some manner for the savings the employees realized by the implementation of the additional tiers.

The parties are in agreement as to the second and third years of the collective bargaining agreement. This agreement provides that:

It is understood that the Winneshiek County Board of Supervisors shall offer to the Secondary Roads employees represented by UE/IUP the plan design offered in FY14. (See attached example).³ This plan will become the “contained in” plan as it relates to the collective bargaining language relating to health insurance.

It is understood that the current and future premium rates are set by the health care provider and are not part of the negotiations.

³ Example not attached.

It is understood that the Winneshiek County Board of Supervisors reserves the right to offer additional plans to the employees not affiliated with UE/IUP without offering the same plans to the employees represented by UE/IUP, unless it is in violation of any State or Federal statute.⁴

CONCLUSIONS OF LAW

Although the parties disagree as to the remedy for the first year of the collective bargaining agreement, the parties have entered into an agreement relating to an appropriate remedy for the second and third years of the CBA. Having reviewed this agreement, I find that it comports with my proposed decision and conclude that the provisions for the second and third year of the CBA constitute an appropriate remedy within the meaning of Iowa Code section 20.1(2)(c). For the reasons set out below, I conclude that the appropriate remedy for the first year, FY15, requires the County to reimburse the two employees who incurred higher premiums due to the illegal insurance change.

As a result of the County's illegal actions, employees who elected the family tier, in the first year of the CBA, were required to pay more per month than the amount they would have paid but for the illegal change. The parties are in agreement that employee Kuboushek paid an additional \$121.00 per month for ten months for a total overpayment of \$1,210.00 and that in order to remedy the harm done to Kuboushek in FY15, this employee should be reimbursed \$1,210.00.

The parties are in disagreement as to (1) the amount of reimbursement for employee Stille as he realized savings for the first three months, but

⁴ Union Exhibit #1a.

incurred additional costs for the remaining nine months, and (2) whether the other four employees who realized savings due to the unlawful implementation of the additional two tiers to family insurance should pay the County, and if so, what amount.

UE maintains that Stille should be reimbursed in the same matter as Kuboushek; thus reimbursed for the increased costs he incurred due to the County's unlawful change to the family premium. UE does not believe that any employee (including Stille) who saved money by electing one of the illegal family tiers (employee + children or employee + spouse), should be required to pay the County for the savings realized. UE argues that employees made their selections based upon the County's decision to unlawfully change family insurance by unilaterally subdividing family insurance into tiers. UE further argues that requiring employees to pay the County for savings they realized would result in a financial windfall to the County as the County would have made the same premium contribution irrespective of whether there were two tiers (single and family) or four tiers (single, family, employee + children, or employee + spouse).

The County continues to argue that the unilateral change to the County's premium structure as a whole benefited more employees than it adversely affected. The County had made this assertion in the initial evidentiary hearing on the merits. However, this hearing was specifically limited to the issue of an appropriate remedy for the County's unlawful actions and thus the County's argument is not given any weight. *See e.g., Pub. Prof'l & Maint. Emps., Local*

2003, *IBPAT & Marshall Cnty.*, 86 PERB 3058 & 3085 at 5 (Ruling). The County's remedial theory focuses on the sentence in my Proposed Decision and Order which states: "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."⁵ The County's theory pays particular attention to the phrase "for either party." As a result, the County has advanced three alternative remedies⁶ that all focus upon preventing employees from receiving what it has improperly characterized as a "financial windfall" as well as minimizing the impact upon the County so it does not incur a financial penalty.

A properly designed remedial order seeks to place the injured employee in the same economic position they would have been in had there been no violation of the Act. *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. Accordingly, where an employer has unilaterally changed employee insurance costs, a typical remedy involves an order to return the employee's insurance costs to the preexisting level and make injured employees whole by requiring the employer to reimburse employees for the increased costs due to the unilateral change. *See e.g., Chauffeurs, Teamsters & Helpers, Local Union No.*

⁵ *United Electrical, Radio & Machine Workers of America and Winneshiek Cnty.*, 15 H.O. 8782 at 22.

⁶ The three remedies are: (1) Require employees to pay the County for savings incurred. (2) Require County to reimburse employee Stille the difference between the costs incurred for nine months minus the amount saved for three months. (3) Pro-rate the amount employees would pay the County so that employees were not financially impacted.

238 & Clayton Cnty., 01 H.O. 6216 at 8; *Pub. Prof'l & Maint. Emps., Local 2003 & Jones Cnty.*, 91 PERB 3794; *Sioux City Educ. Ass'n. & Sioux City Cmty. Sch. Dist.*, 89 H.O. 3778 at 48.

One purpose of ordering a return to the *status quo* is to ensure the offending party is precluded from enjoying the benefits of its unlawful act. *Herman Sausage Co.*, 43 LLRM 1090, 1093 (1958). In certain cases, however, where an unlawful unilateral change has occurred, the factual circumstances dictate a remedial order different from the regular *status quo* remedy in order to effectuate the purpose of the statute. *Id.*; *Lewis Cnty. Corrections Guild v. Lewis Cnty.*, Decision 10571-A (Washington Public Employment Relations Commission, 2011). Such are the circumstances in this case.

To require employees to pay the County for their realized savings would unfairly punish employees for the County's unlawful actions and unfairly reward the County. The employees made their insurance selection based upon the choices the County had given them. Further, the County would have contributed \$680 per month, per employee, regardless of whether the County offered the *status quo* plan 2 tier structure (single or family) or the four tier structure illegally implemented by the County. Thus, there was no financial impact to the County to return to the *status quo* since it did not cost the County any additional money for the 4 tier structure. The County would, instead, receive a "windfall" or financial benefit if it received payments from employees who realized premium savings. Ordering employees to pay the

County for the savings they incurred would in effect benefit the County for having committed the prohibited practice.

As a result of the County's illegal implementation of the additional two tiers, Stille paid more for the same coverage and thus shall be reimbursed \$1,159.83, which is the increased costs he incurred due to the County's unlawful change to the premium structure. Stille shall not pay the County for the savings he received as a result of enrolling in the employee + spouse tier. As to the other four employees, Krivachek, Metille, Miller, and Stevenson, these employees will also not pay the County.

PERB has previously awarded interest where the employer unilaterally changed the insurance provisions contained in the parties' CBA. *See e.g., Pub. Prof'l & Maint. Emps., Local 2003*, 91 PERB 3794. In order for Kuboushek and Stille to be placed in the same economic position they would have been in had no prohibited practice occurred, the County shall pay interest on the two employee's overpayment of insurance premiums. Including interest as a part of the remedy, however, requires a determination as to the date from which the interest accrues and the rate of accrual. *Id.* Stille paid the larger premium amounts for 9 months beginning in September, 2014 and ending in May, 2015. Although the record does not contain evidence as to the dates Kuboushek paid the larger amounts, it is known that he paid 10 months of larger premiums and May, 2015 was the last date of the increased premium for all employees. Consequently, the interest to be paid by the County to these two employees has been calculated commencing on the dates the employees started making their

monthly overpayment and for the time span addressed above. Concerning the rate of interest, a previous PERB decision has applied the same rate as applied by the Iowa District Courts for judgements as established by Iowa Code section 668.13(3). See e.g., *Pub. Prof'l & Maint. Emps., Local 2003*, 91 PERB 3794 at page 29 of H.O. decision. That rate is 2.38%.⁷ Thus, Stille will be reimbursed \$1,159.83 plus simple interest of \$20.70 for a total of \$1,180.53. Kuboushek will be reimbursed \$1,210.00 plus simple interest of \$22.80 for a total of \$1,232.80.

Based upon the foregoing findings of fact and conclusions of law, together with those contained in the proposed decision and order issued on May 8, 2015, I issue the following:

ORDER

The County shall reimburse employees for the additional insurance costs incurred by these employees as a result of the County unilaterally modifying the premium tier structure of both the insurance plan contained in the CBA as well as the HSA plan. The County shall reimburse Kuboushek in the amount of \$1,232.80 and shall reimburse Stille in the amount of \$1,180.53 which includes simple interest calculated at the rate of 2.38%. The reimbursements to these employees shall be made not later than thirty (30) days following the date of this order.

⁷ Iowa Code section 668.13(3) provides in relevant part: "Interest shall be calculated as of the date of judgement at a rate equal to the one-year treasury constant maturity published by the federal reserve in the H15 report settled immediately prior to the date of the judgement plus two percent. The one-year treasury constant maturity index established by the State Court Administrator on September 15, 2015 was .38 percent."

For the second and third years of the CBA, the parties will adhere to the terms of the agreement set out in the Findings of Fact.

DATED at Des Moines, Iowa, this 30th day of September,
2015.



Susan M. Bolte
Administrative Law Judge

File original.

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