
STATE OF MINNESOTA
IN COURT OF APPEALS

WEST ST. PAUL FEDERATION OF TEACHERS,

Respondent,

v.

INDEPENDENT SCHOOL DISTRICT NO. 197, WEST ST. PAUL, MINNESOTA,

Appellant.

RESPONDENT'S BRIEF AND APPENDIX

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LEGAL ISSUES

1. **Whether Respondent was entitled to summary judgment on its unfair labor practice claim?**

The District Court Held: Yes. Appellant's actions in unilaterally changing a term and condition of employment as defined by PELRA constituted an unfair labor practice.

- a. **Whether Appellant can properly argue first on appeal that the parties' collective bargaining agreement permitted its unilateral change.**

The District Court did not address this issue, and it was not raised at any of the hearings.

- b. **If Appellant's argument is properly before this Court, does the language actually allow Appellant's actions?**

The District Court did not address this issue, and it was not raised at any of the hearings.

2. **Whether Respondent was entitled to summary judgment on the issue of the unilateral change to the health insurance plan's aggregate value?**

The District Court Held: Yes. Appellant's unilateral changes to Respondent's health insurance plan constituted a reduction in the plan's aggregate value.

3. **Whether Respondent was entitled to damages calculated as the difference in premiums paid by Appellant?**

The District Court Held: Yes. The proper calculation of damages was the difference between what Appellant would have had to pay for premiums if it had not made the unilateral change and what Appellant actually paid for premiums.

4. **Whether Appellant's unconstitutional delegation argument was properly before the District Court, and if so, whether Minnesota Statutes § 471.6161 (2004) unconstitutionally delegates legislative authority when it requires the parties to mutually negotiate changes to their current agreement.**

The District Court Held: No. Because Appellant waited until the case was decided to raise this issue, which was untimely, it would be improper for the Court to grant the requested relief. Furthermore, although the Court barred the claim on timeliness grounds, it also reached the merits and concluded that the statute did not unconstitutionally delegate legislative authority because the statute did not result in Respondent being delegated law making authority.

5. **Whether Appellant's Collyer Wire arbitration argument was properly before the District Court, and if so, whether the District Court properly refused to vacate its unfair labor practice finding and order the parties to arbitration.**

The District Court Held: No. Appellant's request for arbitration was untimely and therefore, would not save time, expense or judicial resources. Furthermore, Respondent should not be held to the contract's arbitration provision when Appellant violated that same contract by making a unilateral change.

Apposite Cases:

Education Minnesota-Greenway, Local 1330 v. Independent School District No. 316, 673 N.W.2d 843 (Minn. App. 2004), *review denied* (Minn. Apr. 20, 2004).

Apposite Statutory Provisions:

MINN. STAT. § 179A.13 (2004)

MINN. STAT. § 471.6161 (2004)

STATEMENT OF THE CASE

On January 28, 2004, Respondent served a summons and complaint on Appellant. Respondent alleged three counts of statutory violations and requested four main items of relief: 1) For a judgment declaring that Appellant committed an unfair labor practice (ULP) in violation of the Minnesota Public Employee Labor Relations Act (PELRA), specifically Minnesota Statutes

§ 179A.13, subdivisions 2(1) and (5) (2004), and enjoining Appellant from further committing same; 2) For an order requiring Appellant to reinstate the group health insurance plan that was in effect prior to the unilateral changes made by Appellant on May 19, 2003, which reduced the aggregate value of the health insurance plan in violation of Minnesota Statutes § 471.6161; and 3) For an award of damages in an amount equal to the value of the difference in Appellant's premium costs between retaining the previous health insurance plan and moving to the new health insurance plan.

On September 17, 2004, the parties appeared before the Honorable Richard G. Spicer in Dakota County District Court on cross motions for summary judgment. Following that motion hearing, Judge Spicer issued an Order and Findings granting partial summary judgment for Respondent on September 27, 2004. Judge Spicer set the issue of damages on for trial. In granting Respondent's motion, the District Court determined that Appellant's actions violated Minnesota Statutes § 179A.13 (unfair labor practice) and Minnesota Statutes § 471.6161 (no unilateral reduction to the aggregate value of health insurance).

The parties then appeared in trial before the Honorable Robert R. King, Jr. who heard the issue of damages on December 15, 2004. On January 12, 2005, the District Court filed subsequent Findings, Conclusions and an Order awarding damages. Judge King determined that damages should be calculated, as Respondent had requested, as the amount "equal to the difference between what

the district would have paid in premiums under the group health plan prior to the unlawful change in the plan and the premiums it did pay for the revised plan.” Appellant was also ordered to continue to pay these damages until the previous health plan was restored.

On February 28, 2005, Appellant moved the District Court to make four additions to its January 12, 2005, Findings of Fact. Appellant submitted a memorandum in support of its motion on March 16, 2005, and Respondent submitted a reply to this memorandum on April 1, 2005. The District Court heard arguments on April 8, 2005. Judge King signed his final Order and Memorandum on April 28, 2005, denying Appellant’s requests for amended Findings of Fact, and Judgment was entered on April 29, 2005. Appellant filed its Notice of Appeal on May 23, 2005.

FACTS

Respondent West St. Paul Federation of Teachers (the Union) is the exclusive representative of all teachers employed by Appellant Independent School District No. 197 (the District). Both parties are therefore governed under the terms of Minnesota Statutes Chapter 179A, also known as the Public Employment Labor Relations Act (PELRA).

The parties were involved in negotiations over a new collective bargaining agreement during the spring and summer of 2003. (Deposition of MaryAnn

Thomas¹ at 52; Appellant's Appendix² at A-117;). During the 2002-03 school year, there were two health plan options available to teachers, Medica Choice and Medica Elect. (A-2 - A3; Huenecke Testimony³ at 17-18; Thomas Dep. at 7; Ap. App. at A-100). Medica Choice was the more costly of the two programs, but the underlying payment structures of the two plans were identical. Id. (Thomas Dep. at 7). The difference between the two plans involved the doctors in the networks of each plan. Id. Under the Elect plan, a person was limited in the number of doctors that could be reimbursed under the plan. (Id. at 8; Ap. App. at A-101). Under the Choice plan, the network of doctors was almost unlimited. Id.

On May 19, 2003, while the parties were in the midst of negotiations for the 2003-05 successor agreement, Appellant school board (Board) passed a motion unilaterally changing the benefit structure of the Medica Choice health option then in effect for the teachers in the District. Id. The Board based its action on a recommendation by three of the District's administrators. (Respondent's Appendix⁴ at A-21 – A22; Thomas Dep. at 17-18). These administrators had met with a District insurance committee, which for the most part agreed with them. This insurance committee, however, was only advisory and had no independent

¹ Hereinafter, references to the Deposition of MaryAnn Thomas will be designated as "Thomas Dep. at ___."

² Hereinafter, references to Appellant's Appendix will be designated as "Ap. App. at ___."

³ Hereinafter, references to Testimony will be abbreviated as "Test."

⁴ Hereinafter, references to Respondent's Appendix will be designated as "A-___."

implementation authority. (Id. at A-21, A-25; Thomas Dep. at 18, 61). The Board's new plan involved the acceptance of a 5% increase to both the Medica Choice and Medica Elect health plans, rather than the scheduled 11.3% increase. This savings was available only by increasing out-of-pocket expenses in the Choice plan. (District Court 1/12/05 Memorandum at 2; Ap. App. at A-40).

Respondent immediately objected to the Board's unilateral action, and the parties never reached agreement on the health insurance changes (although the changes were imposed). (A-24 (60), A-28 (65); Thomas Dep. at 55, 60, 65; Ap. App. at A-119 (p.55)). Health insurance was being bargained at the negotiations table at the time of the unilateral change, and the issue continued to be discussed in bargaining. (Thomas Dep. at 56; Ap. App. at A-120). The Union, however, never agreed to the District's imposed change.

There were four changes made to the benefits offered in the new Choice plan. Each of the changes resulted in the benefit to the employee being reduced: out of pocket maximums went from \$1,000 to \$1,200; both office visit and emergency care co-pays went from \$10 to \$15; and inpatient hospitalization coverage decreased from 100% to 80%. (District Court 9/27/05 Memorandum at 2; Ap. App. at A-29).

As a result of the unilaterally imposed changes, the District paid out 6.3% less in premiums for the group health plan that it otherwise would have been obligated to pay. (District Court 1/12/05 Memorandum at 3; Ap. App. at A-41).

ARGUMENT

I. Standards of Review.

This Court is being asked to review a district court's order for partial summary judgment; its finding of damages; and its procedural determinations.

A. **This Court Reviews Summary Judgment with Erroneous Construction or Application of Law Standard.**

On appeal from summary judgment, the Court must determine whether there are any genuine issues of material fact, and whether the District Court erred in its application of the law. Brookfield Trade Center, Inc. v. Ramsey County, 609 N.W.2d 868, 873-74 (Minn. 2000) (citation omitted). The District Court here ruled on cross motions for summary judgment, and it has been undisputed that there are no genuine issues of material fact. In a similar case where the facts were not in dispute and the appellant was contesting the district court's conclusions of law, this Court held: "Conclusions of law will be overturned only upon a determination that the trial court has erroneously construed and applied the law to the facts of the case." Dehn v. Comm'r of Pub. Safety, 394 N.W.2d 272, 273 (Minn. Ct. App. 1986).

B. **This Court Reviews Findings of Fact with a Clearly Erroneous/Abuse of Discretion Standard.**

"On appeal from a judgment, this court's scope of review is limited to deciding whether the trial court's findings are clearly erroneous and whether it erred in its legal conclusions." Citizens State Bank of Hayfield v. Leth, 450 N.W.2d 923, 925 (Minn. Ct. App. 1990). In an appeal from a bench trial, this

Court does not reconcile conflicting evidence, but gives the district court's factual findings great deference and will not set them aside unless they are clearly erroneous. Porch v. General Motors Acceptance Corp., 642 N.W.2d 473, 477 (Minn. Ct. App. 2002), *review denied* (Minn. Jun 26, 2002).

When reviewing mixed questions of law and fact, the appellate courts will correct "erroneous applications of law, but accord the trial court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard." Rehn v. Fischley, 557 N.W.2d 328, 333 (Minn. 1997). "Therefore, a trial court's finding of fact will be reversed only if, upon review of the entire evidence, a reviewing court is left with the definite and firm conviction that a mistake has been made." Gjovik v. Strobe, 401 N.W.2d 664, 667 (Minn. 1987). "A clearly erroneous finding is one that is palpably and manifestly against the weight of the evidence." Wear v. Buffalo-Red River Watershed Dist., 621 N.W.2d 811, 815 (Minn. Ct. App. 2001), *review denied* (Minn. May 15, 2001). "In actions tried without a jury, if the trial court's findings are reasonably supported by the evidence as a whole, or not manifestly contrary to the weight of the evidence, the findings must be affirmed." Foster v. Bergstrom, 515 N.W.2d 581, 585 (Minn. Ct. App. 1994). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn.R.Civ.P. 52.01 (2005). As the Supreme Court has explained, great deference is accorded "a trial court's findings of fact because it

has the advantage of hearing the testimony, assessing relative credibility of witnesses, and acquiring a thorough understanding of the circumstances unique to the matter before it.” Hasnudeen v. Onan Corp., 552 N.W.2d 555, 557 (Minn. 1996).

C. This Court Reviews Statutory Interpretation with a De Novo Standard.

To the extent the District Court’s application of the law involved statutory construction, it would be subject to de novo review and reversal only for errors of law. Brookfield, at 873-74.

D. This Court Reviews Constitutionality of Statutes with a Presumption of Constitutionality Standard.

While the constitutionality of a statute is a question of law which this Court may review de novo, statutes are presumed constitutional. Mid-City Hotel Ass’n v. Hennepin County Bd. of Comm’rs, 516 N.W.2d 574, 576 (Minn. App. 1994) (citations omitted). “An act will not be found unconstitutional unless its invalidity is clear or it is shown beyond a reasonable doubt to violate the constitution. We declare a law unconstitutional only if absolutely necessary, and then only with great caution.” City of Richfield v. Local 1215, Int’l Ass’n of Firefighters, 276 N.W.2d 42, 45 (Minn. 1979) (citations omitted). “Statutes are to be construed so as to uphold their constitutionality.” Minnesota Energy & Economic Dev. Auth. v. Printy, 351 N.W.2d 319, 338 n. 1 (Minn. 1984). As the United States Supreme Court observed, when a state legislature acts, the public interest has been

declared in terms which are “well-nigh conclusive.” Id. (quoting Berman v. Parker, 438 U.S. 26, 32 (1954)).

II. Appellant’s unilateral change to the health care plan was an unfair labor practice under PELRA.

Because health insurance is a mandatory subject of bargaining for public employers, Appellant committed an unfair labor practice by implementing a change unilaterally without bargaining.

A. Appellant illegally refused to bargain with the Union before imposing its unilateral change to the health care plan.

Appellant committed an unfair labor practice by unilaterally implementing the change in the Medica Choice health care plan. Public employers are obligated to meet and negotiate in good faith with the exclusive bargaining representative of their employees over the terms and conditions of employment. MINN. STAT. § 179A.07, subd. 2 (2004); see also MINN. STAT. § 179A.03, subd. 11 (2004) (defining “meet and negotiate” as meeting with the “good faith intent of entering into an agreement on terms and conditions of employment.”). Health insurance benefits are undeniably a term or condition of employment. Terms and conditions of employment are defined under PELRA to include “the hours of employment, the compensation therefor including fringe benefits.” MINN. STAT. § 179A.03, subd. 19 (2004). Under PELRA, it is an unfair labor practice for a public employer to refuse to bargain over these mandatory subjects. MINN. STAT. § 179A.13, subd. 2(5) (2004).

Unilaterally imposing a change is a refusal to bargain, and is therefore, prohibited. This principle was most recently reiterated in Education Minnesota-Greenway, Local 1330 v. Indep. Sch. Dist. No. 316, 673 N.W.2d 843, 851 (Minn. App. 2004), *review denied*, (Minn. April 20, 2004). The underlying circumstances in Greenway are indistinguishable from the instant matter for purposes of legal analysis. In Greenway, the public employer unilaterally froze contributions to the teachers' health care plan (which reduced the payment percentage required by the collective bargaining agreement (CBA) in effect) while the parties were in the midst of bargaining over a new contract. Id. at 846. The Court of Appeals held: "ISD's unilateral freeze on wages and benefits [a change to the terms and conditions of employment] violated its statutory duty to meet and negotiate in good faith under PELRA, and, therefore, constituted an unfair labor practice." Id. at 851-52.

In the instant matter, there is no question that the parties were in the midst of negotiations; there was a material, unilateral change to one of the health care plans; and the union objected to the change, but the employer implemented it anyway. The employer's actions were a textbook case of failing to negotiate in good faith, and there was no justifiable reason under the law for its actions.

Further, even after the expiration of a CBA, an employer may not unilaterally implement changes to the terms and conditions of employment without first bargaining in good faith to impasse. Central Lakes Educ. Ass'n v. Indep. Sch. Dist. No. 743, Sauk Centre, 411 N.W.2d 875, 881 (Minn. App. 1987);

see also Hinson v. NLRB, 428 F.2d 133, 136 (8th Cir. 1970). Until the parties reach impasse, the employer is obligated to “maintain the status quo.” Powell v. Nat’l Football League, 930 F.2d 1293, 1300 (8th Cir. 1989). Failure to do so constitutes a prima facie violation of the employees’ collective bargaining rights and may constitute an unfair labor practice. Foley Educ. Ass’n v. Indep. Sch. Dist. No. 51, 353 N.W.2d 917, 920-21 (Minn. 1984); Minnesota Teamsters Pub. and Law Enforcement Employees Union, Local 320 v. Anoka County, 365 N.W.2d 372, 374 (Minn. Ct. App. 1985).

In determining whether the implementation of a unilateral change constitutes an unfair labor practice, the crucial inquiry is whether the employer’s action deprives the union of its right to negotiate a subject of mandatory bargaining. Foley, 353 N.W.2d at 920. The District here unilaterally changed the terms of the health care plan in May of 2003 without allowing the Union to negotiate over the issue; this deprivation was unlawful. See Id. at 921 (concluding that “an employer’s unilateral change of a term and condition of employment circumvents the statutory obligation to bargain collectively ... in much the same manner as a flat refusal to bargain,” citing NLRB v. Katz, 369 U.S. 736, 743, 82 S.Ct. 1107, 1111 (1962)).

Regardless of whether or not there was a change in the aggregate value (addressed below), there was still a violation of PELRA when the District unilaterally implemented a change to the health insurance coverage. (See District Court’s September 27, 2004, Memorandum at 4: “Even if the Court had

concluded that the change in the health insurance program was not an aggregate reduction in the value of benefits, PELRA does not make such an exception from its bargaining requirements.”).

B. Appellants’ action violated PELRA’s prohibition against compelling a party to agree to a proposal.

PELRA notes that the employer’s obligation to “meet and negotiate”: “does not compel either party to agree to a proposal or to make a concession.” MINN. STAT. § 179A.03, subd. 11; MINN. STAT. § 179A.07, subd. 2. Yet by its unilateral implementation of changes to its health care plan, Appellant School District did exactly that: it compelled the exclusive representative to accept those reduced health benefits. Because PELRA prohibits such one-sided decisions, Appellant’s action should not be allowed to stand.

C. Appellants are prohibited from raising a novel legal argument on appeal, and therefore, this Court should not consider Appellant’s argument that the collective bargaining agreement permitted its unilateral change.

Appellant’s new CBA defense was neither pleaded nor litigated prior to Appellant’s submission of its Court of Appeals brief. (See, e.g. District Court September 27, 2004, Memorandum at 3: Appellant “hangs its hat on the argument that the change in the structure of the Choice program did not constitute a reduction in the ‘aggregate value of benefits’ as referenced in the statute;” and at 4: “they rest their argument on the claim that this was not a subject of mandatory bargaining because there was not an aggregate reduction in the value of benefits (in essence, relying on their MINN. STAT. § 471.6161

argument;” and District Court Memorandum 4/28/05 at 3, denying Appellant’s requested amendment to specifically reference the CBA’s grievance procedure, with absolutely no mention of health insurance language). Ap. App. at A-30, A-31, A-91).

It would be prejudicial for this Court to consider Appellant’s new defense at this time because Respondent has not had a chance to submit evidence indicating how the language has been interpreted over the history of the CBA or evidence about the parties’ intentions at the time it was negotiated. The language cannot be interpreted in isolation.⁵

It is a well-settled issue in appellate practice that issues must first be raised in the district court in order for them to properly be in front of the appellate court. “We need not address appellant’s arguments regarding the constitutionality of [the statute] . . . because we will not review matters not properly raised at the trial court level and raised for the first time on appeal.” State v. Decker, 371 N.W.2d 256, 257 (Minn. Ct. App. 1985) (citation omitted); see also Automotive Merchandise, Inc. v. Smith, 212 N.W.2d 678, 679-80 (Minn. 1973) (holding that the “more fatal defect” for defendants was their failure to raise, challenge, or litigate the issue in the district court and instead wait until the

⁵ It should be noted that Appellant attached the CBA language at issue for the first time in its post-trial motion to the District Court. Respondent objected to the inclusion of evidence outside the scope of the trial. (Ap. App. at A-85) The District Court did not specifically rule on this objection as it denied all of Appellant’s motions.

appellate court to raise it for the first time). “A reviewing court must generally consider ‘only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.’” Thiele v. Stich, 425 N.W.2d 580, 582 (Minn. 1988) (citations omitted). “Nor may a party obtain review by raising the same general issue litigated below but under a different theory.” Id. (citations omitted). Thus, Appellant here should be prohibited from raising this new defense on appeal.

D. Even if the Court considers the CBA language, it should be read to include the statutory protections of Minnesota Statutes § 471.6161.

Given that this issue was never raised in the District Court, it is troubling that Appellant asserts that this is an appropriate issue on appeal. It is even more disturbing, however, that Appellant makes the bold statement that the District was “mindful of its collectively bargained-for right to choose health insurance plans for the Teachers.” (Appellant’s Brief at 15)⁶. There was absolutely no evidence presented at trial about this language, and certainly no indication that the District had any opinion about it, much less relied on it, until Appellant’s brief. It seems difficult to believe it could be characterized as “plain” or “unambiguous” language if Appellant did not even raise the argument until this appeal. (Ap. Brief at 27).

⁶ Hereinafter, references to Appellant’s Brief will be designated as “Ap. Brief at ___.”

Furthermore, the only evidence the Court has on the parties' behavior while governed by the CBA is Mr. Huenecke's testimony that in 1999, the West St. Paul Federation of Teachers had the opportunity to vote over whether there should be a change to a copay or to another insurance carrier. (A-1 – A-3; Huenecke Test. at 14-16). Mr. Huenecke also testified that in approximately May of 2002, during the 2001-03 contract negotiations, the members of the bargaining unit voted whether or not to accept Medica as a less expensive health insurance provider. (A-2 – A-3; Huenecke Test. at 17-18). If the District had had the contractual authority to add the copay or switch to Medica unilaterally, it most likely would have exercised it in both of those situations. Clearly the parties behaved in the past as though health insurance changes must be negotiated.

Even if, for the sake of argument, the language at issue permitted Appellant to select a new carrier or new policy, it does not expressly waive the additional statutory protections found in Minnesota Statutes § 471.6161. In fact, Appellant could have this right, subject to the limitations of the statute. In other words, changes could be made as long as the aggregate value of the plan is left intact.

The absence of a clear waiver of the statutory protection provided by PELRA and Minnesota Statutes § 471.6161 means the Union retains their protections. As the Minnesota Supreme Court held in General Drivers: “we agree with the Federal court that any waiver of the statutory right to bargain over a mandatory subject of bargaining must be in clear and unmistakable language.

See, N L Industries, Inc. v. N.L.R.B., 536 F.2d 786, 788-89 (8 Cir. 1976).”

General Drivers Union Local 346 v. Indep. Sch. Dist. No. 704, 283 N.W.2d 524, 527 (Minn. 1979). Because in this case there is no clear waiver of Respondent’s right to negotiate over a change to a term and condition of employment (health insurance), Appellant should be required to negotiate over any desired changes instead of simply imposing them.

E. The District’s unilateral change to health insurance was not justified by its savings or by any salary increase negotiated at the bargaining table.

Appellant’s argument that the savings realized by the change somehow justified its unilateral action is misleading.⁷ There is no acknowledgement of the remaining fact that those same savings could have been realized through the negotiations process. As Appellant pointed out, the majority of non-administrator members on the health insurance committee who voted agreed to the proposal, and Respondent may indeed have agreed to go along with the recommendation. However, the District prohibited it from ever having that opportunity.

⁷ Although it is basically irrelevant, it is unclear how Appellant calculated the \$220,000 figure it claims was saved (and placed on salary schedule). In the chart it cites to, the costs for Medica Choice would have been \$3,394,442.28 if the District would have retained the Choice plan that was in place. (Ap. App. at A-129). This is a total figure for all of the District’s employees, not subdivided for the teachers represented by Respondent. (A-26 – A-27; Thomas Dep. at 63-64). Appellant also used the total costs and failed to take into consideration the portion of the premiums that is paid by the employee. Even using its artificially inflated number and subtracting the corresponding cost figure for the “new” Choice plan (\$3,229,811.83) one gets \$164,630.45, which is quite a bit less than \$220,000.

This cost-savings argument is also disingenuous. Appellant argues on one hand that the same pot of money is available for teacher negotiations, no matter how it is divided between salaries and health insurance. If negotiations occurred as Appellant asserts they did, then the teachers received a greater salary increase because of the cut they took in health insurance, and the District spent the same amount of money it would have spent if there was no reduction in health insurance but the salary increases were lower. If the District was going to spend the same total amount of money anyway, it is even more outrageous that it would unilaterally change the health care plan. Most importantly, however, is that this entire argument is irrelevant to the real issue of whether the District had the authority to make a unilateral change to the health care plan.

Similarly, the District's attempt to justify its actions by claiming that because the teachers pay five percent of their premiums for employee-plus-one and for family coverage, that they received the benefit of the District's unilateral decision, is misguided. There may have been a small savings on their five percent portion, but many of those same employees ended up with a health care plan that provided less coverage. These additional expenses could easily outweigh any small premium savings. Obviously, the insurance company is able to charge less because it pays less in benefits; the consumer must then make up for the lower coverage in increased out-of-pocket expenses.

It is also completely illogical for Appellant to assert that somehow the salary settlement reached for the 2003-05 contract compensated the teachers for

“any loss in benefits.” (Ap. Brief at 17). At the time this change was imposed, Appellants had no idea who would take what insurance or have what claims. Furthermore, when it was bargaining over salaries, Appellant also knew that Respondent intended to pursue legal action over the change, so its imposed plan was subject to change by the Court. (A-23 – A-24, A-29, A-31 – A-32; Thomas Dep. at 59-60, 66, 74-75). Certainly, it considered the possibility of the health insurance being restored when evaluating its salary proposal.

Appellant made this unilateral change in May, before the 2001-03 contract had even expired. (A-14; Thomas Test. at 73). Ms. Thomas testified that the administrators used the insurance committee to see “where we thought we could get some support from employees and employee groups.” (A-19; Thomas Dep. at 16). Each bargaining unit had a representative, but there was no specific or direct tie to negotiations. (A-18; Thomas Dep. at 10).

Although Ms. Thomas testified that the District discussed the “tradeoff” concept in closed session and had the “opinion” that money was available for salaries because of the decrease in health costs, the District presented no evidence that that was ever conveyed to the Union. (A-15; Thomas Test. at 74-75). Mr. Huenecke testified that he was unaware of any tradeoffs for the reduction in the benefit levels for the Choice plan. (A-4; Huenecke Test. at 21). In addition, although Mr. Huenecke testified that there is a give-and-take between putting money toward health insurance and toward salaries, there was never any evidence presented that this was automatically an equal exchange.

Regardless of relationship between the two most costly negotiations items (salary and health care), the problem at issue here is that the Union was not allowed any input into how the health insurance side would be adjusted. (A-15; Thomas Test. at 74). The Union was only allowed to negotiate for salary. (See A-13; Dehnert Test. at 67 indicating that he would prefer to pay the higher premiums than have the unknown cost of the higher copays).

F. The Insurance Committee did not have the authority to make a decision on Respondent's behalf; bargaining was still required.

The Insurance Committee used by the parties was a "sounding board" only and did not have any negotiations authority. (A-24 – A25, A-13a; Thomas Dep. at 60-61; Thomas Test. at 70.) Although members of Respondent Union served on the committee, they had no authority to bind the Union itself. (See Thomas Dep. at 61: "It became apparent to us that the insurance committee in the spring really didn't have any authority in the teachers' mind."); and at 10 (stating that the formation of the insurance committee was not contained in the CBA).

Furthermore, the committee only had five out of the fifteen non-administrators voting for the new plan – this does not seem to be a conclusive recommendation. (A-22; Thomas Dep. at 45). Although it is possible that the Union would have agreed to the change, it was never given the chance to do so through the appropriate process. Appellant's previous counsel even acknowledged this, stating: "While the consideration and informal vote of the insurance committee is certainly not the equivalent of collective bargaining, it

does demonstrate the District's intentions to contain costs while maintaining the aggregate level of benefits for its employees." (Ap. Appendix at A-26).

Unfortunately, it is difficult to reduce costs without reducing the aggregate value of benefits.

G. Appellant's alleged economic circumstances are irrelevant to the issue of whether or not there was a unilateral change.

Although Appellant alleged in its brief that health care premium increases have created difficulties for the District, regardless of the costs that have plagued employers and employees nationwide, the District is still subject to PELRA's requirement that it negotiate over cost-saving measures. Furthermore, Appellant's assertion that "District revenues have remained stagnant" is not in the record and is arguably untrue (Ap. Brief at 5).

III. The unilateral change in the health care plan violated the express terms of Minnesota Statutes § 471.6161.

Minnesota Statutes § 471.6161, subdivision 5 states:

[t]he aggregate value of benefits provided by a group insurance contract for employees covered by a collective agreement shall not be reduced, unless the public employer and exclusive representative of the employees of an appropriate bargaining unit, certified under section 179A.12, agree to a reduction in benefits.

There is no question that Appellant's actions violated this statute. The aggregate value of the benefits provided by the "group insurance contract" was reduced. Four reductions were made unilaterally to the Choice plan (one of the two options under the District's group insurance contract). The uncontroverted evidence demonstrated that each of these changes reduced the value of the applicable

benefit: The out-of-pocket maximums went from \$1,000 to \$1,200 for single coverage; the office visits went from a \$10 co-pay to a \$15 co-pay; inpatient hospitalization payments went from 100 percent paid to 80/20, with the 20 percent being paid by the employee; and emergency care also went from a \$10 co-pay to a \$15 co-pay. When questioned under oath in her deposition, MaryAnn Thomas agreed that each of the changes amounted to an increase in cost to the employee. (Thomas Dep. at 54-55; Ap. App. at A-118-119).

Further, it is clear from the record that the Union never agreed to the changes that were unilaterally implemented. The statute requires mutual agreement when a benefit is reduced, and the District failed to obtain that agreement from the Union.

The affidavit supplied by the actuary indicates that the amount of the reduction is anywhere from 5.3% to 9%--clearly a reduction in value. (A-33 – A-36; Stiglich Affidavit 1-4). The precise amount is irrelevant; the fact that each change in the plan resulted in increased costs to the participant is proof positive that there was a reduction and therefore a violation of the statute. Appellant has in no way contradicted the evidence that the Choice plan was reduced in value.

Only those teachers who were members of the Elect plan in 2002-03 and stayed in Elect for 2003-04 did not receive a reduction in value. Those who moved from Elect to Choice were subject to all of the reductions in the four areas mentioned above; those who moved from Choice to Elect lost the ability to select

their own physician; and those who stayed in Choice ended up with the four reductions too.

A. The retention of the Elect plan did not provide equivalent benefits, as the choice in providers is a benefit.

This Court should defer to the District Court's finding of fact on this issue:

Of course, Defendant's argument discounts the benefits that one enjoys in being able to choose one's own doctor. Before the change in benefit structure, it is certain that many teachers opted for the more flexible (and more expensive) Choice program because the services of the doctor of their choice were covered by that program, and not covered by the Elect program. Essentially, they chose to pay a premium for the privilege of being able to choose their own doctor. That premium has now increased. Now, those teachers are being put in a position where they can either pay more under Choice to keep their doctor (that is, more than the extra that they were already paying), or switch to Elect and probably lose their doctor. When given the choice between tolerating the increased payments and keeping their doctor, or starting from scratch with a new doctor that they don't know, most people would see the increase payments as the lesser of two evils. This is because the trust, rapport, and confidence that one feels with their doctor is important to people. Presumably, this is why many teachers opted to pay more for the Choice plan in the first place—it was important to them to keep their doctors of choice. In view of this, the Court cannot countenance the argument that the teachers can avoid a rise in cost simply by switching to a plan where they can't keep their preferred doctor. In the Court's mind, there is no question that this is an aggregate reduction in benefits—the benefit being the ability to keep their doctor of choice at the prior (lower) cost.

(District Court 9/27/04 Memorandum at 3; Ap. App. at 30).

The most obvious indicator that the choice in providers is a benefit is that the premiums for that plan were significantly higher. (See A-5; Stiglich Test. at 38: "premiums are a final statement on what the value is ... So any value estimate has to be based upon the underlying cost of the services and

intangibles associated with that benefit design for that particular sale, including a network.”). The reason the District wanted to eliminate the open access benefit was that there would be a cost savings. Clearly, the insurance companies know participants will pay for that option. (See A-12, Nisbet Test. at 59, retaining Choice coverage to keep doctors that were treating his wife for cancer; and A-13, Dehnert Test. at 64, retaining Choice for pediatric care). Although Appellant’s assertion that some of the Choice members were actually using Elect doctors is irrelevant, it should be noted that the 36% figure cited by Appellant is a figure that includes all of the District’s employees, not just employees represented by the Respondent Union. (Ap. App. at A-127). Furthermore, it may be that people want to retain the right to choose a doctor if a new health concern develops, and they happen to choose their health plan on that basis.

When Appellant asserts that teachers represented by Respondent Union had the ability to choose a plan with an identical level of benefits, that is false. If they moved to Elect to retain the same reimbursement level, they no longer had the ability to choose their own doctor, which is a benefit. (See A-6 – A-7; Stiglich Test. at 39-40: “you’re getting more in terms of buying a product in product B [tight network, plus out-of-network] with the out-of-network benefit, and because of that, you’ll see a premium load of maybe 2 to 10 percent”). If this was not a benefit, insurance companies would not be able to charge extra for it. (See A-9; Stiglich Test. at 49: “you ultimately have to design a premium structure that

reflects what people are willing to pay for and they may have nothing to do with the—or very little to do with any specific cost in terms of paying providers”).

The Attorney General Opinion cited by Appellant also supports the idea that there are benefits in addition to the monetary reimbursements or payments: “benefits *at a minimum* means monetary indemnities.” (Op. Atty Gen. 59a-25, Dec. 15, 1987). It would be nonsensical that an employer would be prohibited from increasing co-pays, co-insurances or deductibles (all of which would result in decreased premiums) without a negotiated agreement, but could eliminate health provider choice (which would also reduce premiums) without any such agreement. The Oregon decision cited by Appellant is not on point either, given that it was decided fifty years ago and does not address provider choice either way; omission cannot be conclusive evidence of any opinion on the provider issue. Appellant’s argument that one’s choice of doctor is not a claimed benefit is not true, either. Health plans commonly deny claims entirely for doctors that are out-of-network or at a minimum pay less reimbursement toward those claims. (See A-6; Stiglich Test. at 39: “Invariably, you’ll pay an additional premium to have that access out of the network.”).

Appellant’s argument that Minnesota Statutes § 471.6161, subdivisions 4 and 5 conflict under Respondent’s assertions is equally misguided. Although the employer must get bids every five years, the statute in no way envisions that the District would somehow have the authority to accept one of the bids unilaterally. The parties must negotiate over which of the bids to accept. Moreover, simply

because the District must get approval from the Union before a change to the aggregate value is made does not mean that the change will not be approved.

The District appears to understand that for all potential decreases to reimbursements/payments, it would have to negotiate with the Union before accepting it, even if it had "more sensible terms." If the District can abide by the statute in those circumstances, it should be able to when it comes to a change to the available, covered physicians. Certainly those companies that submit bids can do what the Choice plan does and create an open access plan that allows participants to retain their physicians. Although there will be a cost associated with this, because it has value to the participant, it can be offered, permitting districts to freely seek comparable bids.

Contrary to Appellant's assertion, there has been absolutely no claim on the part of Respondent that the Court should evaluate each individual health care provider. Respondent is simply asserting that the freedom of a patient to choose which provider to see has value to the patient. Most importantly, Respondent was given no opportunity to bargain over the District's proposed health care changes before they were implemented. Appellant did not even attempt to get the Union's agreement for the proposed changes; it simply took the unilateral action to implement them, over the Union's clear objection.

IV. Appellant failed to plead unconstitutionality and failure to arbitrate in its pleadings, which should bar those arguments.

Appellant's failure to include Respondent's alleged failure to arbitrate in its pleadings bars this argument. In addition, its failure to plead a defense of unconstitutionality likewise bars the assertion of this defense. The District Court did not err when it determined that "it would be improper for the Court to grant the requested relief" based on the "untimely manner in which the District raised these issues." (District Court 4/28/05 Memorandum at 4; Ap. App. at A-92).

The rule in Minnesota is that the failure to plead an affirmative defense waives that defense. Melbo v. Rinn, 157 N.W.2d 842, 844 (Minn. 1968). As the District Court noted, this Court has also ruled: "an issue first raised in a post-trial motion is not raised in a timely fashion." (District Court 4/28/05 Memorandum at 4; Ap. App. at A-92, citing Grigsby v. Grigsby, 648 N.W.2d 716, 726 (Minn. Ct. App. 2002)). Because Appellant completely failed to plead the defenses of unconstitutionality and failure to arbitrate, it should not be permitted to have its untimely arguments considered by this Court.

V. Minnesota Statutes § 471.6161, Subdivision 5 is not an unconstitutional delegation of legislative authority because it does not delegate any legislative authority to unions.

The legislature is prohibited only from delegating "pure legislative power" to non-legislative bodies. Lee v. Delmont, 36 N.W.2d 530, 538 (Minn. 1949). "Pure legislative power" is defined as the authority to make law that is: 1) complete as to the time it shall take effect; 2) as to whom it shall apply; and 3) to

determine the expediency of its enactment. Id. Prescribing a rule that governs future conduct and is binding upon parties who do not consent is an exercise of legislative power. See Remington Arms Co. v. G.E.M. of St. Louis, Inc., 102 N.W.2d 528, 531-32 (Minn. 1960).

In Remington Arms, the Court considered the constitutionality of the nonsigner provision of the Fair Trade Act, which delegated to manufacturers the power to fix prices of certain goods. Id. at 533-35. The Fair Trade Act allowed a manufacturer, in a contract with a buyer, to set the minimum price at which the buyer could resell the good. Id. at 531. Under the nonsigner provision, this minimum price was binding even upon sellers who were not a party to the contract and did not consent to the price. Id. The court reasoned that this power to fix prices was legislative power because it prescribed a rule that governed future conduct – the price at which retailers sell certain goods – and was binding upon retailers who did not consent to that price. Id. at 534-35. As such, it was an unconstitutional delegation of legislative authority. Id. at 533.

In contrast to the nonsigner provision at issue in Remington Arms, Minnesota Statutes § 471.6161 grants no such authority to unions. Under the Lee factors described above, Respondent had no “pure legislative power.” Id. at 538. First, the legislature, not unions, promulgated the binding rule that governs future conduct: benefits shall not be reduced unless the public employer and the union agree. The legislature also determined when this law took effect (upon enactment of the statute) and upon whom it applies (public employers and the

unions representing their employees). A union has no power to change when or to whom this law applies. It similarly has no ability to bind any other union or employer, unlike the manufacturers in Remington Arms.

The only “authority” granted to a union is the power to waive the legislatively-imposed restriction against an employer’s unilateral change. This type of authority – waiving a beneficial restriction – has been held *not* to be an unconstitutional delegation of legislative authority in the context of land use laws. Thomas Cusack Co. v. City of Chicago, 242 U.S. 526, 530-31 (1917); Leighton v. City of Minneapolis, 16 F. Supp. 101, 106 (D. Minn. 1936); O’Brien v. City of Saint Paul, 173 N.W.2d 462, 467 (Minn. 1969).

In upholding the constitutionality of a rezoning consent clause, the O’Brien Court distinguished between the power to impose restrictions, which is legislative authority, and the right to waive restrictions imposed for the party’s benefit, which is not legislative authority. Id. at 464-466. Neither unions under Minnesota Statutes § 471.6161, nor property owners in O’Brien have the authority to impose additional restrictions beyond those already imposed by the legislatures in the respective statutes. Thus, the Court should apply the reasoning of the O’Brien court and hold Minnesota Statutes § 471.6161 constitutional.

When examined closely, the zoning case cited by the District, State ex rel Foster v. City of Minneapolis, 97 N.W.2d 273 (Minn. 1959), provides further support for finding Minnesota Statutes § 471.6161 constitutional. In Foster, adjoining property owners attempted to use the consent clause in the zoning

statute to impose additional restrictions by rezoning the property from commercial to residential, a more restrictive classification. Foster, 97 N.W.2d at 274. The Foster court held that the consent clause⁸ as applied to these facts was an unconstitutional delegation of legislative power because adjoining property owners used it to impose restrictions upon a property, and imposing restrictions is legislative power. Id. at 275-76. Because the consent clause in Minnesota Statutes § 471.6161 does not give unions any authority to impose restrictions, but rather merely allows the union to agree to a reduction in benefits, waiving the legislative prohibition against reducing benefits, it does not delegate¹ legislative authority.

In addition, the provision of the statute the District challenges as unconstitutional is the very provision that offers the possibility of the District being able to reduce benefits for employees covered under a CBA (with the Union's approval), as the District here so desires. In analyzing an analogous constitutional challenge to a logically similar statute, which prohibited persons from erecting billboards unless a specified number of adjoining landowners agreed, the Supreme Court observed:

⁸ The consent provision in Foster was the same as the consent provision at issue in O'Brien. O'Brien, 173 N.W.2d at 464, n. 2.

The claim is palpably frivolous that the validity of the ordinance is impaired by the provision that such billboards may be erected in such districts ... if the consent in writing is obtained of ... a majority [of the adjoining owners]. The plaintiff ... cannot be injured, but obviously may be benefited, by this provision, for without it the prohibition of the erection of such billboards in such residence sections is absolute.

Thomas Cusack Co., 242 U.S. at 530.

Appellant had input in the initial agreement for the two Medica options under the health insurance plan. The only thing the statute requires is that the public employer must honor its earlier commitment until the parties negotiate a change. PELRA permits unions to bargain hard and reject take-back proposals. (See MINN. STAT. § 179A.03, subd. 11, stating that the parties are not compelled to agree). That is consistent with the aggregate value statute—the initial benefit is retained until an alternative is agree to by both parties. It is appropriate that unions be parties to these discussions as it is the employees that will be impacted by a reduction in the insurance's value. If the District were allowed to do what it has done here, it would gain the ability to unilaterally transfer costs to the individual employee, which certainly is not fair.

VI. The Collyer Wire doctrine does not apply to these facts.

Appellant candidly admits that the Collyer Wire doctrine has never been determined to apply to the public sector in Minnesota. The doctrine would not properly be applied to the fact pattern as it exists in the instant matter.

Not until this appeal did Appellant raise any language from the CBA as being grievable under the CBA. Because of the arguments addressed above,

this argument is not properly before the court and should not be used in this context either. In order to subject a dispute to the grievance procedure and arbitration, there has to be some term of the collective bargaining agreement that is allegedly violated. Absent an allegation that something in the agreement was violated, the Union has no ability to arbitrate purely statutory claims. Under these circumstances, the Collyer Wire doctrine would not apply, even if it is determined to be good law in Minnesota.

The center of the current dispute is the aggregate value law and the bargaining law. There is no real dispute over contract language; the language Appellant now presents was not argued at trial. As the District Court said, the time to have asserted this argument would have been in the beginning of this dispute. To go to arbitration now would not save any resources or economize time. It is also difficult to believe that the issue could be resolved through arbitration as the employer would likely argue that the grievance is untimely and therefore no remedy could be given.

Most significantly, the inclusion of arbitration procedures in Minnesota public collective bargaining agreements is mandatory, so the parties here did not make an affirmative decision to be governed by the grievance remedies rather than by PELRA remedies. See MINN. STAT. § 179A.20, subd. 4(a) (2004):

(All contracts must include a grievance procedure providing for compulsory binding arbitration of grievances including all written disciplinary actions. If the parties cannot agree on the grievance procedure, they are subject to the grievance procedure promulgated

by the commissioner under section 179A.04, subdivision 3, clause (h)).

Since the National Labor Relations Act (NLRA) does not require arbitration, Appellant's comparison of PELRA and the NLRA is not useful here. 29 U.S.C. §§ 151-169 (2004).

In addition, the case Appellant cites for the proposition that "all doubts should be resolved in favor of arbitration" was decided in 1966, several years before PELRA was enacted in 1971. In addition, the posture of the cases cited by Appellant is distinguishable from the instant situation. In Mora Federation of Teachers, Local 1802 v. Indep. Sch. Dist. No. 332, 352 N.W.2d 489, 492-93 (Minn. Ct. App. 1984), the union was attempting to require the district to submit to arbitration after it refused to; there was no issue about whether or not the claims could have been heard in court.

Furthermore, this Court has specifically determined that a teacher union has the right to pursue a remedy under PELRA even though the CBA contained an arbitration provision. See Education Minnesota-Greenway, 673 N.W.2d at 848 (holding

[t]he existence of a grievance procedure under a CBA does not deprive the District Court of subject-matter jurisdiction to decide whether the same conduct constituted a violation of PELRA. See Edina Educ. Ass'n v. Bd. of Educ. of Indep. Sch. Dist. No. 273, 562 N.W.2d 306, 310 (Minn. App. 1997) (holding that, although the CBA provided concurrent grievance procedure, plaintiff was not required to exhaust that remedy because the cause of action did not derive solely from contract but also derived from state law [unfair labor practice]), *review denied* (Minn. June 11, 1997)).

The Edina court also agreed with the District Court that “after two years of litigation, this employer had waived any right it had to compel arbitration.” Id. at 309, *citing* Rowan v. K. W. McKee, Inc., 114 N.W.2d 692, 698 (Minn. 1962) (“employer can waive right to insist upon proceeding under CBA”).

VII. The District Court’s damage award was appropriate.

A. The difference in premiums due to Appellant’s unlawful conduct is one true measure of the actual damages to the Respondent.

Because it was not clearly erroneous, this Court should defer to the District Court’s finding of facts that: 1) “The truest measure of the value of the diminishment in the benefit structure under the circumstances in this case is the decreased amount payable in premiums from the old plan to the new plan;” and 2) “[T]he most appropriate measure of the damages in this case, under a public policy analysis of the applicable statutes, is the decreased amount payable in premiums from the old plan to the new plan.” (District Court 1/12/05 Memorandum at 3 (#7 and #8); Ap. App. at A-41).

The West St. Paul Federation of Teachers, not individual employees and their out-of-pocket costs, is the true party in interest in this litigation and is the only named Respondent. Any damages assessed must, therefore, relate to damages suffered by the union.⁹

⁹ Although Appellant asserts that the damages would go only to “Union members,” it is important to note that any damage award will be applied to all teachers represented by the Union, regardless of their membership status.

Respondent provided expert testimony and evidence that the premium differential between the old plan and the new plan is the most correct valuation of the damages under principles of collective bargaining and the circumstances of this case. Respondent bargained for the cost of the premiums under the old plan as part of its economic package with the Appellant. The premiums are costed as part of the total economic package during collective bargaining and cannot be unilaterally altered by the employer.

As addressed above, Respondent also provided testimony that as an actuarial principle, the value of premiums is equal to the value of the health benefits offered. Appellant misunderstands the nature of insurance when it asserts that the payments made under a policy in a certain time period equals the value of coverage. Appellant is essentially equating its health insurance structure to self insurance. The actual cost of health insurance premiums is the true measure of worth to the union. In collective bargaining, the cost of the insurance on an annualized basis is factored into determining what other economic benefits the union and the employer will agree to. In many cases, the union will agree to share the cost of health insurance to obtain more economic value in the salary structure, for instance.

B. Excess out of pocket costs incurred by employees is an incorrect measure of Respondent's damages.

Measuring Respondent's damages by the excess out-of-pocket costs incurred by individuals is a faulty measure of Respondent's damages for a

number of reasons. First, Appellant's unlawful conduct caused some employees to change plans from the Choice plan to the Elect plan. In doing so, the benefit structure remained the same, but the employees were forced to change doctors. Only counting excess out-of-pocket costs does not compensate for the damage caused by having to change doctors due to the unlawful conduct of Appellant.

Second, those who elected to remain in the Choice plan might elect to forego treatment that they otherwise would have undertaken under the old plan because it would cost them more money under the new plan. (See A-10; Stiglich Test. at 51: "What you're not going to be able to determine are things like who didn't go in because they had to pick up a bigger copay").

Third, using Appellant's proposed valuation method actually results in a windfall to the Appellant, not to the Respondent. Assuming that the amount of excess costs incurred for out-of-pocket costs under the new Choice plan are less than the amounts that would have been paid for premiums under the old plan, the employer gets to pocket the difference. (See A-11, Stiglich Test. at 52: "it would be expected that they [expenses] would be less than the premium differential in any given year."). The employer would be rewarded for engaging in unlawful conduct.

Mr. Stiglich testified that setting damages at a claims-incurred level would not be actuarially sound. The underlying costs for services rendered is only one component of what one purchases when one buys a health insurance plan. (A-8;

Stiglich Test. at 42). One is also purchasing coverage for that possibility that one will need a large amount of care (risk-management). Id.

Appellant's reliance on North Star Steel Co. v. NLRB, 974 F.2d 68, 71 (8th Cir. 1992) is misplaced. There, the employer's unlawful conduct involved unilaterally deciding to charge employees additional money for premiums (while the parties were in negotiations)—a damage amount that was easily ascertainable, completely covered all damages to the employees, and did not unfairly reward the employer for its unlawful conduct. Here, however, the unilateral changes involved the creation of circumstances that would lead to some employees choosing a lesser plan (and changing doctors); other employees paying increased out-of-pocket expenses for using services with decreased coverage; still other employees retaining the right to choose doctors, but deciding not to use certain benefits because of the increased cost; and others having the risk of higher payments that has perhaps not yet been realized.

The other real damage that Appellant is overlooking is the damage to the parties' labor relations. If the District is not required to return to the status quo, it will receive a windfall and profit from its illegal conduct. This would disturb the balance of bargaining power, increasing the employer's leverage. The only way to return to the proper balance of power is to require the District to return to the status quo. See MINN. STAT. § 179A.01 (2004) Public Policy:

It is the public policy of this state and the purpose of sections 179A.01 to 179A.25 to promote orderly and constructive relationships between all public employers and their employees. This

policy is subject to the paramount right of the citizens of this state to keep inviolate the guarantees for their health, education, safety, and welfare. The relationships between the public, public employees, and employer governing bodies involve responsibilities to the public and a need for cooperation and employment protection which are different from those found in the private sector. The importance or necessity of some services to the public can create imbalances in the relative bargaining power between public employees and employers. As a result, unique approaches to negotiations and resolutions of disputes between public employees and employers are necessary. Unresolved disputes between the public employer and its employees are injurious to the public as well as to the parties. Adequate means must be established for minimizing them and providing for their resolution. Within these limitations and considerations, the legislature has determined that overall policy is best accomplished by: (1) granting public employees certain rights to organize and choose freely their representatives; (2) requiring public employers to meet and negotiate with public employees in an appropriate bargaining unit and providing that the result of bargaining be in written agreements; and (3) establishing special rights, responsibilities, procedures, and limitations regarding public employment relationships which will provide for the protection of the rights of the public employee, the public employer, and the public at large.

In order to restore the legislatively required balance in relative bargaining power, Appellant must be responsible to reinstate the Choice health plan and pay the premium differential denied Respondent.

CONCLUSION

For the reasons outlined above, Respondent respectfully asks the Court to affirm the District Court's Findings of Fact and Conclusions of Law.

Respectfully submitted,

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).