

NO. A05-1020

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State of Minnesota  
**In Court of Appeals**

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WEST ST. PAUL FEDERATION OF TEACHERS,  
*Respondent,*

vs.

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

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**APPELLANT'S BRIEF AND APPENDIX**

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## LEGAL ISSUES

**1. Whether the District's actions reduced the aggregate value of the benefits under the health insurance plans for the Teachers.**

*The District Court's Ruling:* Relying on the conclusion that a choice of health care providers constitutes a benefit under Minn. Stat. §471.6161, subdivision 5, the District Court held that the District's actions reduced the aggregate level of benefits of the plans and violated the statute.

**2. Whether the District's decision to adopt changes, authorized by the parties' collective bargaining agreement, in one of its two benefit plans without fully negotiating the issue constituted an unfair labor practice under PELRA.**

*The District Court's Ruling:* The District Court found that, because health insurance is a "fringe benefit," and therefore a "term and condition of employment," the District committed an unfair labor practice under PELRA.

**3. Whether Minn. Stat. §471.6161, subdivision 5 unconstitutionally delegates legislative authority to the Union in providing that an employer may not reduce the aggregate value of benefits of a health insurance plan without the Union's consent.**

*The District Court's Ruling:* The District Court ruled that the statute did not constitute an unconstitutional delegation of authority because the authority provided to the Union was not legislative authority.

**4. Whether the District Court erred in refusing to vacate its finding of unfair labor practice and order the parties to arbitration pursuant to the Collyer Wire Doctrine and the collective bargaining agreement between the parties.**

*The District Court's Ruling:* The District Court ruled that there was no reason to hold the parties to the arbitration provision in their Contract when the District violated the Contract, and found the Collyer Wire Doctrine inapplicable.

**5. Whether the district court erred as a matter of law in its damages award to the Teachers.**

*The District Court's Ruling:* The District Court concluded that the amount of damages was the difference between the what the District's health care premium would have been without a change to one of the plans and the amount the District actually incurred as a result of its decision to decrease the value of the Choice plan.

## STATEMENT OF THE CASE

Plaintiff and Respondent West St. Paul Federation of Teachers (the “Teachers” or “Union”) initiated this action seeking injunctive relief, compensatory and other damages against Defendant and Appellant Independent School District No. 197, West St. Paul, Minnesota (the “District”). The Teachers’ Complaint alleges unfair labor practice for refusal to meet and negotiate in good faith, unilateral implementation of changes to a health insurance plan, and interference with the Teachers’ right to negotiate terms and conditions of employment in violation of Minnesota Statute §179A.13, also known as the Public Employment Labor Relations Act (“PELRA”), and violation of Minnesota Statute §471.6161, subdivision 5 for allegedly diminishing the aggregate value of the group health plan without the Teachers’ consent.

The matter came before the district court, Honorable Richard G. Spicer presiding, on September 17, 2004 on cross-motions for summary judgment by the Teachers and the District on the Teachers’ claims. After the parties briefed and argued the motions, the district court granted the Teachers’ motion for partial summary judgment with respect to the PELRA claims and the Minnesota Statute §471.6161, subdivision 5 claim, denied the District’s motion for partial summary judgment, and ordered the matter to proceed to trial on the issue of damages. The court filed an order on September 27, 2004.

The matter came before the district court, Honorable Robert R. King, Jr. presiding, on December 15, 2004 on the issue of damages. After a bench trial, the district court issued Findings of Fact, Conclusions of Law, and an Order for damages. The district court determined that the damages were the difference between the what the District’s

health care premium would have been without a change to one of the plans and the amount the District actually incurred as a result of its decision to decrease the value of the Choice plan. The court left the actual dollar amount to be computed by the parties.<sup>1</sup> The Order was filed on January 12, 2005.

On February 10, 2005, the district court stayed entry of judgment to allow the District to file a motion requesting the district court to amend certain findings of fact and conclusions of law. The District asked the court to find that the legislature unconstitutionally delegated its legislative authority to Unions when it gave a Union the authority to prevent a public employer from reducing the benefits of a health insurance plan without the Unions' consent. In addition, the District asked the court to order the parties to arbitrate their dispute based on Minnesota case law, public policy, and the Collyer Wire Doctrine recognized under federal law. After the District filed its Motion to Amend the Findings of Fact, Conclusions of Law, and Order, the parties briefed the issues raised in that motion, and the matter came before the district court, Honorable Robert R. King, Jr. presiding, on April 8, 2005. After hearing oral argument, the district court denied the District's motion in an Order filed on April 29, 2005. Judgment was entered on April 29, 2005. The District filed its Notice of Appeal on May 23, 2005.

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<sup>1</sup> The district court also ordered the District to reinstate the previous terms of the health plan.

## STATEMENT OF THE FACTS

### **I. THE PARTIES' COLLECTIVE BARGAINING RELATIONSHIP AND CONTRACTUAL PROVISIONS**

Appellant Independent School District No. 197 (the "District") and the West St. Paul Federation of Teachers (the "Teachers" or "Union") are signatories to a collective bargaining agreement, effective July 1, 2003 through June 30, 2005 (the "Contract" or "Agreement"). (A-72) The District is an independent school district created and organized pursuant to laws of the State of Minnesota, (A-2, A-14), and the Union is certified by the Bureau of Mediation Services ("BMS") as the exclusive representative of all teachers employed by the District for purposes of collective bargaining under the terms of PELRA, Minn. Stat. Ch. 179A. (A-2)

Among other terms and conditions of employment, the parties' Contract contains provisions for group health insurance and provisions setting forth the parties' agreement to send their disputes to arbitration. (A-72-82) Significantly, Article VIII, entitled "Group Insurance," which was negotiated and agreed to by the Teachers, reserves to the District "the right to select the insurance carrier and the policy for any group insurance coverage provided for the teacher[s]." (A-76) The parties also bargained for arbitration to resolve conflicts between them. Article XIV of the Contract contains a grievance procedure. (A-63, A-79-82) Section 1 defines a grievance as "an allegation by either party to this agreement or by a teacher which results in a dispute or disagreement as to the interpretation or application of terms and conditions of employment insofar as such matters are contained in this agreement." (A-63, A-79) Section 7 provides for arbitration

procedures: “in the event that the parties are unable to resolve any grievance, the grievance may be submitted to arbitration as defined herein.” (A-63-64, A-81)

## **II. THE DISTRICT’S PROVISION OF HEALTH INSURANCE TO THE TEACHERS**

### **A. The Parties Negotiate Teacher Salary And Benefit Compensation As A Total Economic Package Under Finite Revenue Such That An Increase In One Compensation Term Inversely Affects The Amount Of Money Available For The Other.**

The District operates under a finite revenue stream. (A-145, A-148) This fact becomes relevant during contract negotiations, as one of the primary issues during bargaining is determining how to allocate the District’s funds toward the two most important aspects of teacher compensation – salary and benefits. (A-145, A-148) Representatives from both the Union and the District affirmatively stated at trial that, given the District’s limited resources, the parties historically have negotiated economic terms under the premise that, to the extent that the parties agree to greater District premium contributions on behalf of the Teachers, there will be less money available to put toward the salary schedule, and vice versa. (A-148)

Health care costs have risen significantly over the past several years, while District revenues have remained stagnant, making negotiations under the paradigm outlined above increasingly difficult. (A-99, A-14-15) The trend in health care cost inflation has created difficulties in the parties’ bargaining because the District is faced with paying for most of the health insurance premium increases and still increasing the salaries of its employees whenever possible. (*Id.*)

**B. The District Provided Two Plans With Identical Benefit Structures To The Teachers in the 2001-2002 and 2002-2003 Plan Years.**

In 2001, the parties negotiated a contract under which the District provided group health insurance to the Teachers, with the plan year starting July 1 of each year of the Contract. (A-99, A-14) Each individual teacher was permitted to choose between two health insurance plans: the Medica Choice plan (“Choice”) and the Medica Elect plan (“Elect”). (*Id.*)

Under the terms of both Choice and Elect, members were entitled to certain benefits such as office visit and inpatient coverage, among others. (A-126) The benefit structure for Choice and Elect was identical. (A-100-01, A-126, A-14) The difference between the two plans was that a broader network of doctors was available to participants under Choice. (A-100-01, A-14) While a greater number of doctors’ services could be reimbursed under Choice, the network available under each plan overlapped to some degree. (A-127)<sup>2</sup>

The Teachers were entitled to elect one of three levels of coverage under the District’s two health insurance plans: single, single + one, and family. (A-149-50) The monthly premium, and the District’s and individual teacher’s monthly premium contribution, differed under the respective coverage levels. (A-149-50) For single + one and family coverage, the participant paid up to five percent (5%) of the monthly premium

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<sup>2</sup> Of the Choice members in the 2002-2003 plan year, 297, or 36% of all insured members, used what would be considered Elect providers. (A-110, A-127) Thus, at least 36% of Choice members could switch to Elect and continue to see the same doctors as they saw under Choice. (*Id.*)

and the District paid for the remaining 95%. (A-149-51) Therefore, assuming no changes in the District's and Teacher's respective premium contributions, an increase or reduction in the monthly premium for these coverage levels would result in a proportionate change to the contributions of each party. (A-150-51, A-165)

### **III. THE DISTRICT FACES DOUBLE-DIGIT PREMIUM INCREASES, EXPLORES COST-CONTAINMENT MEASURES, AND ADOPTS AN ALTERNATIVE HEALTH INSURANCE PLAN PURSUANT TO ITS AUTHORITY UNDER THE PARTIES' CONTRACT AND THE RECOMMENDATIONS OF THE INSURANCE COMMITTEE**

#### **A. The District Faces Significant Premium Hikes And Explores Alternatives.**

The Spring of 2003 was no relief from the recent trend in the rising cost of health care as Medica, the District's insurance carrier, advised the District that the premium rates for Choice and Elect for the 2003-2004 plan year for the identical benefit structure as in the previous two years were projected to increase 11.3% compared to the previous plan year. (A-100, A-102, A-14) At the same time, the parties were operating under a collective bargaining agreement that was scheduled to expire that Summer, and negotiations had begun for a new contract. (A-107)

After receiving Medica's estimate, the District sought advice from its benefits consultant as to how to confront the proposed health insurance premium increases. (A-102-03, A-15) After discussing the issue with its consultant, and in an effort to explore health care cost-containment options, the District asked Medica to submit alternative plans with premium hikes less than the projected 11.3% increase. (A-102, A-15) At the District's request, Medica provided the District with four plan options, ranging from

changing the benefit structure of both Choice and Elect to making no changes to either plan and bearing the 11.3% premium increase. (A-104, A-128-30, A-15)

**B. The Insurance Committee Reviews Medica's Proposed Alternative Plans And Votes To Recommend To The School Board The Plan That Would Result In A 5% Premium Increase.**

On May 7, 2003, the Insurance Committee (the "Committee"), a group comprised of representatives of all of the employee groups – including the Teachers – retirees, and District administrators, convened and reviewed Medica's renewal estimates as well as the three alternative health insurance plans. (A-104, A-114, A-15) The Committee was established to meet and discuss insurance rates and provide a vehicle for disseminating relevant insurance information to District employees. (A-112, A-15) As health care costs have continued to rise, one of the Committee's focuses has been to discuss various methods of cost containment. (A-112-13, A-15)

During its May 7 meeting, the Committee discussed the four options that Medica provided: (1) the status quo at an 11% increase in cost; (2) a change to both plans resulting in a 7% cost increase; (3) a change only to Choice resulting in a 5% cost increase; and a change to both plans resulting in a 3% cost increase. (A-104, A-128-30, A-15) The Committee, and the teacher-members of the Committee specifically, dismissed out of hand the 3% option that required changing the benefit structure of both Choice and Elect because such a change would have resulted in too drastic a change for all participants. (A-104, A-111, A-15) The Committee also dismissed the alternative resulting in a 7% increase because it contained a significant change to prescription coverage that would have impacted a substantial number of employees. (A-112, A-16)

The Committee proceeded to discuss the remaining alternatives and, at the conclusion of the discussion, took a vote of preferences. (A-105-06, A-16) The majority of the Committee, and, significantly, a majority of the non-administrators, supported an alternative resulting in a 5% premium increase which changed the benefit levels in only the Choice plan. (A-106, A-108-09)

The Committee's recommended plan for the 2003-2004 plan year included identical benefits for Elect as the benefits had been under Choice and Elect for the previous two plan years. (A-118-19, A-16) Choice, as modified in the preferred option, included maximum out-of-pocket costs of \$1,200 (compared to \$1,000 under previous plan years), office visit co-pays of \$15 (compared to \$10 under previous plan years), hospitalization inpatient coverage of 80% (compared to 100% under previous plan years), and urgent care co-pays of \$15 (compared to \$10 under previous plan years). (A-118-19, A-16) Under the Committee's recommended plan, Choice members who wished to avoid increased coinsurance contributions and receive the same benefit structure as they received under Choice in previous plan years could simply switch to Elect. (A-129)

**C. The School Board Adopts The Committee's Recommendation.**

After the Committee voted to adopt the alternative resulting in only a 5% cost increase, the District's administrative employees who participated in the Committee meeting recommended the Committee's preference to the School Board (the "Board"). (A-115-17, A-16) During the Board's May 19 meeting, it voted to approve the health plan changes as recommended by the Committee. (A-16) As a result of the Board's adoption of the 5% alternative, both the District and the contributing members realized a

savings of 6.3% over what they would have paid in monthly contributions under the originally-proposed renewal plans. (A-150-51) In real dollars, this 6.3% reduction resulted in over \$220,000.00, which was then used to fund increases in Teacher salaries. (A-129)

**D. The Teachers File The Present Lawsuit.**

The Teachers objected to the Board's decision to change the benefit levels of the Choice Plan, and the parties were unable to reach an agreement on the issue during contract negotiations that Summer. (A-117-21, A-174) Subsequently, the Teachers filed a complaint alleging that the District's decision to adopt the renewal plan that changed only Choice's benefit structure violated Minn. Stat. §471.6161 and constituted an unfair labor practice under Minn. Stat. §179A. (A-1-2)

After briefing and oral arguments on cross-motions for summary judgment, the district court held the District in violation of Minn. Stat. 471.6161, subdivision 5 because, in the court's view, the District adopted an alternative health insurance plan that reduced the "aggregate value of benefits" without the Union's consent. (A-28-31) Additionally, the court concluded that PELRA required the District to fully negotiate its decision to adopt the alternative plan, and that the District's failure to do so constituted an unfair labor practice. (A-28-31) Accordingly, the court granted partial summary judgment to the Teachers, and submitted the issue of damages to a trial. (*Id.*)

**IV. THE COURT HOLDS A BENCH TRIAL ON THE ISSUE OF DAMAGES**

The court held a bench trial to determine the proper measure of damages to the Teachers. (A-139) The District argued that the proper measure of damages that would

make the Teachers whole was the actual losses incurred – that is, the additional out-of-pocket expenses paid – by individual members due to higher coinsurances under the modified Choice plan. (A-142) The Teachers argued that the proper measure of damages suffered by them was the difference in premiums between what the District paid under the 2003-2004 plan year and what the District would have paid in that year had the District not changed the benefit level under Choice. (A-141-42)

**A. Both Parties Realized Premium Savings Under The Board’s Decision, And The District’s Savings Were Allocated Toward The Teachers’ Salary Schedule.**

Members covered under either single + one or family contribute to a portion of the monthly premium for health insurance. (A-150-51) If the Board had decided not to act in the face of Medica’s proposed 11.3% premium hike for the 2003-2004 plan year, both the District and individual members insured under those coverage levels would have faced 11.3% increases in the monthly premiums. (*Id.*) Therefore, in its change of only one of the plans that resulted in a 6.3% savings in premiums under both, the Board realized savings not only for itself but also for the Teachers. (*Id.*) When the District realizes a savings in the cost of health insurance contributions on behalf of its Teachers, its mutually-understood historical practice is to apply those savings to the Teachers’ salary schedule. (A-144-46, A-148) The District operated under the premise, and the Teachers agreed, that, to the extent District premium contributions increased, less money would be available to apply to the Teachers’ salary schedule. (A-148)

Consistent with the mutually-understood historical practice, MaryAnn Thomas (“Thomas”), Director of Human Resources for the District, provided undisputed

testimony that, had the District maintained the status quo with respect to the benefit plans, the Teachers would have received a smaller increase in salaries than they ultimately received under the Contract because the status quo would have resulted in a 6.3% higher increase in premiums and a smaller share of the economic package able to be dedicated to salary increases. (A-175-76) Because the Board adopted a plan that resulted in only a 5% increase in premiums and thereby produced a savings of 6.3%, the District was in a position to, and did, pass these savings on to the Teachers in the form of increased salaries. (A-176)

**B. Some Members May Have Incurred Easily Measurable Out-Of-Pocket Expenses.**

Those members who chose to remain with the more expensive Choice plan instead of switching to Elect and receiving the same benefits they previously received under Choice may have incurred costs such to the extent that they received services whose costs increased, such as co-pays. (A-149) Thomas testified that, based on discussions with its insurance consultant, a determination can fairly easily be made as to whether any member incurred such out-of-pocket costs as a result of increased co-pays under Choice and, if so, in what amount. (A-143, A-176)

**C. The District Court Relied On The Union's Expert Testimony, Which Omitted Important Facts And Made Numerous Assumptions And Inapposite Analogies, And Its Evidence Contradicted Its Position.**

The District Court relied on the testimony of John Stiglich's ("Stiglich"), the Union's expert, to determine that the damages to the Teachers was the difference in the premium increase under the adopted plan - 5% - and the premium increase the District

would have had to pay under the old plan – 11.3%. (A-142) Stiglich’s actuarial analysis omitted all of the following potentially critical facts: that the Teachers could simply switch to Elect and thereby avoid any increased co-pays (A-152-53); that the Teachers received a savings as a result of the changes to Choice (A-162-63); and that the District’s savings were passed on to the Teachers’ salaries. (A-147, A-164) Moreover, Stiglich unequivocally admitted that he had to make “a lot of . . . assumptions” in his analysis. (A-154) For example, Stiglich testified that there are “intangibles” that factor into premium rate setting in addition to the actual cost of the physician and hospital expense that cannot be quantified, such as the “judgment” of third parties, the competitive position of the product, fee schedules for providers, expected use of the product, and provider networks. (A-157-58, A-161)<sup>3</sup> The record is completely devoid of evidence that Stiglich attempted to quantify these intangibles or establish that his assumptions actually hold true in this case. (A-164) In fact, the only data that Stiglich was able to apply to his analysis with confidence was the actual increased cost of services under Choice. (A-152-56)

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<sup>3</sup> Stiglich also testified that he would expect the costs of services provided to the Teachers in a given year to be below the cost of the premium, such that the cost of services would understate the value of the coverage. (A-161a) However, to illustrate this assumption, Stiglich used the example of a term life insurance policy, the costs of services for which undoubtedly will be well below the cost of the premium for most years and which would require an analysis of the cost of services over the entire term of the policy rather than a single year for the incurred-costs valuation method to provide an accurate damages measurement. (A-159) The insurance policy in question in this case is not term life insurance, but a one-year health insurance policy, and Stiglich openly admitted that health insurance is different because upwards of 90% of the premiums in a health insurance policy will be paid out over the life of the policy’s term; that term being one year in this case. (A-146-47, A-160, A-164)

Stiglich's final calculation as to the proper measure of damages amounts to an "estimate" of a reduction in value of 5.3%. (A-155) In light of the fact that the difference in the premium increase between the old plans (11.3%) and the modified plans (5%) is 6.3%, Stiglich's calculation results in an inaccuracy rate of 15%. (A-180) More significantly, Stiglich's calculation diverges 41% from publicly filed documents that measured the difference in value between two insurance plans with benefit structures in line with the old Choice plan and the new Choice plan. (A-156)

Finally, the Union's own witnesses discredit its argument that out-of-pocket costs do not serve as the proper damages valuation method. Stiglich testified that out-pocket-costs would not accurately represent damages to the Teachers in this case because he "would expect" the higher cost of services under Choice to discourage members from using services under the policy. (A-161) However, the Union's only direct evidence of member use of services after the District's decision to change Choice consisted of two member witnesses who testified that, despite the increased co-pays under Choice, they were not discouraged from using services under the plan, and that they chose to seek medical care and incur the additional out-of-pocket coinsurances after having made the voluntary decision to stay with Choice instead of switching to Elect. (A-166-73)

### **LEGAL ARGUMENT**

This case is about a sound, lawful, cost-containment decision made by the District in the face of escalating health care inflation. Staring at a proposed double-digit increase in the premium cost of the health insurance plans for its Teachers, and with the state in a budget crisis and no new revenue coming to schools, the District sought out ways to save

money and use those savings to pay higher salaries to its Teachers while still offering the teachers a valuable health insurance plan. After facilitating an open committee discussion and receiving a recommendation as to the collectively preferred course of Union members and administrators, and mindful of its collectively bargained-for right to choose health insurance plans for the Teachers, the District adopted a measure that was bargained for in a previous negotiation (the right to select a carrier and a policy) and that advanced sound public policy.

The District's chosen course was a resounding success from a cost-containment, Teacher salary, and benefits maintenance standpoint. By modifying the benefit structure under the Choice plan, the District (and the Teachers) saved over 6% in monthly premium costs compared to the originally proposed package -- a savings of nearly a quarter of a million dollars which was used to increase Teacher salaries. All the while, the District's choice in alternative plan options provided each Union Member the opportunity to receive the identical level of benefits as before.

Despite the win-win situation that the District and the Teachers enjoyed following the District's prudent actions, the Teachers brought this suit alleging that the District reduced the value of one of the insurance plans, but not the other, without the Teacher's consent which, the Union claims, was a violation of Minnesota law. The Teachers' claim under the statute is unfounded. The level of benefits that the Teachers' enjoyed under Elect and Choice prior to the modification to Choice were identical. After the changes to Choice, Elect remained unchanged in every aspect, thus leaving the Teachers with the unfettered right to coverage under a plan that guaranteed the same level of benefits that

was provided in previous years. Because the level of benefits under Elect remain unaffected, the District is not in violation of the statute in question, and the Court should vacate the district court's grant of summary judgment to the Teachers and grant summary judgment to the District.

The Teachers also allege that the District's actions violated PELRA because it did not fully negotiate its decision before adopting the changes to Choice. The Teachers' claim fails to account for the fact that the parties' collectively-bargained argument reserved to the District the right to select insurance policies for the Teachers. Therefore, the Union, when it assisted in the District's creation of Article VIII, unmistakably waived its right to bargain over this subject and lodge a statutory claim disputing the District's use of an expressly reserved contractual right. Therefore, having waived the statutory right to bargain over or object to the District's actions, the Teachers' claims under PELRA must fail.

Even assuming that the value of benefits under the health insurance plan were reduced in violation of Minnesota Statute Section 471.6161, subdivision 5, the Teachers can be afforded no relief under that statute, as unconstitutionally delegates legislative authority to the Teachers by giving the Teachers, a financially interested private party, control of a government resource and unchecked authority to make the determination as to when to yield control over that resource without providing sufficient guidelines as to the appropriate use of the authority. Furthermore, even assuming the District's actions arguably constitute an unfair labor practice, the Court should defer judgment on this issue and send the parties to arbitration pursuant to the Collyer Wire Doctrine and the express

terms of their agreement, as this dispute involves the interpretation of a reserved District right under the Contract.

Finally, the Teachers should not be awarded damages in an amount equal to the District's premium savings. Such an award grossly exceeds the amount of damages that would make whole those Union members who suffered an actual monetary loss as a result of the District's actions, would contravene the long-standing principle that a plaintiff must prove damages beyond speculation and conjecture, and would result in a windfall to the Teachers, as the undisputed evidence establishes that the Teachers have already been compensated for any loss in benefits through increased salaries.

This Court should either uphold the School District's decision or defer the matter to arbitration. Thus, Appellants request that this Court vacate the district court's order granting summary judgment to the Teachers, grant summary judgment to the District, and vacate the monetary and injunctive relief awarded to the Teachers.

**I. THE DISTRICT IS ENTITLED TO SUMMARY JUDGMENT ON THE TEACHERS' CLAIMS UNDER PELRA AND MINN. STAT. §471.6161, SUBDIVISION 5.**

**A. The Applicable Standard Of Review Of Summary Judgment**

On an appeal from summary judgment, the Court of appeals asks two questions: (1) whether there are any genuine issues of material fact and (2) whether the lower courts erred in their application of the law. *State of Minnesota, by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion, reviewed de novo by the appellate court. *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856

(Minn. 1998) (citing *Wallin v. Letourneau*, 534 N.W.2d 712, 715 (Minn. 1995)); *Fairview Hosp. & Health Care Servs. v. St. Paul Fire & Marine Ins. Co.*, 535 N.W.2d 337, 341 (Minn. 1995).

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. Minnesota courts interpret this standard to mean that summary judgment must be granted if the moving party is entitled to judgment as a matter of law and a reasonable fact finder could not disagree with respect to any factual issues that may exist. *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1989) (citing *Matsushita Electrical Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *Celotex Corp. v. Catrell*, 477 U.S. 317 (1986); *Anderson Liberty Lobby, Inc.*, 477 U.S. 242 (1986)).

Applying this standard, The District is entitled to summary judgment on the Teachers' claims of violation of Minn. Stat. §471.6161 and Minn. Stat. Ch. 179A.

**B. The District's Decision To Change The Benefit Structure Under Choice Did Not Violate Minn. Stat. §471.6161 Because The "Aggregate Value Of Benefits" Of The Plans Was Not Reduced.**

The Teachers brought this suit alleging that the District violated Minn. Stat. §471.6161, subdivision 5 by changing the benefits structure under Choice. However, the Teachers' argument fails to account for the fact that Elect, with the identical benefits structure as Choice under the previous plan year, was not changed and remained available to the members at all times. As a result, there simply was no reduction in the value of benefits available to Union members and, consequently, no violation of Minn. Stat. §471.6161, subdivision 5.

The choice of provider networks does not constitute a “benefit” impacting the value of a health insurance plan. The appropriate comparison for purposes of analyzing the plans’ value of benefits is between the old Choice plan and the Elect plan. Since the choice of provider networks does not constitute a benefit under a health insurance plan, the difference between Choice’s and Elect’s network of providers is of no relevance to the Plan’s values, and this Court must vacate summary judgment to the Teachers and grant summary judgment to the District.

**1. “Aggregate Value Of Benefits” Is Not Defined Under The Statute.**

Minnesota Statute §471.6161, subdivision 5 provides:

The aggregate value of benefits provided by a group insurance contract for employees covered by a collective bargaining agreement shall not be reduced, unless the public employer and the exclusive representative of the employees of an appropriate bargaining unit, certified under section 179.12, agree to a reduction in benefits.

This provision prohibits a school district from reducing the value of benefits provided by a group insurance contract if the union does not agree to such a reduction. However, “aggregate value of benefits” is not defined by the statute.<sup>4</sup>

**2. The Statute Does Not Prohibit The District From Reducing The Level Of Benefits Of One Of Its Plans, So Long As Another Plan Offers The Teachers The Same Value Of Benefits.**

Only if the value of benefits has been reduced can the Teachers establish a violation of the statute. By leaving Elect unchanged, the District maintained a plan under

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<sup>4</sup> Additionally, Minnesota courts have not interpreted the meaning of “aggregate value of benefits.”

which the value of benefits remains unchanged. Minnesota law does not prohibit an employer from reducing the level of benefits of one of its plans, as long as employees can maintain the same level of benefits. Therefore, the District did not violate the statute when it modified the benefit structure only to Choice. Elect was still available (at a lower cost) with the same level of benefits as before the modification to Choice, and each member would have access to a health insurance plan with the same level of benefits. That the Choice plan may have seen its value reduced due to increased coinsurance, is ultimately irrelevant when, as here, each Union member could obtain coverage under a plan with an identical benefit structure after the change to Choice as the Plan under which he or she was insured prior to the change.

The district court relied on Stiglich's actuarial analysis, who affirmatively stated at trial that his analysis was performed to determine if there was a reduction in the value of benefits between the old Choice plan and the modified Choice plan. The analysis completely disregarded Elect. An accurate determination of the value of benefits available to the Union's members cannot occur if one of the two plan options available is completely disregarded. The isolated question of whether the modified Choice plan constitutes a reduction in value from the old Choice plan fails to address the issue in its entirety. Rather, the value of benefits under Elect must also be analyzed. As a matter of simple logic and uncontested fact, the value of benefits available to the Teachers under Elect has not been reduced.

**3. Minnesota Attorney General Opinion 59a-25 (Dec. 15, 1987) And Limited Case Law Indicate That The Term “Benefits” Is Limited To Monetary Indemnities And Does Not Include The Choice Of A Network Of Health Care Providers.**

An Opinion provided by the Minnesota Attorney General indicates that a “benefit” refers to a monetary indemnity for losses sustained by the insured.<sup>5</sup> The opinion provides in relevant part:

QUESTION TWO

May the City require, without the approval of the employees, that an employee (1) make a co-payment for each visit to a doctor or health care provider, (2) be responsible for a certain percentage of medical expenses, or (3) pay a certain deductible amount?

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We answer this question in the negative. “Benefits” at a minimum means monetary indemnities available under an insurance policy. Schweigert v. Beneficial Standard Life Ins. Co., 204 Ore. 294, 282 P.2d 621 (1955). Requiring employees to make co-payments for certain kinds of visits, absorb certain percentages of medical expenses, or pay deductible amounts all have the effect of reducing the benefits available under the group insurance policy and thus are impermissible under the statute unless appropriate consent has been obtained or unless the change has no effect on the aggregate value of benefits.

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<sup>5</sup> Minn. Stat. §8.07 states that:

The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district . . . on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any questions arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.

(Emphasis added).

Minn. Op. Atty. Gen. 59a-25 (Dec. 15, 1987). The Attorney General Opinion indicates that the term “benefits” includes monetary indemnities available under an insurance policy. Such a definition, while including such things as copayments and deductibles, simply does not encompass access to or denial of a certain network of medical providers.

The case cited in the Attorney General Opinion also supports an interpretation of “benefits” that does not encompass provider networks. In *Schweigert v. Beneficial Standard Life Ins. Co.*, 282 P.2d 621, 625 (1955), the Oregon Supreme Court interpreted “benefit” to mean “pecuniary help in time of sickness.” In other words, “benefit” means pecuniary help in the form of indemnity for losses sustained by the insured in payment of any items of cost. *Id.* Thus, a “benefit” is a tangible monetary benefit flowing directly to the employee under the terms of an insurance contract.

From the above two authorities emerges the sensible conclusion that “benefits” does not include access to a particular network of medical providers. Therefore, choice of networks does not constitute a benefit so as to fall within the statute’s meaning of “aggregate value of benefits.”

**4. The Common Usage Of The Term “Benefit” As Well As The Use Of That Term In Other Minnesota Statutes Relating To Health Care Benefits Does Not Include A Choice Of Certain Medical Providers.**

The American Heritage Dictionary defines “benefit” as “a payment or series of payments to one in need.” *American Heritage Dictionary* 123 (New College ed. 1981.) This definition clearly suggests that a benefit is monetary in nature rather than a choice between a network of health care providers and, therefore, parallels the interpretations of

“benefit” in the above Minnesota Attorney General Opinion and the Oregon Supreme Court decision. Moreover, the Minnesota Comprehensive Health Insurance Act defines “health benefits” as benefits offered to employees on an indemnity or prepaid basis which pay the costs of or provide medical, surgical, or hospital care. Minn. Stat. §62E.02, subd. 12. Here again, the use of the term “benefit” refers to a monetary indemnity and neither mentions nor reasonably encompasses the choice of a certain provider.

Through the authority granted by the Minnesota Comprehensive Health Insurance Act, the Department of Commerce has promulgated rules and regulations regarding the provision of group health insurance plans. Minn. Stat. §§62E.01-17. While the Department of Commerce rules do not define “aggregate value of benefits,” they do provide for measures of health insurance benefits through actuarial equivalency tests. *See* Minn. R. 2740.0100, *et seq.* “Actuarial equivalent” or an “actuarially equivalent benefit” is defined in the following manner:

“Actuarial equivalence” shall be recognized for two plans where, employing the same set of assumptions for the same population, the expected value of benefits provided by the plans is equal. Expected value of benefits shall be measured by the probability of the claim for each benefit multiplied by the average expected amount of each of those benefits.

Minn. R. 2740.0100, subp. 4. The Rules set forth benefits ranging from physical therapy to major medical coverage. Conspicuous by its absence, however, is any mention of the choice of a certain doctor as a defined benefit. In fact, such a “benefit,” as alleged by the Teachers, simply does not fit into the usage of “benefit” in the above definition of “actuarial equivalence,” as the term “benefit” as employed in that definition is something

that is “claimed” and paid out under the contract. The choice of a particular doctor is not a benefit that can be claimed in any sense, as such an alleged benefit cannot not be quantified to allow for a payout. Therefore, the choice of a particular doctor cannot be considered to affect the value of a health insurance plan.

**5. The Teacher’s Suggestion That Provider Networks Are Benefits Engenders Conflict Between Subdivision 5 of Minn. Stat. §471.6161, Subdivision 4 Of That Statute Because The Legislature Intended That Health Care Plans Be Periodically Bid.**

It is a maxim of statutory interpretation that statutes are to be construed as to give effect to every provision. *Swenson v. Waseca Mut. Ins. Co.*, 653 N.W.2d 794, 798 (Minn. Ct. App. 2002). The Court must read and construe the statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations. *American Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). Moreover, statutory provisions are to be read in a way that avoids absurd results. *Id.* at 278. If a choice between provider networks is to be read into subdivision 5 of section 471.6161, such a reading compromises the language in subdivision 4.

Subdivision 4 of Minn. Stat. §471.6161 provides: “[t]he political subdivision shall request proposals for coverage at least once every 60 months.” Subdivision 4 clearly contemplates the District soliciting proposals from different carriers every five years. (A-178) Additionally, Article VIII of the parties’ Contract clearly provides the District with the authority to select insurance carriers: “[t]he School Board reserves the right to select the insurance carrier and the policy for any group insurance coverage provided for the teacher.” (A-72-82) If, pursuant to subdivision 4, the District were to solicit proposals

from carriers, receive a proposal with more sensible terms from a different carrier than its current carrier, and, pursuant to its authority under Article VIII, select that new carrier to insure the Teachers, the provider network under a new plan with that new carrier would almost certainly differ from the network under the previous plan. Yet, under the lower court's interpretation of "benefit" as including the choice of provider networks, such an action by the District, required under Subdivision 4 and expressly reserved as a right under the Contract, would necessarily violate subdivision 5 of section 471.6161.

The lower court's interpretation leads to absurd results, as the School District's compliance with subdivision 4 of the statute and exercise of authority under Article VIII of the Contract would violate subdivision 5 of the statute in almost all cases where the District chooses another insurance carrier based on the carriers' respective proposals. This absurd result can be avoided, and the provisions of the statute can be read in harmony, by reading the term "benefit" not to include such speculative notions as an individual's preference of doctors.

**6. The Court Should Not Insert Itself Into Analyses Of The Respective Merits Of Doctors And The Subjective Preferences Of Patients.**

To conclude that a particular provider network is part of the value of benefits of a plan would require courts to judge the respective merits of health care providers. Under this scenario, no two plans could ever have the same value. Moreover, the court necessarily would be asked to make such a determination based not only on whatever objective evidence may be available regarding a doctor's relative worth, but also on the subjective, personal preferences and "values" of each insured individual or group. Such

determinations obviously are not in the province of the Court and would no doubt engender confusion and valuation problems in each case.

The legislature has not included a member's choice of a particular doctor within the definition of "value of benefits." Based on the plain meaning and common usage of "benefits," the meaning given to that term by the Minnesota Attorney General and another court that visited the issue, and the lack of any reference to provider networks as a "benefit" throughout Minnesota statutes and rules, a particular provider network, and the difference in provider networks between two insurance plans, it is clear that the choice of networks is not part of the value of a plan's benefits. Since the choice of a certain provider does not constitute a benefit as that term is used in the statute, and since Elect is identical to the old Choice plan in all other respects, the District did not violate Minn. Stat. §471.6161.

**II. THE DISTRICT DID NOT COMMIT AN UNFAIR LABOR PRACTICE UNDER PELRA BY CHANGING THE BENEFITS UNDER CHOICE.**

The Teachers brought this suit alleging that the District violated Minn. Stat. §179A.13, subdivision 2(5) by refusing to negotiate in good faith and Minn. Stat. §179A.13, subdivision 2(1) by interfering with the Teachers' right to negotiate terms and conditions of employment. Under PELRA, a public employer must meet and negotiated in good faith over the terms and conditions of employment with the exclusive representative of its employees. Minn. Stat. §179A.13, subd. 2(5). The Teachers' claims fail because the District decided to change the benefits under Choice pursuant to its

collectively-bargained right to do so, and made that decision only after the Committee carefully considered each alternative.

**A. The Union Waived Its Right To Contest The District's Decision To Select An Alternative Choice Plan.**

Under established Eighth Circuit precedent, a Union may waive its statutory right to bargain over a mandatory subject of bargaining. *Amcar Div., ACF Indust. Inc. v. N.L.R.B.*, 641 F.2d 561 (8th Cir. 1981). To have waived a statutory right, the Union's waiver must be clear and unmistakable, as waiver will not be assumed. *Proctor & Gamble Mfg. Co. v. N.L.R.B.*, 603 F.2d 1310, 1318 (8th Cir. 1979). The language of a contract can establish the Union's waiver of its statutory rights. *Amcar*, 641 F.2d at 567 (holding that the parties' contract indicated a clear waiver of the union's statutory rights).

Here, the parties plainly agreed that the District would possess the authority to select an insurance policy for the Teachers. Article VIII of the contract unambiguously reserves that right to the District. Therefore, the Union, when it agreed to the language in Article VIII, either agreed that it would not bring disputes arising out of the District's decisions regarding the selection of insurance policies to the courts, or unmistakably waived its right to bargain over this subject and dispute the District's use of an expressly reserved contractual right. Therefore, having waived the statutory right to bargain over or object to the District's actions, the Teachers' claims under PELRA must fail.

**B. The District Acted In Good Faith In Changing The Benefits Under Choice.**

The facts of this case do not present a situation where a public employer has taken away a benefit from its employees. Rather, the District simply made cost-savings

changes to Choice while maintaining the identical benefits under Elect and thereby not changing the level of benefits available to the Teachers. The District reached its decision to make changes to Choice only after it sought the proposal of additional health insurance options, considered the alternatives, and discussed those alternatives with the Committee. The consideration and informal vote at the Committee level certainly demonstrates the District's intentions to contain costs while maintaining the aggregate level of benefits for its employees.

The ever-rising costs of health care impact both the District and its employees. Rather than expend District and employee funds at an 11% increase for the identical product, the District proactively sought alternative structures and made changes to Choice to reduce the cost increase while providing the same level of benefits to its employees. The Teachers' attempt to obstruct the District's right to do so is unwarranted under both the parties' Contract and the statutes in question. Consequently, the district court erred in its application of Minn. Stat. §471.6161 and PELRA, and the District is entitled to a summary judgment as a matter of law.

### **III. MINNESOTA STATUTE §471.6161, SUBDIVISION 5 CONSTITUTES AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY**

#### **A. The Appropriate Standard Of Review.**

The District filed a post-trial motion arguing that Minn. Stat. §471.6161, subdivision 5 unconstitutionally delegates legislative authority to the Teachers because it gives the Teachers, a financially interested private party, control of a government resource – state funds – and carte blanche authority to make the determination as to when

to yield control over that resource without providing sufficient guidance as to the proper exercise of that authority and without making the Teachers accountable for exercising its authority under changed circumstances and inflationary health care costs. The district court denied the District's motion. This Court can proceed with a de novo review of the issues raised by the District. *Miles, et al. v. City of Oakdale, et al.*, 323 N.W.2d 51, 55 (Minn. 1982) (holding that appellate courts are not bound by determinations of law made by the district courts); *Phillips v. State of Minnesota*, C1-99-604, 1999 Minn. App. LEXIS 1094, \*7 (Sept. 14, 1999).

**B. The Courts Analyze Under Close Scrutiny The Delegation Of Legislative Authority To Private Parties.**

Legislative power is the authority to make law that is complete as to the time it shall take effect and as to whom it shall apply. *Lee v. Delmont*, 36 N.W.2d 530, 538 (Minn. 1949); *Mid-City Hotel Assoc. v. Hennepin County Bd. Of Com'rs*, 516 N.W.2d 574, 576 (Minn. Ct. App. 1994). The legislature cannot delegate purely legislative power. When the legislature delegates legislative authority to private persons, "the private exercise of these public powers may be peculiarly subject to abuse." *Minn. Energy and Econ. Dev. Auth. v. Printy*, 351 N.W.2d 319, 350 n.12 (Minn. 1984) (noting that Minnesota courts find unconstitutional delegation of legislative authority in cases that involve delegation to non-state agencies). "Delegations of legislative authority to private entities are strictly scrutinized because, unlike governmental agencies, private persons will often be wholly unaccountable to the general public." *Bd. of Tr. Of the*

*Employees' Ret. Sys. Of Baltimore v. Mayor and City Council of Baltimore*, 562 A.2d 720, 731 (1989).

**C. Minnesota Statute Section 471.6161, Subdivision 5 Grants Unions The Authority To Decide When The Statute Will Operate To Prohibit A Public Employer From Reducing Its Member's Benefits And Provides No Standards For The Exercise Of This Authority.**

According to the Minnesota Supreme Court, important factors in the determination of whether the legislature has unconstitutionally delegated its authority include whether the law furnishes a reasonably clear policy or standard of action which controls and guides the party in ascertaining the operative facts to which the law applies, and whether the law takes effect according to the whim or caprice of the party to whom authority has been delegated. *Lee v. Delmont*, 36 N.W.2d 530, 538-39 (Minn. 1949).

In adopting Minn. Stat. §471.6161, subdivision 5, the legislature did not furnish any standards to follow in deciding whether, and under what circumstances, the Union should exercise its authority to prohibit a public employer from implementing a change to its employee's benefits consistent with cost-containment objectives. As such, the statute is drafted as to provide the Teachers – a private party – authority to determine when the statute becomes operative according to the Union's own whim and caprice. Such a delegation is precisely the kind that was cautioned against in *Lee. Id.*

**D. The Union Is The Party That Will Benefit From The Arbitrary Use Of Its Authority And Is Unaccountable To Members Of The General Public Whose Tax Dollars Pay The School's Bills.**

In finding unconstitutional delegations of legislative authority to private entities, Minnesota courts admonish self-serving statutory provisions that allow a private entity to

determine a provision's specific applications to its group without public recourse where the private party otherwise would have no such authority. For example, in *Remington Arms Co. v. G.E.M. of St. Louis, Inc.*, 102 N.W.2d 528, 536 (1960), the Minnesota Supreme Court found an unconstitutional delegation of legislative authority where a provision of the Minnesota Fair Trade Act delegated to private manufacturers the authority to fix the future price of certain goods and thereby bind non-parties and the general public without compliance with any legislative standards. Considering the absence of consideration for the public welfare under the statute, the court stated:

Courts must view with grave concern the exercise of arbitrary power left in the hands of unofficial persons. Granting legislative power to private persons without hearing or other safeguards is a practice to be indulged in only when it appears that the end the legislature seeks can be accomplished in no other practicable way. This is especially so when, as here, the grant is given to the very persons who will benefit most by an arbitrary and wrongful use of that power.

*Id.*

Similarly, in *State ex rel Foster v. City of Minneapolis*, 97 N.W.2d 273 (1959), the Minnesota Supreme Court found an unconstitutional delegation of legislative authority where rezoning was conditioned upon the consent of a select group of private property owners. The court held that this granted the small, private group "the right to empower the council to act to impose property restrictions where otherwise it would have no such authority." *Id.* at 275.

Minnesota Statute Section 471.6161, subdivision 5 is just the type of private party absorption of government responsibility that was condemned in *Remington Arms* and *Foster*. Like the statutes in *Remington Arms* and *Foster*, Minn. Stat. §471.6161,

subdivision 5 provides a private party the authority to arbitrarily make decisions that affect the public – in this case, the arbitrary decision to keep costly insurance – without allowing any further public revisiting of these self-serving decisions regardless of changed circumstances.<sup>6</sup> As the private party in *Remington Arms* was able to regulate prices as it saw fit and thereby affect the general public, so the statute here provides the Teachers the unconstitutional authority to exercise a right of action for its own benefit according to its will without regard to the welfare of the taxpaying members of the public. In effect, self-interested public employees are given a veto power over a change in benefit structure and can act in place of the elected Board “where otherwise it would have no such authority.” *Foster*, 97 N.W.2d at 275. By requiring the Teachers to agree to any change in benefits before the District can change a plan, the statute delegates to the Teachers, a private non-governmental entity, veto power over an issue of substantial importance to them without providing proper safeguards for the wrongful use of this authority.

**IV. THE COURT SHOULD RESERVE JUDGMENT ON THE ISSUE OF UNFAIR LABOR PRACTICE AND SEND THIS DISPUTE TO ARBITRATION PURSUANT TO THE COLLYER WIRE DOCTRINE AND THE EXPRESS TERMS OF THEIR CONTRACT.**

**A. The Applicable Standard Of Review**

The District filed a post-trial motion arguing that that the court should vacate its finding of unfair labor practice and order the parties to arbitration to resolve the current

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<sup>6</sup> The inflation rate of health insurance costs is about 10% per year. (A-179) At the same time, the District’s revenues are rising modestly, at best. (A-179) The lag in revenues compared to the inflation rate in health care costs means that insurance programs are consuming available resources for children and schools. (A-179)

dispute pursuant to the Collyer-Wire Doctrine and the provisions in their Contract providing for arbitration of disputes arising out of the terms of the Contract. (A-54-82) The district court denied the District's motion. This Court can proceed with a de novo review of the issues raised by the District. *Miles, et al. v. City of Oakdale, et al.*, 323 N.W.2d 51, 55 (Minn. 1982) (holding that appellate courts are not bound by determinations of law made by the district courts); *Phillips v. State of Minnesota*, C1-99-604, 1999 Minn. App. LEXIS 1094, \*7 (Sept. 14, 1999). (A-181-84)

PELRA was adopted with the objectives of the National Labor Relations Act ("NLRA") in mind, and the Collyer-Wire doctrine recognized in the federal system under the NLRA should apply with equal force under PELRA to obligate the parties to arbitrate this dispute. Public policy considerations that make arbitration a prudent alternative dispute resolution for labor-management issues – specialized expertise in labor disputes, cost-sensitivity, and efficiency – also apply in this case to make arbitration a sensible forum in which to resolve this dispute. Therefore, the Court should order the parties to take their dispute to an arbitrator.

Additionally, Minnesota case law dictates that when parties to a collective bargaining agreement agree to resolve their disputes through arbitration, the court should order the parties to honor the terms of their contract and send the dispute to an arbitrator. Federal precedent and sound public policy also promote dispute resolution through arbitration rather than the courts if the issues arise in the context of a labor agreement. In this case, the parties expressly agreed to resolve disputes through arbitration, and they should be held to their bargained-for agreement.

**B. The Court Should Adopt The Collyer Wire Doctrine.**

**1. The Parties Expressly Agreed To The District's Right To Select An Insurance Policy For The Teachers And To Arbitrate Disputes Arising Under The Contract.**

Under the long-standing Collyer Wire Doctrine recognized in our federal system, when the parties' contract contains an arbitration clause and their dispute requires the application or interpretation of that contract, the parties are required to honor their contractual obligations and arbitrate the dispute, even if such a dispute arguably includes unfair labor practices. *Collyer Insulated Wire*, 192 N.L.R.B. 837 (1971). Thus, when a dispute involves behavior that arguably constitutes an unfair labor practice, the National Labor Relations Board (the "Labor Board" or "NLRB") first defers its review to the arbitration process.

In *Collyer*, Labor Board considered a claim arising out of an alleged unilateral change of working conditions by an employer. *Id.* at 842. The NLRB held that it would require exhaustion of arbitration remedies provided for in the collective bargaining agreement before it considered the claim because the collective bargaining agreement's arbitration clause covered the dispute at issue and the meaning of the contract stood at the center of the dispute. *Id.* The Board explained its rationale as follows:

We are not compelling any party to agree to arbitrate disputes arising during a contract term, but are merely giving full effect to their own voluntary agreements to submit all such disputes to arbitration, rather than permitting such agreements to be side-stepped and permitting the substitution of our processes, a forum not contemplated in their agreement. The long and successful functioning of grievance and arbitration procedures suggests to us that in the overwhelming majority of cases, the utilization of such means will resolve the underlying dispute and make it unnecessary for either party to follow the more formal, and sometimes lengthy, combination

of administrative and judicial litigation provided for under our statute.

*Id.* at 842-43. Thus, the Collyer Wire Doctrine promotes efficiency and judicial economy by requiring the parties to abide the arbitration clause in their collective bargaining agreement rather than taking the issue directly to court.

As previously established, Article VIII of the Contract clearly evinces the parties' agreement that the District has the authority to select an insurance policy for the Teachers. In addition, the parties' Contract includes a grievance procedure stating that disputes arising under the interpretation of a matter set forth in the Contract must be decided by an arbitrator. Thus, the District's decision to exercise its express authority and change the benefits under Choice is subject to the grievance procedure, despite the Union's allegations of unfair labor practice. As the facts of this case square with those in which the federal courts long ago decided were ripe for a court's exercise of deferral to arbitration, this Court should adopt the Collyer Wire Doctrine and give full effect to the parties' own voluntary agreement and submit this dispute to arbitration rather than permit the Teachers to side-step its contractual obligations and go directly to court.

**2. Factors Considered Under the Collyer Wire Doctrine To Determine Whether A Court Should Defer In The First Instance To An Arbitrator Are Met In This Case.**

Under the Collyer Wire Doctrine, the Court can employ a number of considerations in analyzing whether this dispute is properly deferrable to an arbitrator. Included among them are: whether the dispute is well-suited to resolution by arbitration; whether the contract and its meaning lie at the center of the parties' dispute; whether the dispute arises within a long and productive collective bargaining relationship; the parties'

willingness to resort to arbitration; and whether the rights of each party to the dispute will be injured by its deference to an arbitration procedure. *Collyer*, 192 N.L.R.B. at 842. The NLRB stated that the determination of these issues is best left to the parties who negotiated the contract or, if such discussion does not resolve them, to an arbitrator. *Id.*

The parties' dispute is particularly well-suited to resolution through arbitration because the Contract manifests a clear intent to arbitrate a controversy arising out of the interpretation of contractual provisions. The meaning of Article VIII lies at the center of this dispute. Moreover, the parties expressed their willingness to arbitrate this dispute in Article XIV the Contract itself wherein they agreed that in the event that the District and the Teachers were unable to resolve a dispute, the issue may be submitted to arbitration. (A-72-82) Finally, the rights of each party to the dispute will not be injured by deferral. Clearly, both parties would benefit from foregoing the expense and time a review of this Court's decision or further proceedings at the district court level if this Court were to remand certain issues to the district court. In short, this case presents the Court with an ideal opportunity to promote industrial peace and stability by adopting a sound policy that enforces collective bargaining agreements that provide for final and binding arbitration of disputes.

**3. Collyer Deferral Will Not Compromise The Statutory Rights Of Either Party.**

The Collyer Wire Doctrine fully addresses the issue of statutory rights of the parties by permitting the Court to maintain jurisdiction to ensure that statutory rights are not sacrificed. Specifically, the NLRB stated:

Nor are we “stripping” any party of “statutory rights.” The courts have long recognized that an industrial relations dispute may involve conduct which, at least arguably, may contravene both the collective agreement and our statute. When the parties have contractually committed themselves to mutually agreeable procedures for resolving their disputes during the period of the contract, we are of the view that those procedures should be afforded full opportunity to function. . . . By our reservation of jurisdiction . . . there will be no sacrifice of statutory rights if the parties’ own processes fail to function in a manner consistent with the dictates of our law.

*Id.* at 842-43.

Plainly, the Court would be acting consistent with the call of the Collyer Wire Doctrine in sending the District and the Teachers to arbitration while maintaining jurisdiction to ensure that the parties’ rights are not sacrificed.

**4. Recognition Of Collyer Deferral In This Case Tracks The Close Relationship Between PELRA And The NLRA And Coincides With The United States Supreme Court’s View Of Voluntary Dispute Resolution Procedures.**

It is understood that the nature of PELRA as a whole indicates that the Minnesota legislature attempted to emulate at the state level the procedures and objectives of the NLRA. *Minn. State College Bd. and Another v. Public Employment Relations Bd., Minn. Fed’n of Teachers*, 228 N.W.2d 551, 557 (1975). By recognizing the Collyer Wire Doctrine under PELRA, the Court would be furthering this legislative intent that labor relations in the state public sector be governed by procedures similar to those at the federal level. Just as the United States Supreme Court recognized the Collyer Wire Doctrine as a vehicle for “harmonizing” Congress’ intent that parties use the voluntary dispute-resolution procedures in their contracts to resolve disputes involving their contract, *William E. Arnold Co. v. Carpenter’s District Council (Jacksonville and*

*Vicinity*), 417 U.S. 12, 16 (1974), so too the Court in this case, through deferral, would be honoring the parties' expressed intent and harmonizing the legislature's intent to align PELRA with the procedures under the NLRA.

**C. Minnesota Case Law And Public Policy Require Parties To Arbitrate Disputes When They Have Bargained For Arbitration.**

**1. The Contract Contains An Arbitration Provision.**

Arbitration clauses in collective bargaining contracts are to be given a broad and liberal construction. *Bonnot v. Congress of Indep. Unions, Local 14*, 331 F.2d 355, 358 (8th Cir. 1964). All doubts should be resolved in favor of arbitration. *Local 1416, Intl. Ass'n of Machinists v. Jostens, Inc.*, 250 F.Supp. 496, 500 (D. Minn. 1966). If there is an agreement to arbitrate, a court must order the parties into arbitration and stay any judicial action pending arbitration. Minn. Stat. §572.09(a),(d); *see also Heyer v. Moldenhauer*, 538 N.W.2d 714, 716 (1995) ("If it is reasonably debatable whether a dispute is subject to arbitration, the district court should forward the dispute to arbitration.")<sup>7</sup>

Here, Article XIV of the parties' Contract contains a grievance procedure. (A-72-82) Section 1 defines a grievance as "an allegation by either party to this agreement or by a teacher which results in a dispute or disagreement as to the interpretation or

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<sup>7</sup> Judicial precedent at the federal level also holds that when parties contract for an arbitrator's judgment in their collective bargaining agreement, the arbitrator is the proctor of the parties' bargain and it is not the function of the courts to construe a collective bargaining agreement that is subject to arbitration. *United Steelworkers v. Am. Mfg. Co.*, 363 U.S. 563 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960) (also known as the "Steelworkers Trilogy"). Minnesota courts have found principle established in the Steelworkers Trilogy to be instructive in employment cases. *See, e.g., Ramsey County v. Am. Fed'n of State, County and Mun. Emp., Council 91, Local 8*, 309 N.W.2d 785, 790 (Minn. 1981).

application of terms and conditions of employment insofar as such matters are contained in this Agreement.” (A-72-82) In addition, Section 7 provides for arbitration procedures: “[i]n the event that the parties are unable to resolve any grievance, the grievance may be submitted to arbitration as defined herein.” (A-72-82)

**2. The Dispute In This Case Is Arbitrable Because The District’s Right To Select The Teachers’ Insurance Carrier And Policy Is Expressly Reserved Under The Terms Of The Contract.**

To determine whether an issue is arbitrable, the language of the parties’ agreement must be examined to ascertain whether the parties intended to make an issue arbitrable. If an issue expressly included in a Contract and, therefore, bargainable, the issue is grievable and, thus, arbitrable. *Metro. Airports Comm’n v. Metro. Airports Police Fed’n*, 443 N.W.2d 519, 524 (Minn. 1989). In *Mora Fed’n of Teachers, Local 1802 v. Indep. Sch. Dist. No. 332*, 352 N.W.2d 489, 492-93 (Minn. Ct. App. 1984), this Court held that a dispute should be sent to an arbitrator when either: (1) the parties evinced a clear intent to arbitrate a controversy arising out of specific provisions of the contract; or (2) the intention of the parties is reasonably debatable as to the scope of the arbitration clause.

The parties unquestionably evinced a clear intent to arbitrate the issue of the District’s right to select an insurance policy for the Teachers. The District’s right to select an insurance policy for the Teachers is at the heart of this dispute, and because the Teachers dispute the District’s exercise of that authority, the District’s reserved right under Article VIII of the Contract is brought squarely into this dispute. The parties have bargained for arbitration to resolve their conflicts. The parties should therefore honor

their contractual obligations, rather than casting their dispute in statutory terms and ignoring their agreed-upon grievance procedure.

**V. THE DAMAGES CAUSED BY ANY VIOLATION OF THE STATUTES IS THE MEMBERS' ADDITIONALLY INCURRED OUT-OF-POCKET EXPENSES DUE TO THE INCREASED CO-PAYS UNDER CHOICE**

**A. The Standard Of Review Of The Court's Conclusions Of Law.**

PELRA provides that a party aggrieved by an unfair labor practice may bring an action for injunctive relief or damages caused by the unfair labor practice. Minn. Stat. §179A.13. In determining that the damages suffered by the Teachers in this case is the difference between the dollar figure that the parties negotiated as the District's payment for health care premiums and the amount that the District actually incurred after it decreased the value of the Choice Plan, the district court rendered its interpretation of the measure of damages permitted under the statutes. Thus, the district court's conclusion is a question of law and is not entitled to deference at the appellate level. *Miles, et al. v. City of Oakdale, et al.*, 323 N.W.2d 51, 55 (Minn. 1982) (holding that appellate courts are not bound by determinations of law made by the district courts).

**B. An Award Of Additional Out-Of-Pocket Expenses Incurred By Union Members Who Stayed With Choice And Used Services Subject To Higher Coinsurances Is The Only Damage Award That Will Make The Teachers Whole And Avoid A Windfall To The Teachers In This Case.**

It is well established that, to remedy an employer's unfair labor practice of unilaterally changing the terms and conditions of employment of its union-member employees, the usual practice is to order the employer to restore the unit employees' terms and conditions of employment to the level in existence before the unilateral

changes were implemented, and to make the employees whole for the losses they incurred as a result of the changes. *Southwest Forest Indus.*, 278 N.L.R.B. 228, 228 (1986).

According to the Eighth Circuit, when an employer unilaterally and unlawfully makes alterations to its employees' health insurance policy resulting in damages to the employees, the proper make whole remedy is to order the employer to return the health insurance plan to the status quo that existed prior the changes and reimburse the employees for money paid to cover the alterations made to a plan. *North Star Steel Co. v. N.L.R.B.*, 974 F.2d 68, 69 (8th Cir. 1992) (stating that, the proper make whole remedy to employees who lost money as a result of having to make higher contributions to a health insurance plan – due to the employer's unilateral actions – was to require the employer to compensate the employees for the money they actually lost).

In general, the measure of damages is the loss to the plaintiff rather than the gain to the defendant. *B & Y Metal Painting, Inc. v. Ball*, 279 N.W.2d 813 (Minn. 1979). The wronged party is entitled to damages in an amount that will reasonably compensate for damages naturally and proximately resulting from the wrong. *Johnson v. Gustafson*, 277 N.W. 252 (Minn. 1938). Furthermore, *Black's Law Dictionary* defines actual or compensatory damages as “an amount awarded to a complainant to compensate for a proven injury or loss; damages that repay actual losses.” *Black's Law Dictionary* (page number) (7<sup>th</sup> ed. 1999) (emphasis added).

The damages sufficient to make the Teachers whole in this case are the additional out-of-pocket costs incurred by those Teachers who were forced to pay higher fees due to

the increased co-pays under Choice. Teachers like those who testified at trial may have incurred expenses under Choice that they would not have incurred had the District not adopted the Committee's cost-containment recommendation. This is the only figure that can fairly represent the "actual losses" to the Teachers.

Both the District and the Union testified that salary and benefit compensation bargaining represents a total economic package. As such, the relationship between salary and benefits is an inverse one, and when the District realized savings in the benefits component of compensation, a greater share of the District's finite resources were able to be allocated toward providing increased Teacher salaries. The District provided undisputed testimony to this effect. Thus, the Teachers have already realized the District's savings in the form of higher salaries. The only damages that a Teacher could conceivably suffer would be the costs of services paid out of his or her own pocket for services received at higher co-pays. A damage award to the Teachers in the amount of the District's premium savings would greatly exceed full compensation and cannot stand, as such an award truly would result in a windfall to the Teachers. The Teachers' requested remedy in its Motion for Summary Judgment aligns with this logic, as, in that Motion, the Teachers requested remedy was simply "to make whole any person who suffered a monetary loss." (A-87) (emphasis added). The court cannot disregard the request of both parties and award that the Union did not seek in its dispositive motion and which is not supported by law.

**C. The Union's Damages Evidence Is Largely Speculative, Whereas The District Established That Out-Of-Pocket Costs Can Easily Be Measured.**

Although damages are not required to be calculable with absolute precision, they must be "ascertainable with reasonable exactness and may not be the product of benevolent speculation." *Faust v. Parrott*, 270 N.W.2d 117 (Minn. 1978). In order to be recoverable, damages must not be speculative, remote, or conjectural. *Duchene v. Wolstan*, 258 N.W.2d 601 (Minn. 1977). The Union bears the burden of producing evidence to prove its damages in this case.

The District provided frank testimony that, based on discussions it had with its benefits consultant, any out-of-pocket expenditures that the Teachers made could be calculated. On the other hand, the Union provided expert testimony regarding the proper damages valuation that was full of supposition. The Teachers' evidence also omitted critical facts regarding the way in which savings were passed on to the Teachers in higher salaries and the fact that the Teachers themselves enjoyed savings due to the lower premiums. Stiglich's testimony even compromised the Teachers' position, as the most precise calculation he could offer as to the damages owed to the Teachers diverged some 40% from publicly available calculations measuring the comparative value of benefit plans with structures similar to the old Choice plan and the current Choice plan. While the Union is not required to prove damages with certainty, the Court should require something more than a measurement that chalks up a 40% variance to speculation of "intangibles."

**CONCLUSION**

Appellants request that this Court vacate the district court's order granting summary judgment to the Teachers and denying summary judgment to the District, grant summary judgment to the District, and vacate the monetary and injunctive relief awarded to the Teachers. Alternatively, this dispute belongs in arbitration, and the Court should require the parties to arbitrate this dispute.

Dated: September 6, 2005



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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).