STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KITSAP COUNTY SHERIFF'S OFFICE LIEUTENANT'S ASSOCIATION, Complainant, vs. KITSAP COUNTY, Respondent.	CASE 22907-U-09-5844 DECISION 10836-A - PECB DECISION OF COMMISSION

Lowenberg, Lopez & Hansen, P.S., by *Stephen M. Hansen*, Attorney at Law, for the union.

Russell D. Hauge, Kitsap County Prosecutor, by *Deborah A. Boe*, Deputy Prosecuting Attorney, for the employer.

On December 11, 2009, the Kitsap County Sheriff's Office Lieutenant's Association (union) filed a complaint alleging that Kitsap County (employer) committed an unfair labor practice by unilaterally changing its contribution to employee health insurance premiums without providing notice and an opportunity for bargaining. Examiner Lisa A. Hartrich held a hearing, found that the employer committed the alleged unfair labor practice, and fashioned a status quo remedy that gave full effect to the parties' agreements while at the same time preserving employee health insurance premiums. *Kitsap County*, Decision 10836 (PECB, 2010). The employer appeals the Examiner's conclusion that it unilaterally altered the status quo without bargaining.

For the reasons set forth below, we affirm the Examiner's decision that the employer committed an unfair labor practice when it unilaterally changed its contribution to employee health insurance premiums. The evidence in this case demonstrates that the parties agreed to amend their collective bargaining agreement for calendar year 2009 that required employees and the

employer to contribute a fixed amount to employee health insurance. Because of the fixed contribution rates specified in the addendum to the agreement, the Examiner did not commit reversible error when she required both the employer and employees to proportionally increase their contributions in order to maintain employee health insurance when the rates increased in 2010.

DISCUSSION

A brief recitation of the facts is necessary to place this controversy in its proper context. The employer and union were parties to a collective bargaining agreement covering the period of January 1, 2007 through December 31, 2009. Article II, Section H of the agreement covered "Health and Welfare Benefits" and stated, in part:

1. Effective January 1, 2007, the County's contributions towards medical, dental and life insurance coverage for regular full-time employees shall be as follows:
    a. The parties agree to renew the following plans with upgraded vision coverage as proposed in the joint-union offer by the members of the joint labor-management Medical Benefits Committee dated August 29, 2006. For the period January 1, 2007 through December 31, 2007, employees may choose to participate in one of the plans listed below. Effective with January 2007 premiums, the County will make contributions to medical insurance premiums as shown in the table below. *Employees will pay the remaining contributions through payroll deduction.*

Group Health Options POS	[employer] contribution
Employee	$370.86
Ee + Spouse	$744.98
Ee + Child(ren)	$638.08
Ee + Family	$1,012.22

    [The agreement then lists the employer's contribution for the Group Health Select, KPS PPO 1, and KPS PPO 2 plans.]

    b. Effective with the January 2008 premiums, the County will pay the first 10% increase over the 2007 the (sic) County premium contributions for employee-only and dependent coverage under the KPS PPO 1 and PPO 2 plan, and the Group Health Select $15.00 co-pay Plan, or as modified upon the recommendation of the joint labor-management Medical Benefits

Committee, *with employees paying the remaining share through payroll deduction*. The parties agree to participate in a joint labor-management Medical Benefits Committee that will make every effort to devise plan changes that will keep rate increases below 10% for 2008. The parties recognize that insurance providers' dual carrier rules may place restrictions on the County's ability to allow differentials between employee contribution rates for similar levels of coverage provided by different carriers. Therefore, the Medical Benefits Committee will consider such adjusting employee contributions rates when devising plan changes under this paragraph.

c. The parties agree to open Article II, Section H.1 for negotiations of coverage for the 2009 Plan year. Such negotiations will open not later than June 1, 2008 and may be conducted in part by participation in the joint labor-management Medical Benefits Committee.
d. During the final year for which the contract establishes medical contributions, the Association's representative on the joint labor-management Medical Benefits Committee may participate in deliberations regarding medical coverage for the following year and the Association's representative may, but will not be required to cast a vote. If the Association's representative votes for a majority recommendation to the Board of County Commissioners that is thereafter adopted by the Board of County Commissioners, such recommendations will become a tentative agreement between the parties, subject to final ratification by the bargaining unit membership and approval by the Board of County Commissioners as part of a successor collective bargaining agreement.
e. The parties recognize that it may be mutually beneficial to memorialize the practices of the joint labor-management Medical Benefits Committee and/or to establish more definite rules for the Medical Benefit Committee's function. . . .

Exhibit 1 (emphasis added). The Medical Benefits Committee (MBC) referenced in the agreement is a labor-management group that meets annually to recommend changes to employee health insurance and the contribution rates for insurance premiums. Representatives from management, represented employees, and unrepresented employees participate in the MBC. As noted above, the union participates in the MBC, but is not bound by any decision made by the MBC and the union is free to request independent bargaining over health insurance.

For calendar year 2007, the employer contributed to employee health insurance premiums in a manner consistent with subsection 1.a. of the contract, and the employees contributed the remaining costs through payroll deduction. For calendar year 2008, the employer increased its contribution to employee health insurance premiums by 10% over what it contributed in 2007, consistent with subsection 1.b. of the collective bargaining agreement. The employees continued to pay the remainder of the total premium consistent with section 1.a. of the agreement.

For calendar year 2009, the MBC recommended a change to the medical insurance contributions that was adopted by the employer and union and memorialized in an amendment to the collective bargaining agreement. The amendment stated, in part:

> Kitsap County and undersigned Union(s), having participated in the Joint Labor Management Medical Insurance Committee, and having reviewed employees' health care benefits plans; hereby mutually agree to amend the insurance provisions of their collective bargaining agreement for the calendar year 2009:
>
> 1. Medical Insurance
>   a. The parties agree that the choices of plans offered to employees for the year 2009 will be as follows:
>
>   • Group Health – Revised to include Welcome Package
>   • Premera Blue Cross PPO Plan
>
> A summary of the two are set forth in Attachment A and incorporated fully into this amendment.
>
>   b. Contributions. *The [employer's] monthly contributions towards medical coverage for full-time employees and the employee's monthly premium contribution are set forth below:*

Group Health	[employer] Contribution	Employee Contribution
Employee	$404.10	$0.14
Employee + Spouse	$811.20	$17.46
Employee + Child(ren)	$694.88	$12.46
Employee + Family	$1,102.04	$29.78

> [The agreement then lists the employer's contribution for Premera Blue Cross.]
>
> In addition, employees who elect spousal medical coverage will be required to pay an additional $25.00 per month if that spouse has group medical insurance through his/her own employer (including Kitsap County).

Exhibit 2 (emphasis added). In April 2009, the MBC met to develop its recommendations for 2010 medical contribution rates. The employer informed the MBC that premium costs were projected to increase by 18.3% over what was paid in 2009, and that the employer was only able to contribute an additional 5%. The record demonstrates the MBC eventually developed an insurance package that resulted in only an 11% increase over what was paid in 2009. On October 2, 2009, the MBC made its recommendation for 2010 medical benefit package. The union did not vote on the MBC's proposal.

Starting in July 2009, the employer and union met several times to negotiate the successor agreement. The parties did not initially bargain over health insurance premiums, as they were awaiting the MBC's recommendation. On October 2, 2009, the MBC released its recommendation. The union decided against accepting the recommendation and instead requested to bargain medical benefits during negotiations for the successor agreement.

On October 26, 2010, Fernando Conill, the employer's labor relations manager, sent the union an e-mail explaining that the employer believed that it would have to "implement the status quo 2009 medical benefits with the 2010 status quo rates, effective January 1, 2010, for those unions that do not choose the 2010 Medical Benefits (and rates) as proposed[.]" Exhibit 3. In December 2009, the employer increased the amount that employees contributed to medical premiums to cover the additional costs while at the same time maintaining the level it paid in 2009. At the time the employer made its change, the parties had not reached agreement on the health insurance premiums and they had not sought interest arbitration as an alternative means for settling the matter.

Applicable Legal Standard – Duty of Bargain

Under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, a public employer has a duty to bargain with the exclusive bargaining representative of its employees. RCW 41.56.030(4). "[P]ersonnel matters, including wages, hours, and working conditions" of bargaining unit employees are characterized as the mandatory subjects of bargaining under *City of Richland*, Decision 2448-B (PECB, 1987), *remanded*, 113 Wn.2d 197 (1989); *Federal Way School District*, Decision 232-A (EDUC, 1977), *citing NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958).

This Commission has long held that medical benefits are mandatory subjects of bargaining. *See Snohomish County*, Decision 9834-B (PECB, 2008); *City of Seattle*, Decision 651 (PECB, 1979). Prior to any changes to mandatory subjects of bargaining, employers must give unions advance notice of the potential change, so as to provide unions time to request bargaining and, upon such requests, bargain in good faith to resolution or lawful impasse. Because the employees at issue in this case are uniformed employees eligible for interest arbitration under Chapter 41.56 RCW, the employer may not unilaterally implement a term or condition of employment, but must utilize the Chapter 41.56 RCW interest arbitration provisions to secure a change.

Duty to Maintain Status Quo

Following the expiration of a collective bargaining agreement, an employer must maintain terms and conditions of employment that existed at the time the agreement expired during the subsequent negotiations for a new collective bargaining agreement. *City of Mukilteo*, Decision 9452-A (PECB, 2008); *see also City of Seattle*, Decision 651 (PECB, 1979). An employer who alters a term or condition of employment during this period without first satisfying its bargaining obligation violates the statute.

Determining the Status Quo

The status quo obligation depends on how the parties craft the language in the collective bargaining agreement. *City of Mukilteo*, Decision 9452-A (PECB, 2008), *review denied,* 171 Wn.2d 1019 (2011). In making such determinations, this Commission has "adhered to an objective manifestation theory in construing words and acts of contractual parties, and impute to a person an intention corresponding to the reasonable meaning of the words and acts." *City of Mukilteo*, Decision 9452-A, *quoting City of Wenatchee*, Decision 8802-A (PECB, 2006). The subjective intent of the parties is irrelevant. *City of Mukilteo*, Decision 9452-A, *citing Everett v. Estate of Sumstad*, 95 Wn.2d 853 (1981). If the plain language used within the collective bargaining agreement demonstrates a meeting of the minds, there is no need to look further into the bargaining process to determine what was intended. *City of Mukilteo*, Decision 9452-A.

For example, in *City of Mukilteo*, the parties' collective bargaining agreement required the employer to contribute 100% of the cost for employee health insurance in the first year of the agreement. However, the language went on to state that in each subsequent year, the employer's

"contribution increases shall be limited to a maximum increase of 11% above 2001 rates in 2002, 10% above 2002 rates in 2003, and 10% above 2003 rates in 2004. Any increases that exceed those amounts in 2002, 2003 and 2004 shall be paid by the employee . . . ." That agreement expired without being replaced by a subsequent agreement. *City of Mukilteo*, Decision 9452-A. The Commission found that the language of the collective bargaining agreement demonstrated that "the employer's contribution level is a formula that would be capped at a certain amount, and bargaining unit employees would be required to cover any additional costs of health insurance premiums." *City of Mukilteo*, Decision 9452-A.

Similarly, in *Snohomish County*, Decision 9834 (PECB, 2007), *aff'd, Snohomish County*, Decision 9834-B (PECB, 2008), the collective bargaining agreement required the employer to pay a fixed dollar amount toward premiums, and employees were required to pay any remaining amount needed to cover the costs of insurance, regardless of how high or low the cost. When employees changed bargaining representatives, the employer continued to contribute towards insurance premiums only the fixed amount specified in the previously negotiated agreement, even though the overall cost of insurance escalated substantially during the subsequent negotiations.

In *City of Anacortes*, Decision 7007-A (PECB, 2006), a different result was reached. There, the collective bargaining agreement stated the employer would pay 100% of employee health insurance premiums. Insurance premiums subsequently escalated, and when the existing agreement expired, the employer claimed it was only obligated to pay the actual dollar amount it previously paid for premiums. The Commission found that the status quo required the employer to continue to pay 100% of health insurance premiums, regardless of the cost. When the employer attempted to fix a set amount it contributed, it committed an unfair labor practice.

In *Lewis County*, Decision 10571-A (PECB, July 15, 2011), the parties' agreement provided that the employer pays 95% of health insurance premiums, and the employees would pay 5%. When the agreement expired, the employer claimed it was only obligated to pay the actual dollar amount it had previously paid for premiums, even though the total premium costs had increased. The Commission found that the status quo required a continuation of the 95%/5% split, regardless of the total cost of insurance premiums.

Application of Standard

Here, the Examiner found that the parties' 2009 agreement placed a "cap" on the health insurance premium contributions that limited the amount paid by both the employer and employee. In reaching this conclusion, the Examiner compared the language of the 2009 amendment to the contractual language cited in the above-mentioned precedents and determined that the parties' language differed in that premiums were not tied to any specific formula, and the language was silent as to whether the employer or employees were liable to cover any additional increases to premium rates.

The employer argues that this case is similar to the *City of Mukilteo* and *Snohomish County* cases because the employer's contribution is set at a specific amount that increases by a certain percentage. The employer also points out that the parties' collective bargaining agreement capped the employer's contribution and required employees to cover all additional costs, and urges this Commission to read the 2009 amendment together with the original contract language to determine the status quo. We disagree.

The 2009 amendment demonstrates a clear intent on the part of the parties to "mutually agree to *amend* the insurance provisions of their collective bargaining agreement for the calendar year 2009." To amend means "to alter . . . formally by adding or deleting a provision or by modifying the wording." BLACK'S LAW DICTIONARY, 80 (7th ed., 1999). A plain reading of the 2009 amendment demonstrates two distinct changes from the original collective bargaining agreement.

First, the 2009 amendment specifically lists in dollar amount contributions of both the employer and employees to health insurance premiums, and those amounts are not tied to a formula that allows the amount paid to vary. Stated another way, both the employer and employee knew that for calendar year 2009 the amount paid would not vary from the amount specified in the amended agreement. This is in stark contrast to the original language of the collective bargaining agreement, which set forth only the employer's contribution amount, and contained a formula that limited the amount the employer was bound to pay for the following year of the agreement.

Second, while subsection 1.b. of the original agreement required employees to pay the "remaining share" of health insurance premiums beyond the fixed amount that the employer was required to pay no matter what the amount was, the 2009 amendment did not include similar language. Thus, while the original collective bargaining language fixed the employer's contribution to a specific amount that would increase by only a specific percentage over what was paid in the previous year, the 2009 amendment fixed *both* the employer's and employee's contributions to a specific amount.

These facts, examined together, are distinguishable from the facts presented in both the *City of Mukilteo* and *Snohomish County* decisions. If this employer and union intended to fix the employer's contribution to a specific amount while at the same time requiring employees to cover all additional increases for health insurance benefits, they would have explicitly stated so in the amended agreement in a manner similar to the original agreement. The changes and omissions to the contractual language from 2008 to 2009 are significant and material changes that altered the employer's and employee's obligations in the event the contract expired. In this manner, the language of the instant case is similar to the *Lewis County* case in that both the employer and employees have fixed contributions.

Having determined that the 2009 amendment represents the status quo and required the employer and employee to pay the specific amounts referenced in that agreement, we next turn to the question of whether the employer maintained the status quo.

The Unilateral Change

In this case, the record clearly demonstrates that although the employer maintained the level of health insurance benefits provided to employees upon expiration of the agreement, the premium for those benefits increased above what those same benefits cost in 2009, and the employer passed the entire cost of the increase on to the employees. Accordingly, by unilaterally altering the status quo without first bargaining in good faith to impasse and seeking interest arbitration, the employer committed an unfair labor practice.

Remedy

The standard remedy for a unilateral change violation is restoring the status quo that existed prior to the unilateral change, making employees whole for any loss of wages, benefits, or working conditions as a result of the employer's unlawful act, posting a notice of the violation, and reading that notice into the record at a public meeting of the employer's governing body. *City of Anacortes*, Decision 6863-A (PECB, 2001), *citing Seattle School District*, Decision 5733-A (PECB, 1997). The typical order also instructs the employer to cease and desist from making unilateral changes to mandatory subjects of bargaining unless the employer first provides the complainant union with notice of proposed changes and the opportunity to bargain over the proposed changes. The purpose of ordering a return to the status quo is to ensure the offending party is precluded from enjoying the benefits of its unlawful act and gaining an unlawful advantage at the bargaining table. *Lewis County*, Decision 10571-A.

In *Lewis County*, this Commission held that in certain cases where a unilateral change violation has been found, the factual circumstances may dictate a remedial order different from the regular status quo remedy in order to effectuate the purposes of statute. This is such a case.

The Examiner found that the fixed contributions of both the employer and employees created a conundrum because premium costs have increased over the 2009 cost, thus raising the question of which party will be responsible for the excess costs. Because an exact maintenance of the 2009 status quo would result in an inadequate amount of funding for the level of health insurance benefits, the Examiner held that the specific amounts paid by the employer and employees under the various plans outlined in the 2009 amendment should be converted to percentages and then be applied to the 2010 rate. The employer is also required to refund each employee the amount he or she paid above that percentage beginning with the December 2009 paycheck.

We find that the ordered remedy is tailored in such a fashion to respect the agreed upon amendment while at the same time recognizing that both the employer and employees need to pay an increased premium rate in order to prevent employees' health insurance from lapsing. Accordingly, the ordered remedy is appropriate for this case.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued by Examiner Lisa A. Hartrich are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 10th day of August, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

THOMAS W. McLANE, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER:	22907-U-09-05844	FILED:	12/11/2009	FILED BY:	PARTY 2
DISPUTE:	ER GOOD FAITH				
BAR UNIT:	SUPERVISORS				
DETAILS:	Health Benefits/Injuctive Relief				
COMMENTS:					

EMPLOYER: KITSAP COUNTY
ATTN: FERNANDO CONILL
614 DIVISION ST
MS-23
PORT ORCHARD, WA 98366
Ph1: 360-337-4484

REP BY: DEBORAH BOE
KITSAP COUNTY
614 DIVISION ST
MS-35-A
PORT ORCHARD, WA 98366
Ph1: 360-337-4992

PARTY 2: INTERNATIONAL UNION OF POLICE ASSOCIATIONS LOCAL 7408
ATTN: JOHN SPRAGUE
614 DIVISION ST
PT ORCHARD, WA 98366
Ph2: 360-337-4905

REP BY: STEPHEN M HANSEN
LOWENBERG LOPEZ AND HANSEN
1703 A DOCK ST
TACOMA, WA 98402
Ph1: 253-302-5955