In the Matter of ASHBURNHAM-WESTMINSTER REGIONAL SCHOOL DISTRICT

and

ASHBURNHAM-WESTMINSTER TEACHERS ASSOCIATION

Case No. MUP-01-3144

54.611	*health insurance*
67.15	*union waiver of bargaining rights*
67.16	*other defenses*
67.8	*unilateral change by employer*
67.82	*implementing changes after impasse*
82.111	*interest*
82.125	*make-whole interest*
82.3	*status quo ante*

April 9, 2003
Helen A. Moreschi, Chairwoman
Peter G. Torkildsen, Commissioner

Gregory Angelini, Esq.	*Representing Ashburnham-Westminster Regional School District*
Sandra Quinn, Esq.	*Representing Ashburnham-Westminster Teachers Association*

DECISION[1]

Statement of the Case

The Ashburnham-Westminster Teachers Association (Union) filed a charge of prohibited practice with the Labor Relations Commission (Commission) on October 19, 2001, alleging that the Ashburnham-Westminster Regional School District (School District) had engaged in a prohibited practice within the meaning of Section 10(a)(5) of M.G.L. c. 150E (the Law). Following an investigation, the Commission issued a complaint of prohibited practice on March 6, 2002. The complaint alleged that the School District had failed to bargain in good faith by changing health insurance benefits without giving the Union prior notice and an opportunity to bargain to resolution or impasse in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. The School District filed an answer on March 13, 2002.

On October 16 and 17, 2002, Cynthia A. Spahl, Esq., a duly-designated Commission hearing officer (Hearing Officer), conducted a hearing at which both parties had an opportunity to be heard, to examine witnesses, and to introduce evidence. Following the hearing, the School District e-mailed its post-hearing brief on January 8, 2003 and filed a hard copy on January 9, 2003. The Union filed its post-hearing brief on January 17, 2003. The Hearing Officer issued Recommended Findings of Fact on January 24, 2003. The Union and the School District filed challenges to the Recommended Findings of Fact on March 5, 2003 and March 4, 2003 respectively.

Findings of Fact[2]

Both the Union and the School District challenged portions of the Hearing Officer's Recommended Findings of Fact. After reviewing those challenges and the record, we adopt the Hearing Officer's Recommended Findings of Fact and summarize the relevant portions below.

The Union is the exclusive collective bargaining representative for the following employees employed by the School District: 1) teachers employed on a contract year basis; 2) adjustment counselors; 3) early childhood coordinators; 4) guidance director and counselors; 5) health coordinator; 6) home school liaisons; 7) librarians; 8) life skills program director; 9) psychologists; 10) reading specialists; 11) school nurses and nurse supervisor; 12) school to career coordinator; 13) special education chairperson; and 14) speech/language pathologists and therapists.

Successor Contract Negotiations

Between October or November 2000 and February 2001, the parties negotiated for a successor collective bargaining agreement. During those negotiations, the parties did not bargain over changing the cost of prescription drug co-payments, but they did negotiate over other issues related to health insurance like premium contributions and health insurance coverage for retirees. Although the School District offered to investigate other health insurance carriers at some point during the negotiations, the Union preferred to remain with Blue Cross/Blue Shield (BCBS).

After the negotiations concluded, the School District and the Union ratified a tentative collective bargaining agreement on or about February 27, 2001 and March 7, 2001 respectively. The parties' collective bargaining agreement is in effect from July 1, 2001 to June 30, 2004. Part VI, G of that agreement provides in part:

> The [School] District shall pay fifty percent (50%) of the individual premium and fifty-four and six-tenths percent (54.6%) of the family premium for Blue Cross-Blue Shield Master Medical (family and individual). The following percentages shall be applied to HMO Blue and Blue Choice (Health Flex) over the duration of this Agreement as follows:

	2001-2002	2002-2003	2003-2004
EMPLOYER'S SHARE	90%	85%	75%
EMPLOYEE'S SHARE	10%	15%	25%

> a. Benefits include the Blue Cross-Blue Shield Master Medical Plan and the Blue Cross - Blue Shield Extended Benefits Certificate[.]

Events through July 1, 2001

Prior to July 1, 2001, the School District offered its employees the following health insurance plans through BCBS: Master Medical,

1. Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission shall issue a decision in the first instance.

2. The Commission's jurisdiction is uncontested.

HMO Blue, Blue Choice, and Medex. The prescription drug co-payments for those plans were $5 for generic drugs and $10 for brand name drugs. BCBS was the School District's only health insurance provider.

In January or February 2001, School District Business Administrator Ernie Muserallo (Muserallo)[3] asked Brian Boyle (Boyle), who worked as a health insurance consultant at Cook & Company,[4] to investigate the possibility of obtaining health insurance renewal rates from BCBS for the upcoming year earlier than usual.[5] Boyle advised against doing so.

In early March 2001, Muserallo received a letter dated March 1, 2001 from BCBS Account Executive Michael Breen (Breen).[6] That letter stated in part:

> As your July open enrollment approaches, I would like to remind you of some of the changes taking place with your [BCBS] plan upon renewal[.]
>
> **Three Tier Pharmacy Program**: Effective with your renewal on July 1, 2001 the prescription drug co-payment benefit will change from the current two-tier (generic, brand) program. [BCBS] will be introducing a three-tier pharmacy program that will provide three levels of member co-payments for covered drugs. The aim is to help better manage prescription drug costs. The new co-payment structure will be $10 for generic drugs, $20 for preferred name drugs, and $35 for non-preferred drugs. Medex and Blue Care 65 members will not be affected.[7]

(Emphasis in original.) At about the same time, Muserallo met with Boyle and again asked him to obtain health insurance renewal rates from BCBS.

In late March or early April 2001, Boyle obtained the health insurance renewal rates from Breen and learned that BCBS would implement a three-tier pharmacy benefit program. Boyle also learned from Breen that the three-tier pharmacy benefit program was mandatory for all accounts that were fully insured, including the School District's account.[8] Boyle informed Muserallo about what he had learned from Breen, including the three-tier pharmacy benefit program. Boyle and Muserallo discussed who would notify the employees about the pharmacy benefit program change. Breen informed Boyle and Muserallo that BCBS would send letters to all subscribers about the change directly to their homes.

On or about April 18, 2001, Breen sent Muserallo the BCBS health insurance renewal information and provided Boyle with a copy of that information.[9] The benefit update for the three-tier pharmacy program that was included in the renewal package stated in part:

> The three-tier co-payment structure is *mandatory* for all group products with drug coverage (HMO, POS, PPO, Indemnity) in accounts with under 51 employees offering plans with drugs, and for all insured managed care products (HMO, POS) in accounts with 51 or more employees. Accounts with 5,000 or more members in a single managed care product may opt out of the three-tier benefit for that product.[10]

(Emphasis in original.) Muserallo shared the health insurance renewal information with Superintendent Charles Thibodeau (Thibodeau).[11] Thibodeau asked Muserallo to contact Boyle to learn if the School District could avoid the increased prescription drug co-payments.

Shortly after receiving the health insurance renewal information on or about April 18, 2001 and talking to Thibodeau, Muserallo met with Boyle to discuss the change in prescription drug co-payments. After reviewing the clause in the health insurance renewal information indicating that the change in prescription drug co-payments was mandatory, Boyle and Muserallo decided that the School District could do nothing about that change. Muserallo conveyed to Thibodeau that the School District was not in a position to negotiate over the change in prescription drug co-payments with BCBS.

---

3. Muserallo was a member of the School District's bargaining team and participated in the negotiations for the 2001-2004 collective bargaining agreement.

4. Cook & Company was a fee-for-service consultant for the School District. Boyle's job was to evaluate the health insurance renewal packages proposed by BCBS.

5. The School District's contract with BCBS expired on June 30, 2001. In the prior contract from July 1, 1999 through June 30, 2000, there was no change in co-payments, a change in mental health benefits, and a change in premiums. The change in benefits was not negotiated with the Union, and the premium contribution amounts were dictated by the parties' collective bargaining agreement. The Union did not file any grievances or unfair labor practices regarding the changes.

6. Breen worked in the municipal unit of BCBS.

7. Muserallo received a bulletin from BCBS as early as December 2000 stating that BCBS intended to introduce a three-tier pharmacy benefit program in June 2001. However, Muserallo did not review that bulletin before filing it. Muserallo first learned about the change in the prescription drug co-payments sometime after he returned from vacation on March 4, 2001.

8. BCBS Program Manager Nicole Condon (Condon) prepared and e-mailed an internal BCBS memorandum dated March 19, 2001 and entitled "BARS Instructions" to the regional sales divisions, including the municipal unit where Breen worked, on March 19, 2001 and to the sales, marketing and product management divisions in April 2001. BARS is an acronym for billing account renewal system. The "BARS Instructions" memorandum pertained to the three-tier pharmacy benefit program and stated in relevant part:

> **For Credible HMO/POS less than 5,000 members with union contracts:**
>
> If an account has a collective bargaining agreement that is not up for renegotiation before the account's renewal, we will approve opting out of the three-tier benefit on an exception basis. Upon the first anniversary date after the union contract expires, the three-tier pharmacy benefit will be mandatory.

(Emphasis in original.) However, Breen did not recall seeing the "BARS Instructions" memorandum prior to approximately June 13, 2002. Consequently, Breen did not discuss the possibility of the School District opting out of the three-tier pharmacy program with Boyle and Muserallo prior to that date.

9. As part of the renewal process, BCBS and the School District agreed to an eighteen-month contract instead of a twelve-month contract, so the School District's contract renewal would occur on a calendar year cycle ending on December 31 instead of a fiscal year cycle ending on June 30. The purpose of this change was so the School District could obtain health insurance renewal rates in advance of the budget process.

10. The School District was insured as opposed to self-insured and had less than 5,000 members.

11. Thibodeau was a member of the School District's bargaining team and participated in the negotiations for the 2001-2004 collective bargaining agreement.

On or about May 24, 2001, Muserallo sent a memorandum to all employees informing them that the open enrollment period for the 2001-2002 insurance year was in progress through June 15, 2001. Muserallo provided the health insurance premium rates for HMO Blue, Blue Choice, and Master Medical in that memorandum.

In late May or early June 2001, BCBS members received a letter from BCBS dated May 29, 2001 announcing a new pharmacy program. The letter provided in part: "[W]e're introducing three co-payment levels for covered drugs. Your cost will depend on which level a drug is on. To check this, please visit our website[.]" BCBS members also received a pamphlet entitled "Drugs, Dollars, and Sense: Why Prescription Costs are Hard to Swallow and How to Find Relief," which listed the new prescription drug co-payments. Prior to unit members receiving those materials, the School District had not notified the Union that BCBS was changing its prescription drug co-payments.

Union Grievance Chairperson Linda Perla-Mullins (Perla-Mullins) learned about the change in prescription drug co-payments after receiving the May 29, 2001 letter from BCBS in late May or early June.[12] Shortly after receiving that letter, Perla-Mullins spoke to Jim Mullins (Mullins), who was the Negotiations Chairperson of the Union's Professional Rights and Responsibilities Committee (Union negotiating committee), and to Union representative Ed Kimball (Kimball) to ask if the School District could make that change.[13] Mullins and Kimball responded that, because health insurance was a mandatory subject of bargaining, prescription drug co-payments could not be changed without negotiating. Perla-Mullins also spoke to Bob Zbikowski (Zbikowski), who was a member of the Union negotiating committee and a member of the insurance advisory committee (IAC) between January 2001 and July 1, 2001. Perla-Mullins asked Zbikowski if the IAC had met to discuss the change in prescription drug co-payments, and he said that it had not.

On June 7, 2001, Perla-Mullins and Mullins sent Thibodeau a memorandum stating:

> Bargaining unit members who take part in the [BCBS] plan have received notification from [BCBS] that the pharmacy program has changed its co-payment. Insurance is a mandatory subject of bargaining. The [School District] cannot increase the co-payment of the insurance plan without bargaining that agreement.
>
> As we have just completed negotiations, and this increase was never mentioned, the [Union] considers this matter to be closed. We will disregard this letter. The [Union] expects that [BCBS] members' co-payment for pharmaceuticals will remain at its current rate, as we never bargained over this issue.

The following day, on June 8, 2001, Mullins, Perla-Mullins, Thibodeau, and Muserallo had a meeting to discuss various items, including the upcoming change in prescription drug co-payments. Perla-Mullins told Thibodeau and Muserallo that health insurance was a mandatory subject of bargaining, and that although the upcoming change in prescription drug co-payments had not been bargained with the Union, that change must be bargained.[14] Muserallo responded that he never negotiated with BCBS to change the prescription drug co-payments. Rather, BCBS decided to make that change on its own. As a result, the School District could not negotiate the change with the Union, because the School District could not negotiate the change with BCBS. Muserallo also explained that the parties' collective bargaining agreement required the School District to purchase health insurance from BCBS. Muserallo concluded that he could do nothing about the change in prescription drug co-payments and summarized the situation by stating that "it was a done deal."[15] Perla-Mullins stated that the School District had a contract with BCBS, and that there was always room for negotiation. Thibodeau stated that, based on the information provided by Boyle and Breen and the language in the renewal packet, the School District was not exempt from the change in prescription drug co-payments. Before leaving the meeting, Perla-Mullins received a copy of the School District's eighteen-month contract with BCBS for the period July 1, 2001 to December 31, 2002. Perla-Mullins shared that contract with Mullins.

Prescription drug co-payments changed on July 1, 2001. The new rates were $10 for generic drugs, $20 for preferred brand name drugs, and $35 for non-preferred brand name drugs. BCBS subscribers received new insurance cards by mail listing the amounts of the new prescription drug co-payments.

Opinion

A public employer violates Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it unilaterally changes an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without first giving its employees' exclusive collective bargaining representative notice and an opportunity to bargain to resolution or impasse. *Commonwealth of Massachusetts* v. *Labor Relations Commission*, 404 Mass. 124 (1989); *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557 (1983); *Town of Ludlow*, 17 MLC 1191 (1990). The terms and costs of health insurance benefits, including co-payments, are conditions of employment that constitute mandatory subjects of bargaining. *Town of Dennis*, 28 MLC 297(2002).

---

12. Perla-Mullins was a member of the Union's bargaining team and participated in the negotiations for the 2001-2004 collective bargaining agreement.

13. Mullins was a member of the Union's bargaining team and participated in the negotiations for the 2001-2004 collective bargaining agreement.

14. Thibodeau testified that the Union did not demand to bargain over the change in prescription drug co-payments at the June 8, 2001 meeting. However, the Hearing Officer credited Perla-Mullins's testimony that she had requested to negotiate on June 8, 2001, because she had a clearer memory of that meeting than Thibodeau had.

15. At some point prior to the June 8, 2001 meeting, Muserallo spoke to Breen and asked if the School District could avoid the increase in prescription drug co-payments. Breen told Muserallo that the increase was not negotiable. Muserallo confirmed that information in a second conversation with Breen sometime between June 8, 2001 and July 2001.

Here, it is undisputed that, prior to July 1, 2001, the prescription drug co-payments for the BCBS plans offered by the School District were $5 for generic drugs and $10 for brand name drugs. It is also undisputed that, after July 1, 2001, prescription drug co-payments increased to $10 for generic drugs, $20 for preferred brand name drugs, and $35 for non-preferred brand name drugs. However, the School District raises several defenses to justify its actions. We turn to explore the merit of those defenses.

No Control

The School District first argues that it was not required to bargain with the Union over the decision to increase prescription drug co-payments, because that decision was beyond its control. Where a third party exercises its authority to change specific requirements concerning the terms or costs of health insurance coverage, the public employer may not be required to bargain over the third party's decision to make that change. *See, e.g., MCOFU* v. *Labor Relations Commission*, 417 Mass 7 (1994) (Commonwealth not required to bargain over GIC's decision to reduce health insurance benefits); *Town of Weymouth*, 23 MLC 71 (1996) (town excused from negotiating over insurance company's decision to cancel town's coverage); *City of Somerville*, 19 MLC 1795 (1993) (city not obligated to bargain over legislature's mandate to increase employee portion of HMO premium deduction). Nevertheless, a public employer who is excused from bargaining over a decision that is outside of its control must still bargain over the impacts that decision will have on wages, hours, and other terms and conditions of employment prior to implementing it. *Id.*

The School District's argument is undercut by the existence of an opt-out procedure at BCBS which excused accounts having a collective bargaining agreement that was not up for renegotiation before the account's renewal from participating in the three-tier pharmacy program until the first anniversary date after the contract expired. Based on the criterion in that procedure, it would have been possible for the School District to opt-out of the three-tier pharmacy program. Specifically, the parties had ratified the successor collective bargaining agreement by March 7, 2001, well before the School District received the renewal package from BCBS on or about April 18, 2001. Because the School District had the ability to opt out of the three-tier pharmacy program, it exercised a sufficient degree of control over the decision to change prescription drug co-payments to require it to bargain over that decision with the Union. *See, Town of Dennis*, 28 MLC at 302 (because town was member of joint purchase group, it retained a certain amount of control over its actions and was not excused from bargaining over decision to increase prescription drug co-payments); *Compare, Town of Weymouth*, 23 MLC at 71 (parties' stipulations disclosed that decision to cancel Blue Cross/Blue Shied Master Medical was beyond the town's control). Thus, the School District's argument is unpersuasive.

Good Faith

The School District next contends that its good faith belief that the change in prescription drug co-payments was not negotiable excused its conduct. The School District points out that it was unaware of the opt-out procedure until at least June 13, 2002. Prior to that date, the School District asserts that it properly relied on Breen and Boyle's assessment that the change to a three-tier pharmacy program was mandatory. However, the Commission has previously held that a unilateral change in a mandatory subject of bargaining is a *per se* violation, and that a public employer's good faith is not relevant. *City of Boston*, 26 MLC 177, 182 (2000); *Commonwealth of Massachusetts*, 20 MLC 1545, 1552-1553 (1994); *City of Malden*, 7 MLC 1188, 1190 (H.O. 1980), *aff'd* 7 MLC 1518 (1980). Therefore, we reject the School District's contention.

Waiver by Inaction

The School District also argues that the Union waived by inaction the right to bargain over the decision to change prescription drug co-payments. In support of its argument, the School District points to the language in the Union's June 7, 2001 letter stating that the Union considered the co-payment increase matter "to be closed" and indicating the Union's intention to disregard the May 29, 2001 letter from BCBS announcing the change. The School District concludes that it was not obligated to negotiate with the Union, because the Union had never made a demand to bargain.

The Commission has consistently held that a union waives its right to bargain by inaction if the union: 1) had actual knowledge or notice of the proposed action; 2) had a reasonable opportunity to negotiate about the subject; and 3) had unreasonably or inexplicably failed to bargain or request bargaining. *Town of Dennis*, 26 MLC 203, 204 (2000); *Town of Hudson*, 25 MLC 143, 148 (1999). The employer must prove those elements by a preponderance of the evidence, as the Commission does not infer a union's waiver of its statutory right to bargain without a "clear and unmistakable" showing that a waiver occurred. *Holyoke School Committee*, 12 MLC 1443, 1452 (1985), *citing City of Everett*, 2 MLC 1471, 1476 (1976), *aff'd sub nom. Labor Relations Commission* v. *City of Everett*, 7 Mass. App. Ct. 826 (1979). The Commission will not apply the doctrine of waiver by inaction where the union is presented with a *fait accompli*, where, "under all the attendant circumstances, it can be said that the employer's conduct has progressed to a point that a demand to bargain would be fruitless." *Town of Hudson*, 25 MLC at 148; *Holliston School Committee*, 23 MLC 211, 212-13 (1997); *Scituate School Committee*, 9 MLC 1010, 1012 (1982); *City of Everett*, 2 MLC at 1471.

Despite the School District's assertion to the contrary, the record shows that Perla-Mullins made a demand to bargain at the parties' June 8, 2001 meeting. Even if Perla-Mullins had not done so, the Union was not obligated to demand bargaining, because it was presented with a *fait accompli*. In particular, the May 29, 2001 letter from BCBS announced that the decision to implement the three-tier pharmacy program had already been made, rendering a demand to bargain futile. Consequently, the preponderance of the evidence demonstrates that the Union did not clearly and unmistakably waive its right to bargain by inaction.

Impasse

The School District further contends that it lawfully implemented the change in prescription drug co-payments, because the parties were at impasse concerning that issue. Specifically, the School District asserts that the Union refused to consider any proposal

other than a return to the *status quo* and a make whole remedy. The School District concludes that the Union's inflexible bargaining position resulted in a deadlock between the parties.

To determine whether impasse has been reached, the Commission considers the following factors: bargaining history, the good faith of the parties, the length of the negotiations, the importance of the issues to which there is disagreement, and the contemporaneous understanding of the parties concerning the state of the negotiations. *Town of Westborough*, 25 MLC 81, 88 (1997); *Town of Weymouth*, 23 MLC at 71; *City of Leominster*, 23 MLC 62, 66 (1996). The Commission will determine that the parties have reached impasse in negotiations only where both parties have bargained in good faith on negotiable issues to the point where it is clear that further negotiations would be fruitless, because the parties are deadlocked. *Commonwealth of Massachusetts*, 25 MLC 201, 205 (1999); *Town of Brookline*, 20 MLC 1570, 1594 (1994). An analysis of whether the parties are at impasse requires an assessment of the likelihood of further movement by either side and whether they have exhausted all possibility of compromise. *Town of Plymouth*, 26 MLC 220, 223 (2000); *Woods Hole, Martha's Vineyard and Nantucket Steamship Authority*, 14 MLC 1518, 1529-1530 (1988). If one party to the negotiations indicates a desire to continue bargaining, it demonstrates that the parties have not exhausted all possibilities of compromise and precludes a finding of impasse. *Commonwealth of Massachusetts*, 25 MLC at 205, *citing City of Boston*, 21 MLC 1350 (1994).

Here, the parties had one bargaining session on June 8, 2001 before the change in prescription drug co-payments was implemented on July 1, 2001. However, the record does not demonstrate that the parties reached a stalemate at that session. Rather, the evidence shows that the purpose of the negotiating session was primarily for the Union to gather information about the impending change. Further, neither party made a proposal at that session. Based on those facts, we cannot conclude that there was no likelihood of further movement by either side, or that the parties had exhausted all possibility of compromise. *Compare, City of Boston*, 29 MLC 6, 9 (2002) (no movement by either side at parties four bargaining sessions, and no outstanding proposals at last session); *City of Boston*, 28 MLC 175, 185 (2001) (union's position at parties' eighth bargaining session was no different than its position at the first session).

Conclusion

Based on the record before us, we find that the School District had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by unilaterally changing prescription drug co-payments.

Remedy

The Commission has considerable discretion under Section 11 of the Law to fashion appropriate remedies, including awarding interest. *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. at 579-580. Prior to 1984, the Commission varied the rate of interest awarded in monetary remedies to reflect fluctuations in the cost of currency. *See, e.g., Lawrence School Committee*, 4 MLC 1422 (1977), *aff'd* 4 MLC 1837 (1978) (7% interest); *Town of Townsend*, 1 MLC 1450 (1973) (6% interest). In *Everett School Committee*, 10 MLC 1609, 1613 (1984), the Commission adopted the 12% interest rate specified in M.G.L. c. 231, §6B[16] as the rate of interest applicable to monetary remedies.[17] In doing so, the Commission reasoned that the damages in §6B were analogous to monetary remedies ordered pursuant to violations of Section 10 of the Law, and "the public interest [was] best served by application of the same interest rate . . . judged appropriate for tort claims [by the General Court]."[18] *Everett School Committee*, 10 MLC at 1613. From the date of that decision until 2001, the Commission consistently awarded 12% interest in all cases with monetary remedies. *See, e.g., City of Lawrence*, 27 MLC 57 (2000); *Higher Education Coordinating Council*, 24 MLC 97 (1998); *Board of Trustees, University of Massachusetts*, 21 MLC 1795 (1995); *Commonwealth of Massachusetts*, 15 MLC 1666 (1988).

In *Secretary of Administration & Finance* v. *Labor Relations Commission*, 434 Mass. 340 (2001), the Supreme Judicial Court (SJC) held that the Commission had erred by applying the 12% interest rate in §6B to monetary awards against the Commonwealth of Massachusetts (Commonwealth). In particular, the SJC found that, with respect to orders against the Commonwealth, the floating interest rate in M.G.L. c. 231, §6I had supplanted the 12% interest rate in §6B as a matter of law.[19] *Secretary of Administration & Finance* v. *Labor Relations Commission*, 434 Mass. at 345-346. Further, taking the fluctuating economic conditions over the past decade into account, the SJC concluded that the flat, above-market interest rate of 12% in §6B violated public policy by making charging parties more than whole. *Id.* at 346-347.

Because the public policy considerations noted by the SJC in *Secretary of Administration & Finance* apply equally to monetary remedies awarded against other respondents, we are compelled to

16. Section 6B states in part: "In any action . . . for personal injuries . . . there shall be added . . . to the amount of damages interest thereon at the rate of twelve percent per annum from the date of commencement of the action[.]"

17. The Commission did not adopt the time period for accruing interest set forth in §6B. Rather, the Commission continued to order interest to accrue from the date of the monetary loss until the date of reimbursement. *Everett School Committee*, 10 MLC at 1613-1614 n.7.

18. The Commission also noted that the statutory interest rate set forth in §6B had been adjusted several times and appeared to reflect the General Court's assessment of money market changes. *Everett School Committee*, 10 MLC at 1613.

19. Section 6I provides in pertinent part:

> Interest required to be paid by the Commonwealth . . . shall be calculated at a rate equal to the coupon issue yield equivalent, as determined by the United States secretary of the treasury, of the average accepted auction price for the last auction of fifty-two-week United States treasury bills settled immediately prior to the date of judgment; provided, however, that such interest shall not exceed the rate of ten percent per annum[.]

reassess our practice of applying the 12% interest rate in §6B to monetary awards that do not involve the Commonwealth. As the SJC noted in its decision, adhering to the flat, above-market interest rate of 12% set forth in §6B makes charging parties more than whole when variable economic conditions over this decade are considered. *Secretary of Administration & Finance* v. *Labor Relations Commission*, 434 Mass. at 346, *citing Brayman* v. *99 West, Inc.*, 116 F. Supp. 2d 225, 236 (D. Mass. 2000). Applying the floating rate of interest in §6I, instead, will more closely approximate charging parties' actual losses by taking market conditions into account when calculating interest rates. *Secretary of Administration & Finance* v. *Labor Relations Commission*, 434 Mass. at 346-347, *citing Boston Children's Heart Foundation, Inc.* v. *Nadal-Ginard*, 73 F.3d 429, 442 (1st Cir. 1996). Moreover, applying the same interest rate to all monetary awards will promote fairness and consistency in Commission decisions and orders. Accordingly, pursuant to the discretion granted to the Commission under Section 11 of the Law, we prospectively adopt the floating interest rate specified in §6I as the rate of interest applicable to all monetary remedies awarded by the Commission.[20]

Order

WHEREFORE, based on the foregoing, it is hereby ordered that the School District shall:

1. Cease and desist from:

   a. Unilaterally changing prescription drug co-payments for bargaining unit members represented by the Union.

   b. In any like manner, interfere with, restrain and coerce any employees in the exercise of their rights guaranteed under the Law.

2. Take the following affirmative action that will effectuate the purposes of the Law:

   a. Restore to bargaining unit members represented by the Union the cost and structure of prescription drug co-payments for all health insurance plans offered by the School District that were in place prior to July 1, 2001.

   b. Provide the Union with prior notice of any proposed change in prescription drug co-payments affecting its bargaining unit members and, upon request, bargain in good faith to resolution or impasse before implementing any changes in prescription drug co-payments.

   c. Make whole bargaining unit members for any economic losses they may have suffered as a result of the School District's unlawful change in prescription drug co-payments, plus interest on any sums owing at the rate specified in M.G.L. c. 321, §6I compounded quarterly.

   d. Sign and post immediately in conspicuous places where employees usually congregate or where notices to employees are usually posted and maintain for a period of thirty (30) days thereafter copies of the attached Notice to Employees.

   e. Notify the Commission within thirty (30) days after the date of service of this decision and order of the steps taken to comply with its terms.

SO ORDERED.

NOTICE TO EMPLOYEES

The Massachusetts Labor Relations Commission has determined that the Ashburnham-Westminster Regional School District (School District) has violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by failing to bargain in good faith by unilaterally changing prescription drug co-payments.

WE WILL NOT unilaterally change prescription drug co-payments for bargaining unit members represented by the Ashburnham-Westminster Teachers Association (Union).

WE WILL NOT in any like manner, interfere with, restrain and coerce any employees in the exercise of their rights guaranteed under the Law.

WE WILL restore to bargaining unit members represented by the Union the cost and structure of prescription drug co-payments for all health insurance plans offered by the School District that were in place prior to July 1, 2001.

WE WILL provide the Union with prior notice of any proposed change in prescription drug co-payments affecting its bargaining unit members and, upon request, bargain in good faith to resolution or impasse before implementing any changes in prescription drug co-payments.

WE WILL make whole bargaining unit members for any economic losses they may have suffered as a result of the School District's unlawful change in prescription drug co-payments, plus interest on any sums owing at the rate specified in M.G.L. c. 321, §6I compounded quarterly.

[signed]
Ashburnham-Westminster Regional School District

* * * * * *

20. We do not, however, alter our existing policies of ordering interest to accrue as of the date of the monetary loss and to compound quarterly. *See, Secretary of Administration & Finance* v. *Labor Relations Commission*, 434 Mass. at 347-348 (compounding interest quarterly lies within the Commission's discretion).