EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-26-06

(UNFAIR LABOR PRACTICE)

AFSCME COUNCIL 75, LOCAL 3694,	)	
	)	
Complainant,	)	
	)	
v.	)	COMPLIANCE ORDER
	)	
JOSEPHINE COUNTY,	)	
	)	
Respondent.	)	

On October 30, 2007, this Board issued an Order holding that Josephine County (County) violated ORS 243.672(1)(a) and (b) when it transferred mental health programs from the County to other organizations. 22 PECBR 61. As a result of the unlawful transfer, a number of employees represented by AFSCME Council 75, Local 3694 (AFSCME) lost their jobs with the County. Most of the employees followed the work to the other organizations, but often at reduced wages and benefits. As pertinent here, we ordered the County to make the contracted-out employees whole for lost wages and benefits from the date of the transfer until 30 days after the date of the Order, with interest, but minus interim earnings.

The County appealed. While the appeal was pending, we withdrew our October 30, 2007 Order to address remedial issues raised and discussed in an interim order from the Court of Appeals, dated January 13, 2009, concerning a stay pending appeal. 23 PECBR 33. On March 12, 2009, we issued an Order on Reconsideration under ORS 183.482(6). We adhered to our October 2007 Order, but modified it to specify that the County was required to provide make-whole relief to former AFSCME bargaining unit members for the period beginning on the date the former County employees ceased being AFSCME bargaining unit members and ending on the date the County reinstates them to their former positions. 23 PECBR 37.

On March 31, 2010, the Court of Appeals affirmed our Order. 234 Or App 553, 228 P3d 673 (2010).

By letter dated August 24, 2010, AFSCME notified this Board that it believed the County had failed to comply with some portions of the remedy this Board ordered, and it asked that we take further action to enforce our Orders. We asked the County to tell us the steps it had taken to comply with our Orders, and the County did so by letter dated October 28, 2010.[1]

On January 18, 2011, AFSCME filed a Motion to Compel Enforcement of our Orders. In its motion, AFSCME alleges that the County made a number of errors in calculating the back pay and benefits owed to former employees of the County's Early Intervention (EI) program who now work for the Southern Oregon Education Service District (ESD), and to former employees of the County's mental health programs who now work for Options of Southern Oregon (Options). At our request, the parties provided additional information concerning their dispute.

The issues are:

1. Did the County erroneously calculate the wages former County EI employees would have earned had they continued working for the County?

2. Did the County erroneously calculate interim wages earned by former County EI employees who now work at the ESD?

3. Did the County erroneously fail to compensate former County EI employees for vacation time they lost when they began working for the ESD?

4. Did the County fail to adequately compensate former County employees who now work for Options for retirement benefits they would have earned had they continued working for the County?

5. Did the County erroneously calculate interim wages earned by former County employees who now work at Options?

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[1]In its October 28, 2010 letter, the County included a copy of an agreement it reached with AFSCME on a number of remedy issues. Among the issues this agreement resolved was reinstatement; the parties agreed that the County was required to reinstate only three former employees of the mental health department, and the rest of the transferred employees would remain with their new employers.

FINDINGS OF FACT

The following facts are undisputed by the parties:

Employees Transferred to the ESD

1. When EI employees worked for the County, they worked 12 months per year. These employees are now employed by the ESD and work 10 months per year—a total of 190 work days. Pay for this 190-day work year is spread over 12 months so that employees receive a paycheck every month.

2. During the 2005-2006 fiscal year (FY), EI employees took a four-week voluntary unpaid furlough to avoid layoffs. EI employees also went on strike for three days in 2006. They received no pay for the days they were on strike.

3. During FY 2008-2009, County employees took 13 unpaid furlough days. During FY 2009-2010, County employees took 10 unpaid furlough days.

4. The County used the following formula to calculate the monthly wages each EI employee would have earned had the employee continued working for the County:

a. For each employee, the County added together all regular hours worked,[2] all holiday hours taken, and all sick leave or personal leave hours taken for FY 2005-2006 (from July 1, 2005 through June 30, 2006). The County excluded leave bank balances paid to each employee on June 30, 2006, the date each employee stopped working for the County.

b. The County converted the total hours paid during the year to the standard ratio used in Oregon Budget Law to express employee full time equivalency (FTE).

c. The County multiplied the actual FTE for FY 2005-2006 by the average of 173.33[3] full-time monthly hours to calculate hours the employee would have

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[2]In computing hours these employees worked during FY 2005-2006, the County did not include the four-week voluntary furlough, three-day strike, or any unpaid time off an individual employee took.

[3]The County calculated average full-time monthly hours by multiplying 40 hours per week by 52 weeks per year and dividing it by 12 months as follows: $40 \times 52 = 2080 \div 12 = 173.33$.

worked per month for the entire remedy period, the period from July 2007 through June 2010.[4] For example, the FTE for a half-time employee is .50 FTE; .50 x 173.33 hours per month = 86.67 hours worked per month.

d. The County multiplied the employee's hourly wage by the hours worked per month (as calculated in part c) to compute the monthly salary the employee would have earned had the employee continued working for the County.

5. To determine the back wages owed to each former EI employee, the County calculated the difference between the monthly County wages the employee would have earned and the monthly ESD wages the employee actually earned during the remedy period. The County reduced County monthly wages for furlough days other County employees took in FYs 2008-2009 and 2009-2010, and increased it for step and cost-of-living increases the employees would have received. The County considered each of the 12 paychecks an ESD employee received as the employee's monthly wages. The County reimbursed each employee for the difference between the monthly County wages and the monthly ESD wages.

6. For each former EI employee, the County compared the monthly amount the employee would have paid out-of-pocket for health insurance premiums at the County with the monthly amount the employee actually paid out-of-pocket for ESD health insurance premiums. If the employee paid more out-of-pocket for County health insurance premiums than for ESD premiums, the County considered the difference between the County and ESD payments to be an increase in the employees' monthly wages. The County then added the amount of this difference to each employee's monthly ESD wages. In effect, the County used the reduced out-of-pocket premium cost as an offset to the back wages it owed the transferred employees.

7. For each County employee, the County contributed an amount equal to six percent of the employee's monthly wages to the employee's Oregon Public Employees Retirement System (PERS) account. Each County employee was required to pay an additional six percent of the employee's wages into the employee's PERS account.

For EI employees who were transferred to the ESD, the ESD "picked up" (paid) the six percent employee contribution employees would otherwise have been required to pay into their PERS account. When the County computed the wages that each former EI employee earned during the remedy period, it considered this six percent PERS

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[4]The parties agreed that the appropriate remedy period for calculating back wages and benefits is July 2006 through June 2010.

pickup to be an increase in the wages the employee earned with the ESD. In effect, the County used the PERS pickup as an offset to the back wages it owed the transferred employees.

8. Former County employees who now work at the ESD have many more days off than when they worked for the County because of school breaks and holidays. ESD employees receive no pay for these days off. The County did not reimburse ESD employees for any paid vacation time they would have received had they continued working for the County.

Employees Transferred to Options

9. Former County employees who worked at Options during the remedy period could make voluntary contributions to a 403b deferred compensation plan. Options matched the amount of each employee's contribution, up to six percent of the employee's monthly salary.

The Options 403b plan has a number of features that are different from PERS. Participants in the 403b plan can determine the amount they wish to contribute and can change that amount if they wish. They can also withdraw their contributions under certain circumstances.

10. The County has not made former County employees who now work at Options whole for the contributions the County would have made to each employee's PERS account had the employee worked for the County during the remedy period.

11. Options gave former County employees the following gift cards:

- In December of 2006, 2007, 2008, and 2009, employees received holiday gift cards with a face value of $100 per FTE.

- During the period from January 2008 through March 2010, employees received gift cards to reward them for years of service to the people of Josephine County. The value of each gift card varied, depending in part on the number of years the employee had worked for the County.

- During the period from April 2010 through June 2010, one employee received a gift card in the amount of $171.38; one employee received a gift card in the amount of $128.53; and two employees received gift cards in the amount of $42.84.

12. Former County employees working at Options received the following bonuses:

- In September 2007, employees received a discretionary bonus of $1,000 per FTE.

- Between January 2008 and March 2010, Scott Willi received a longevity bonus of $342.76, and Melody Beckwith received a longevity bonus of $555.50; other Options employees received discretionary bonuses in amounts ranging from $85.69 to $1,371.03.

13. In calculating the interim wages former County employees earned at Options, the County treated the cash value of gift cards and the bonuses as wages the employees received from Options.

DISCUSSION

1. The County erroneously calculated the wages former EI employees would have earned had they continued to work for the County during the remedy period.

ORS 243.676(2)(c) authorizes this Board to award back pay to individuals injured by an unfair labor practice. Our objective in making a back pay award is to restore "the circumstances existing before the offending party's unlawful conduct." *Central Education Association and Vilches v. Central School District 13J,* Case No. UP-74-95, 17 PECBR 93, 94 (Order on Reconsideration), *aff'd,* 155 Or App 92, 962 P2d 763 (1998). To achieve this goal, we ordered the County to use the following formula to calculate back pay owed to former EI employees:

> "The County must compute the loss of pay for each separate month or part of a month during the remedy period. The County must compare EI employees' interim wages for each month with the wages the employees would have earned for that same month had they continued to work for the County, and pay employees any difference." 22 PECBR at 661.

This formula has two components: the amount the employee would have earned with the County, and the amount the employee actually earned through interim employment. This portion of the dispute concerns the amount the EI employees would have earned had they remained with the County.[5]

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[5]Back pay disputes fall into a general pattern. Employers seek to reduce their back pay liability (*i.e.,* reduce the difference between what the employees would have earned if they
(...continued)

We recently reviewed the appropriate methods for calculating how much employees would have earned had they continued working for the employer. In *Marion County Law Enforcement Association v. Marion County,* Case No. UP-24-08, 24 PECBR ___ (2011) (Compliance Order), we observed that neither the Public Employee Collective Bargaining Act (PECBA) nor this Board's cases provide guidance. We therefore looked to the National Labor Relations Board's *NLRB Casehandling Manual* (*Manual*). *See also Lebanon Association of Classified Employees v. Lebanon Community School District,* Case No. UP-33-04, 21 PECBR 533, 536-37 (2006) (consulting the *Manual* to resolve back pay issues); *Central School District,* 17 PECBR at 800 n 8 (1998) (Compliance Order) (same); *Woodburn Education Association and Bradford v. Woodburn School District No. 103C,* Case No. C-126-83, 8 PECBR 8362, 8366 (1986) (Enforcement Order) (same).

Section 10540.1[6] of the *Manual* identifies three possible formulas to calculate how much an employee would have earned, with directions to adopt the formula that best fits the circumstances. Here, the parties agree that the appropriate formula is to compute the average salary the employee actually earned in a representative period before the unlawful transfer.[7] The parties also agree that the appropriate representative period is FY 2005-2006, just before the County unlawfully transferred the employees. The dispute is over application of this formula.

The County applied this formula by computing the monthly average salary for each former EI employee based on the hours each employee worked during FY 2005-2006. The sticking point is that the County excluded hours for the four-week furlough and the three-day strike in FY 2005-2006. Stated differently, the County

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(...continued)
remained with the employer and what they actually earned through interim employment). They therefore typically make arguments that seek to maximize what the employee actually earned and minimize what the employee would have earned. Unions argue the opposite. They want to increase the back pay award, so they make arguments that seek to maximize what the employees would have earned and minimize the offset for what they actually earned. All of the disputes in this compliance proceeding follow this familiar pattern.

[6]Published at https://www.nlrb.gov/sites/default/files/documents/44/compliancemanual.pdf (last visited on September 1, 2011).

[7]The other two methods are based on the average hours worked by comparable employees, or the hours worked by the person who replaced the discharged employee. Neither of these formulas would work here. The County contracted out the entire department, so there were no comparable or replacement employees with the County during the back pay period.

assumed that since the employees did not work during the furlough and strike in 2005-2006, they similarly would not have worked those hours in subsequent years during the back-pay period. This assumption reduces the average monthly salary the employees would have earned with the County and thus reduces the amount of back pay the County would owe the transferred employees.

AFSCME contends that the County should not have included the 2005-2006 furlough and strike days in its computation of the employees' monthly average salary. We agree with AFSCME. An appropriate period is one which is representative of the employee's normal work schedule, and it excludes any periods in which there were unusual fluctuations in work hours or wages. *Manual,* Section 10540.2[8] (the calculation of the average wage should exclude any "extraordinary variations" in employees' work schedules).

Here, the County selected an appropriate period—FY 2005-2006—to calculate former EI employees' monthly average salary.[9] The County erred, however, by including in this computation those months in which the EI employees experienced drastic fluctuations in their work hours and wages due to a four-week furlough and three-day strike. Our goal is to determine, as accurately as we can, the wages the employees would have earned if the County had not unlawfully transferred them. As described, we will use a formula based on the average monthly wage the employees earned during the FY just prior to the transfers. The County may not reduce that average by including extraordinary variations such as furlough days or a strike.[10]

Accordingly, we order the County to exclude from its calculation of the average monthly wage in FY 2005-2006 those months in which former EI employees were on strike or furloughed. The following example illustrates what the County must do. If former EI employees' wages were reduced for two months in FY 2005-2006 because of

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[8]Published at https://www.nlrb.gov/sites/default/files/documents/44/compliancemanual.pdf (last visited on September 1, 2011).

[9]We differ from the NLRB in that we compute loss of pay on a monthly, rather than a quarterly, basis. *Oregon School Employees Association v. Klamath County School District,* Case No. C-127-84, 9 PECBR 8832, 8853 n 28 (1986).

[10]The County imposed a smaller number of County-wide furlough days in two different years during the back pay period. The County need not pay back wages to the transferred employees for those furlough days because the employees would not have worked on those days even if they had remained with the County. But furlough days during the back pay period are different from furlough days during the representative period prior to the transfers. The County may not include furlough days served prior to the back pay period to reduce the employees' average monthly salary for the entire back pay period.

the strike and furlough, the County will not include these months in its computations. Thus, the County would calculate an employee's average monthly wage by adding the remaining 10 months of wages and dividing this amount by 10.

2. The County will base its calculations of each former EI employee's interim earnings from the ESD on a 10-month wage.

We again begin with the formula that back pay equals the amount the employees would have earned with the County minus the amount they actually earned from interim employment. The County must make this calculation for each month of the back pay period. This dispute concerns the proper method for determining the monthly income employees earned from interim employment with the ESD. At the ESD, the employees work for only 10 months, but as a convenience to its employees, the ESD divides each employee's annual salary into 12 parts so the employee gets a paycheck every month. In effect, employees defer a portion of their monthly earnings so they can receive a paycheck even in the two months when they do not work.

The issue is how much the employees earned for purposes of the back pay calculation during the two months when they did not work but received a paycheck for deferred compensation. The County treated the pay for those two months as an offset against the amount the employees would have earned with the County during those two months.

We disagree. The employees performed no work for pay during those two months, so there is no income to act as an offset against what they would have earned with the County.[11] The net result, however, may be a wash because the checks the employees received for those two months are properly attributable to the other ten months when they did work and when the money was earned. The paychecks for those two months should be equally allocated to the other ten months. This increases the interim earnings for those ten months and thereby decreases the County's back pay obligation for those months.

The former EI employees would have worked 12 months if they had remained with the County. To make these employees whole for the work they lost when they began working for the ESD, the County must calculate back pay based on the employees' 10-month interim wages. *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-14-04, 21 PECBR 300, 305 (2006) (Compliance Order). To determine former EI employees' interim earnings, the County will divide each employee's annual salary by 10 to determine the employee's monthly interim earnings

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[11]This applies only to the deferred pay the employees received from the ESD. If individual employees engaged in other interim work during those two months, the amount they earned may be offset against the amount of back pay the County otherwise owes them for those months.

for 10 months. The County will credit the employee with no earnings for the remaining two months in which they perform no work for the ESD. As a result of these calculations, ESD employees' monthly wage will be higher for 10 months of the year and the amount of back pay the County owes them will be less for these months. For two months of the year, however, these employees had no interim earnings and the County's back pay liability will be greater for these months.

3. The County will not consider the following as interim wages for former EI employees: (1) any difference in the amount employees paid out-of-pocket for County health insurance premiums and the amount employees paid out-of-pocket for ESD health insurance premiums; and (2) the six percent PERS contribution that the ESD picked up for these employees.

This dispute concerns the components of interim earnings that qualify as an offset against the wages the employees would have earned with the County. Specifically, the County asserts that the EI employees received more generous contributions to their health insurance premiums[12] and retirement plan from their interim employment with the ESD than they would have received if they remained with the County. The County asserts that the excess should be treated as interim wages and used to offset the back pay it owes the employees. The effect would be to reduce the amount the County owes the transferred employees.

The County made the calculation as follows: If a former EI employee paid less out-of-pocket for health insurance premiums at the ESD than at the County, the County considered the difference between the County and ESD payments to be an increase in the employee's wages. The County then added the amount of this difference to the interim ESD wages. The County performed a similar computation with the six percent PERS contribution the ESD picked up for each former EI employee that would not have been picked up if the employee had remained with the County. The County added the amount of this PERS pickup to each employee's interim wages. The County contends that these two items are appropriate additions to interim wages because former EI employees received automatic pay increases when they began paying less to PERS and less for their health insurance benefits. We disagree.

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[12]To be clear, the current discussion applies only to the cost of health insurance *premiums*. In an earlier order, we dealt with the disparity in health insurance *benefits*. We held that the County must reimburse employees for out-of-pocket medical expenses they incurred under the interim employer's health insurance plan that they would not have incurred if they had remained under the County's health insurance plan. 22 PECBR 651, 664 (2008) (Supplemental Order), *adh'd to on recons,* 22 PECBR 904 (2009).

The NLRB does not normally treat payments for a medical insurance plan or contributions to a retirement fund as interim earnings that offset back wages. *Manual,* Section 10552.4. *See also John T. Jones Construction Co.,* 352 NLRB 1063, 1067 (2009) (inappropriate to add monetary value of fringe benefits to employees' interim earnings, despite employer's argument that failure to do so results in a "windfall" for employees). We agree with this principle and apply it here. The County cannot use the PERS pickup the ESD now pays, or any difference in the employees' out-of-pocket payments for health insurance premiums, as an offset to the back wages the County owes the former EI employees.[13]

4. The County will compensate former EI employees for vacation time they lost when they began working for the ESD.

The County contends that former EI employees who now work at the ESD have much more time off than they did at the County because they do not work during school holidays and breaks. According to the County, it is unnecessary to pay these employees for any vacation time they would have received had they continued working for the County. The County has incorrectly interpreted and applied the provisions of our earlier Supplemental Order, 22 PECBR 661. In that Order, we explained the County's obligation to make former employees whole for lost vacation time:

> "If an employee earned more vacation time working for the County than the employee does working for a new employer, the employee will not be made whole unless compensated for this difference." 22 PECBR at 665.

Former EI employees earn *no* paid vacation time at the ESD. They work 190 days per year and are not paid for time off due to school holidays and breaks. Accordingly, the County must compensate these employees for the paid vacation time they would have received at the County. The appropriate calculation is to reduce the amount of interim earnings the employees received from the ESD by the amount of paid vacation time the employees would have received if they had remained at the County. *Manual,* Section 10544.5.

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[13]This does not mean we ignore the benefits the employees received from the ESD. An employee injured by an unfair labor practice should be made whole for both lost wages and lost benefits. If an employee receives health insurance or retirement benefits through interim employment, they offset the amount the employer would otherwise owe for these benefits. *Manual,* Section 10552.4. But, as discussed in the text, the monetary value of the benefits does not offset the back wages the employer owes. In other words, interim benefits can offset payment for equivalent lost benefits, but they do not offset back wages.

5. The County must compensate former County employees who worked at Options for payments to their retirement accounts they would have received had they worked at the County during the remedy period.

Wrongfully discharged employees should be made whole for lost employer contributions to pension funds or retirement plans. *Manual*, Section 10544.3. All of the unlawfully transferred employees participated in PERS while they worked for the County. As required by the system, the County paid an amount equal to six percent of each employee's salary into the employee's PERS account; the employee paid an additional six percent of salary into the employee's PERS account. Former County employees who now work for Options are no longer public employees and can no longer participate in PERS. The County has not compensated former County employees for the PERS contributions the County would have made into these individuals' accounts had these individuals continued working at the County.

AFSCME argues that the County must make PERS contributions to make employees completely whole for the loss of their County employment. The County, however, contends that former County employees lost nothing. Options offers employees a 403b deferred compensation plan to which the employee may choose to contribute a percentage of salary.[14] Options then matches the employee contribution, up to six percent. According to the County, these employees actually benefitted from the change—because they were no longer required to pay six percent of their salary to their PERS account, their take-home pay increased.

We reject the County's argument because it is based on the premise that interim wages and contributions to a retirement plan are equivalent. As discussed above, retirement benefits and wages are separate elements in any back pay calculation. *Manual*, Section 10544.3 ("Retirement benefits are not offset by interim wages."). Accordingly, the County must compensate former employees for contributions to their retirement plans it would have made; increases in these individuals' interim earnings cannot be used to offset this liability.

The County also contends it is unnecessary to compensate former employees for any loss in retirement benefits because the Options 403b plan has a number of advantages over the PERS program. The County notes the advantages of this plan—an individual can choose the contribution amount and can change this amount if desired, and an individual can withdraw the amount contributed under certain circumstances.

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[14]A 403b retirement plan is available to employees of nonprofit organizations and has many features similar to the more familiar 401k plan.

Equivalent retirement benefits an individual earns through interim employment may be used as an offset against the employer's liability for payment of retirement benefits the individual would have earned had there been no unlawful action. *Manual*, Section 10544.3. The employer has the burden of proving this affirmative defense. *Chem. Fab. Corp.*, 275 NLRB 21, 21 (1985) *enfd mem*, 775 F2d 1169 (8th Cir 1985); *Millenium Maint. & Elec. Contr., Inc.*, 344 NLRB 516, 517 (2000); OAR 115-035-0042(6). *See also Central School District*, 17 PECBR at 800 (in compliance disputes, the complainant has the burden of proving the gross amount of back pay due; the respondent has the responsibility to prove facts that mitigate its liability).

Accordingly, the County has the burden of showing that the retirement benefit offered to Options employees is an appropriate offset to the PERS benefit the County would have provided to these employees. To demonstrate that such an offset is appropriate, the County must prove that the Options 403b plan is equivalent to PERS. The County has failed to do so.

To determine if the 403b plan is equivalent to PERS, we take guidance from Section 10544.3 of the *Manual*. The *Manual* defines equivalence by example. It begins with the example of an unlawfully discharged employee whose former employer contributed to the Teamsters pension fund. In the first hypothetical, the employee obtains interim employment with a company that provides a profit-sharing plan. Contributions to the profit-sharing plan do not offset the liability for contributions to the Teamsters pension fund.

In the second hypothetical, the discharged employee obtains interim employment that pays into a different union's pension fund. These contributions do not offset liability for payments to the Teamsters pension fund.

In the third hypothetical, the employee obtains interim employment with a different company that also contributes to the Teamsters pension fund. These contributions are offset against the liability the original employer owes for lost pension and benefits.

These examples demonstrate that receiving some sort of pension or retirement benefit from interim employment does not guarantee an offset. An offset is appropriate only when there is substantial equivalence between the two plans. The County's PERS and Options' 403b plans are not equivalent. PERS is a defined benefit program whereas the 403b plan is a defined contribution program. The County also points out several other differences between the plans. If, as in the example from the *Manual*, contributions to one union's pension fund are not equivalent for offset purposes to contributions owed to a different union's pension fund, then contributions to a 403b plan are not equivalent to contributions to PERS. Even if a 403b plan could theoretically be equivalent to PERS in some circumstances, the County has failed to offer sufficient proof of such equivalence here. The 403b contributions do not offset the contributions the County owes to PERS.

6. The County properly included the value of gift cards and bonuses as part of the interim wages former County employees earned at Options during the remedy period.

When the County calculated interim earnings of former County employees who worked at Options during the remedy period, the County included the value of gift cards and bonuses employees received from Options. In effect, the County used the value of the cards and bonuses to offset its liability for back pay. AFSCME contends that the County erred in doing so. We disagree.

In calculating interim earnings, the NLRB includes additions to base wages such as premiums, tips, and bonus payments. *Manual,* Section 10552.1. Consistent with current NLRB practice, the County correctly calculated bonuses as part of Options employees' interim wages. We also conclude it is appropriate to consider gift cards, which have a monetary value, as an addition to base wages. Consequently, the County did not err when it included the value of these gift cards in computing former County employees' interim earnings.

ORDER

1. To calculate the monthly wages that former EI employees would have earned had they continued working for the County, the County will determine each employee's average monthly wage for FY 2005-2006. In calculating average monthly wages, however, the County will not include those months in which employees' wages were reduced because of the four-week unpaid furlough or three-day strike.

For example, if former EI employees' wages were reduced for two months in FY 2005-2006 because of the strike and furlough, the County will determine each employee's average wage by adding the remaining 10 months of wages and dividing this amount by 10.

2. The County will not include as interim wages any difference between the amount former EI employees paid for health insurance premiums at the County and the amount these employees paid for health insurance premiums at the ESD during the remedy period.

3. The County will not include as interim wages the 6 percent contribution to PERS that the ESD picked up for former EI employees during the remedy period.

4. The County will compensate former EI employees for vacation time they would have received had they continued working for the County during the remedy period, from July 2007 through June 2010.[15]

5. For each month of the remedy period, from June 2007 through July 2010, the County will make County employees who worked at Options whole for the contributions the County would have made to that employee's PERS account had the employee continued to work for the County.

6. The County will promptly pay each former employee the difference between back pay and benefits it already paid each former County employee and back pay and benefits as computed in accordance with this Order. The County will pay interest at 9 percent per annum on any such payments from the date each payment was due until it is paid.

DATED this 7 day of September 2011.

Paul B. Gamson, Chair

Vickie Cowan, Board Member

Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.

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[15]We explained the method for calculating lost vacation time in our first Supplemental Order, 23 PECBR at 667.