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BEFORE ARBITRATOR DOROTHY A. FALLON

KENAI PENINSULA EDUCATIONAL
SUPPORT ASSOCIATION

THE KENAI PENINSULA EDUCATION
ASSOCIATION

and

KENAI PENINSULA BOROUGH
SCHOOL DISTRICT

Advisory Interest Arbitration
Case No. 01-18-0003-3445

**KENAI PENINSULA BOROUGH SCHOOL DISTRICT'S
POST-HEARING BRIEF**

A. INTRODUCTION

This arbitration arises from the parties' impasse in bargaining for successor Negotiated Agreements (N.A.s) for the individual KPEA and KPESA contracts covering the FY 16, FY 17 and FY 18 school years. FY 18 ended on June 30, 2018, and the FY 18 N.A. has remained in effect as the status quo during subsequent bargaining, mediation, and this advisory arbitration.

The Alaska Public Employment Relations Act and its implementing regulations require advisory interest arbitration, with a subsequent report and recommendations from the arbitrator, to assist the parties in reaching successor N.A.s.¹ The law requires the arbitrator to “review the issues,” but does not set forth any standard for the arbitrator to follow in making the report and recommendations.² As noted by Elkouri & Elkouri, in such a circumstance, and in the absence of stipulated standards by the parties, “the arbitrator generally will make an award based on one or more of the commonly accepted standards.”³ The District has addressed those standard in its presentation.

B. HEALTH INSURANCE

1. The District’s Health Care Program

a. Introduction

The most critical, difficult, and intransigent issue in this bargaining is health insurance. The District provides health insurance to its eligible employees through a self-insured plan. Basically, the District acts as its own insurance company. The costs of its plan include medical/prescription/dental/vision claims; administrative expenses such as the fees of an independent third party administrator and a broker; and stop loss premiums to a separate insurance carrier to protect the District against “catastrophic” claims. Total plan costs are shared by the District and the employee participants

¹ AS 23.40.200(g); 8 AAC 97.280(a).

² 8 AAC 97.280(a).

³ Elkouri & Elkouri, *HOW ARBITRATION WORKS* at pp. 22-30 (8th ed. 2016).

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according to the formulas set forth in the current Negotiated Agreements. Benefits are provided to the employee, spouse, and eligible dependents.

The District's plan provides a \$220,000 specific stop loss limit. An individual's claims exceeding that amount--"catastrophic claims"--are paid by the stop loss insurance carrier. The carrier sets its yearly premium rate for the District based upon its determination of assumed risk. The District's plan cannot be fiscally secure without stop-loss insurance. For illustrative purposes, if 28 employees incur an average of \$500,000 in payable claims in a year in excess of the stop loss limit, for those employees alone, the plan's costs would be \$14 million, slightly over one-half of the plan's total cost of \$28.96 million in FY 18.⁴

b. The District's Two Plans and Cost Sharing Formulas

Section 210 of the KPEA N.A. and Article 27 of the KPESA N.A. set forth the District's Health Care Program.⁵ The two plan options to the participating employees are a Traditional Plan and a High Deductible Health Plan (HDHP). For the Traditional Plan, the District's contribution for each participant on a 12-month basis is 85% of that plan's cost up to a District cap of \$1,731.45 per month. The District pays the costs exceeding that cap at 50%. The participating employee's contribution on a 12-month basis is 15% of that plan's cost up to the District's cap. The costs exceeding that cap are paid by the participant at the remaining 50 %.

⁴ District Exhibit 38, at p. 2. Director of Finance Elizabeth Hayes' chart entry of Total Care Plan Costs, FY 08 through FY 18.

⁵ District Exhibit 2, at pp. 9-12; District Exhibit 3, at pp. 28-31.

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For the HDHP, the District's contribution on a 12-month basis is 90%, up to \$1,645.61 per month. The costs exceeding that cap are paid at 50%. The participating employee's contribution on a 12-month basis is 10% for the HDHP, increasing to 50% if the District's costs exceed the \$1,645.61 per month cap. The District also provides a \$750/year Health Reimbursement Arrangement (HRA) for those employees participating in the HDHP.

c. The Health Care Program Committee

The N.A.s establish a Health Care Program Committee (HCPC) comprised of 11 members, with 4 selected by KPEA and 3 selected by KPESA. The Committee has substantial authority:

The HCPC shall be empowered to determine health care benefits different from benefits in the plan in place.... The committee will determine and control the health care program for all District employees covered by the program...including but not limited to the following: benefits and coverages provided, cost containment measures, preferred provider programs, co-payment provisions, evaluating other health insurance programs, and implementing any wellness measures it deems beneficial to employees and the health care program.⁶

2. The District's Health Care Program Proposals to the Associations

The District has proposed successor N.A.s with a one year duration covering FY 19. There are no changes proposed to the current Health Care provisions regarding the two plan structure, the cost sharing formulas, and the HCPC. The District proposes

⁶ *Id.*

changes to how employee contributions are estimated, and then finalized, after the Program's year-end audit.⁷

3. The Associations' Health Care Program Proposals.

The Associations propose successor N.A.s for FY 19, FY 20, and FY 21. Their proposed Health Care provisions delete the District's separate caps for the Traditional Plan and the HDHP. They further delete the 50% District and 50% employee contribution split above those caps. Instead, they require an 85%/15% contribution split for the Traditional Plan, and a 90%/10% contribution split for the HDHP.⁸

4. The District Health Care Program's High Medical Costs

The Public Education Health Trust (Trust) is an independent third-party health insurance provider to Alaska school districts. Participants include the Anchorage School District, the Matanuska-Susitna Borough School District, and the Juneau School District. During this bargaining, at the request of the Associations, the Trust was asked to calculate the premium rates it would charge the District as a Trust participant. The Trust requested, and received, the data it needed to determine those rates.⁹

The medical costs of the District's program were determined to be 45% higher than the medical costs experienced by the Trust.¹⁰ As a result, the Trust offered the

⁷ District Exhibits 7 and 8.

⁸ District Exhibits 9 and 10.

⁹ See District Exhibit 6, at p. 3, titled Public Education Health Trust Data Request Form.

¹⁰ District Exhibit 6, at p. 4, October 25, 2018 letter stating, "Theses rate include a load of 45% to the medical rates."

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District premium rates approximately 45% higher than the premium rates charged to other participating Alaska school districts. The Trust also required the District to accept “a 4-tier rate structure,” not a composite rate.¹¹ A 4-tier rate structure requires separate rates for the categories of Employees; Employee + Spouse; Employee + Child(ren); and Employee + Spouse + Child(ren).¹²

The Trust’s determination was devastating. Not only was Trust participation no longer an option to the parties, the Trust’s independent analysis exposed the high cost of health care usage by the employee participants in the District’s Program.

The Trust offers “eight medical plans, three dental plans and an option to add orthodontia coverage.”¹³ The costs of the District Program’s two distinct plan options are calculated on a composite, not a tier, basis. To demonstrate the cost significance of the Trust’s 45% load determination, the tiered rates offered to the District for each of the Trust’s medical plans¹⁴ was calculated as composite rates based upon the District’s employee member census. The District’s broker, Marsh & McLennan Agency, prepared those calculations.¹⁵

As examples, the composite premium to Kenai for the Trust’s Plan A medical would be \$2,832.12 per member per month (pmpm). That amount is approximately

¹¹ *Id.*

¹² District Exhibit 6, at p. 17, titled Public Education Health Trust Rates for Plan Year FY 2019. *See* “Tiered Rates” subheading section.

¹³ District Exhibit 6, at p. 4.

¹⁴ Footnote 12, *Supra*.

¹⁵ District Exhibit 6, at pp. 18-19.

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45% higher than the Trust's Plan A composite premium of \$1,965.00 pmpm charged to the Anchorage School District and the Mat-Su Borough School District.¹⁶

The benefits and coverages of the District's Traditional Plan include deductibles of \$200 per individual and \$600 per family. Out of pocket limits, not including deductibles, are \$1,000 per individual and \$3,000 per family. There is a separate \$250 emergency room deductible that is waived if the patient is admitted.¹⁷

Plan A medical is the Trust's most comparable plan to the District's Traditional Plan. Its deductibles are \$100 per individual and \$300 per family. The out of pocket limits, not including deductibles, are the same as the District's Traditional Plan. There is a separate \$500 emergency room deductible that is waived if the patient is admitted.¹⁸

The composite premium to Kenai for the Trust's Plan F medical would be \$2,436.83 pmpm. That amount is approximately 45% higher than the Trust's Plan F medical composite premium of \$1,690.00 pmpm charged to Anchorage and Mat-Su.

The benefits and coverages of the District's HDHP include deductibles of \$1,500 per individual and \$3,000 per family. Out of pocket limits, not including deductibles, are \$2,000 per individual and \$4,000 per family. The \$250 emergency room deductible is also in the plan.¹⁹

¹⁶ District Exhibit 6, last two pages.

¹⁷ District Exhibit 4.

¹⁸ District Exhibit 6, at p. 8.

¹⁹ District Exhibit 5.

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Plan F is the Trust's most comparable plan to the District's HDHP. The deductibles are also \$1,500 per individual and \$3,000 per family. The out of pocket limits are \$3,000 per individual and \$6,000 per family. There is also a separate \$500 deductible per hospital admission capped at two times per individual per year.²⁰

The Trust has three plans with higher deductibles than Trust Plan F and the District's HDHP. Those are plans G, HDHP, and Super Global Out of Pocket (SGOOP).²¹ The Trust's pmpm composite premium for those three plans are \$1,562, \$1,569, and \$1,435, respectively.²² The composite premium to Kenai for those three Trust plans would be \$2,248, \$2,263, and 2,069, respectively.²³ Each amount is approximately 45% higher than what the Trust charges Anchorage and Mat-Su for those plans.

5. The Big 5 School Districts' Health Insurance Contributions to Teachers.

a. Introduction

Of the other Big 5 school districts, only Fairbank's Plan A contribution to its teachers is not subject to a hard cap—the maximum contribution a district will pay per teacher per month. However, Plan A has not been “an option for new [Fairbanks] District employees after January 1, 2017.”²⁴ For the other two plans offered by

²⁰ District Exhibit 6, at p. 10.

²¹ District Exhibit 6, at pp. 10-11.

²² District Exhibit 6, at p. 18.

²³ Footnote 15, *Supra*.

²⁴ District Exhibit 33, at p. 13.

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Fairbanks to its teachers, the amount paid by Fairbanks for its teachers in FY 19 “will become a hard cap of District contributions for ensuing years.”²⁵

b. Kenai Peninsula Borough School District’ Contributions for Teachers.

As of November 30, 2018, the District is contributing \$1,923.49 pmpm for its Traditional Plan. Annualized, that equates to \$23,081.88. As of that same date, the District is contributing \$1,770.47 pmpm for its HDHP. That annualizes to \$21,245.64 per member. Either District-wide plan is available to eligible District employees.²⁶

c. Juneau School District’s Contribution to the Trust for Teachers

Pursuant to the FY 19 N.A. between the Juneau School District and the Juneau Education Association (JEA) representing the teachers, Juneau pays a hard cap of \$1,569 pmpm.²⁷ That equates to \$18,828 per member per year. The health plans available to JEA members are the Trust’s Base Plan referred in the testimony as the “Legacy Plan,” and a Trust HDHP.²⁸ Accordingly, the amount per member per year that Juneau is paying the Trust for teacher health insurance is \$4,253.88 less than what Kenai contributes per member per year for teachers enrolled in its Traditional Plan.

KPEA’s President, David Brighton, disclaimed the Juneau School District as one of the “Big 5” comparable districts. His testimony contradicted the Associations’

²⁵ *Id.*, at p. 14.

²⁶ District Exhibit 40, Elizabeth Hayes’ formula calculations for the current District FY 19 contribution rate.

²⁷ District Exhibit 11, at p. 19 of 51.

²⁸ District Exhibits 12 and 13.

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position in the prior advisory arbitration. As stated by Arbitrator Axon, “For comparison purposes, both parties referred to the school districts of Anchorage, Fairbanks, Juneau, and Mat-Su.”²⁹

David Brighton’s testimony also contradicted the Associations’ argument in the 2012 advisory arbitration before Arbitrator Whalen. Ms. Whalen referenced a portion of the Associations’ argument that “Teacher salaries and benefits may be compared with other large school districts in Alaska—Mat-Su, Anchorage, Juneau and Fairbanks.”³⁰

Mr. Brighton acknowledged that the Juneau School District provided health insurance for its teachers through the Public Education Health Trust’s legacy plan—a plan no longer offered to other districts in the state. He knew this through direct contact with Trust members and officers.

He described the legacy plan as “golden” and “quality,” and more beneficial to employees than the Trust’s current Plan A. The Trust’s cost documents for the Anchorage and Mat-Su School Districts demonstrate the obvious--premium costs decrease as deductibles and out-of-pocket limits increase.³¹ For those districts, the Trust’s medical plan premiums drop from Plan A’s \$1,965 pmpm to the SCOOP’s \$1,435 pmpm. That drop holds true for Kenai’s cost differences between its Traditional Plan and HDHP.

²⁹ District Exhibit 1, at p. 2.

³⁰ Association Exhibit 30, at p. 5 (Sec. C. 5.)

³¹ Footnote 16, *Supra*.

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The only plausible explanation for the Trust's decision to phase out its legacy plan is that plan's high costs. Yet Mr. Brighton was speechless when asked why the Trust would deny districts such a "golden" and "quality" plan if high cost was not the reason. Put another way, why do the Associations now deny Juneau as a Big 5 district? Is it the \$4,254 more per teacher per year that Kenai pays for its Traditional Plan--a plan not even as "golden" as the Trust's legacy plan?

d. Anchorage School District's Contributions to the Trust for Teachers

The Anchorage School District provides health insurance to the Anchorage Education Association (AEA) teacher members through the Trust. Anchorage's FY 19 N.A. with AEA sets a hard cap of \$1,645 pmpm, plus a one-time \$1.9 million payment into a teacher reserve account. The \$1.9 million equates to approximately \$50 per month per teacher.³²

In FY 20 and FY 21, that hard cap increases by \$50 per month to \$1,695, with no additional reserve payment. No other contribution is required regardless of Trust premium increases.

That \$1,695 pmpm equates to \$20,340 per member per year, \$2,742 less than Kenai's annualized \$23,082 per member per year for its Traditional Plan. Anchorage's \$20,340 is \$906 less per member than Kenai's annualized \$21,246 payment per member for its HDHP.

³² District Exhibit 16, at p. 22.

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e. Fairbanks North Star Borough School District's Contribution For Teachers

Fairbanks provides a self-insured health plan. Pursuant to the N.A. with the Fairbanks Education Association, in FY 19 Fairbanks pays \$1,605 pmpm, annualized at \$19,258.³³ That amount is \$3,835 less than Kenai's annualized payment for its Traditional Plan, and \$1,988 less than Kenai's annualized payment for its HDHP.

f. Mat-Su School District's Contribution to the Trust for Teachers

Mat-Su provides its health insurance through the Trust. The FY 19 N.A. with the Mat-Su Education Association states: "Beginning in FY 19 the District's share of the group health plan shall be capped at \$1,744 pmpm."³⁴ That equates to \$20,982 per member per year. That amount is \$2,153 less than Kenai's annualized contribution of \$23,082 for its Traditional Plan, and \$264 less than Kenai's annualized contribution of \$21,246 for its HDHP.

g. District Exhibit 37.

This bar graph summarizes the annual cost differences between the Big 5 School Districts for their teacher bargaining units. Kenai contributes the most, in amounts ranging from a high of \$4,254 per member per year to a low of \$906 per member per year, in excess of what the other districts pay.

³³ District Exhibit 33, last page. This document was prepared by Andreau DeGraw, MBA, Fairbanks' Chief Operations Officer. Fairbanks' total plan costs are shown at \$37,502,742. The employee share is \$7,500,548. The difference of \$30,003,194 is paid by the District. That amount divided by the "1,558 covered Ees / mo" equals \$19,257.50 per year. Divided by 12 equals \$1,605 pmpm.

³⁴ District Exhibit 26, at p. 26.

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6. The Big 5 School Districts' Health Insurance Contributions to Support Staff

a. Introduction

There are 9 support staff bargaining units within the 5 districts. Anchorage has 5 such units. Only 2 of those 9 units (Kenai and Mat-Su) do not have hard caps, but do have soft caps. In Kenai and Mat-Su, after a specific dollar amount of district contributions per employee per month is exceeded, each district shares the excess amount 50%-50% with its participating support employees.

b. Kenai School District's Contribution for Support Staff

Kenai's health insurance plan is the same for all of its participating employees. As set forth in paragraph **5 .b.** above, for the Traditional Plan, the District's contribution is \$1,932.49 pmpm, annualized at \$23,081.88. For the HDHP, it is \$1,770.47 pmpm, annualized at \$21,245.64.

c. Juneau School District's Contributions to the Trust for Support Staff

Juneau's FY 19 N.A. with its Education Support Staff requires a contribution of \$1,629 pmpm to the APEA/AFT Health and Welfare Trust. An additional 20% of that amount, \$325.80, is paid for the 50 waiver employees, equaling \$16,290.³⁵ That amount divided by the 224 participating employees equals an additional \$72.74 pmpm, for a total pmpm of \$1701.74. This annualizes to \$20,420.68 per member per year. This is \$2,661 less than Kenai's annualized payment of \$23,082 for its support staff in the

³⁵ District Exhibit 14, at pp. 35-36, and last page.

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Traditional Plan. It is \$825 less than Kenai's annualized payment of \$21,246 for its HDHP.

d. Anchorage School District's Contributions to its Own Plan, and to a Staff Union Plan for its Support Staff

Anchorage provides health insurance through its own plan to participating members of The Anchorage Council of Education/AFT Local 4425, The Totem Association, APEA/AFT (AFL-CIO), Teamsters Local 959, the Food Service Bargaining Unit, and Teamsters Local 959 for Warehouse and Maintenance Employees.

The N.A.s with each of these associations require Anchorage to pay \$1,645 pmpm.³⁶ For those associations there are two available plans. One offers a \$1,500 deductible for individuals and \$4,500 for family. The other offers a \$1,500 deductible for individuals and \$3,000 for family. Each plan has substantial out-of-pocket limits of \$5,300 per individual and over \$10,000 per family.³⁷

The N.A. with Public Employees Local 71, covering Custodians and Building Plan Operators, provides insurance through Local 71's Health Plan Trust. Anchorage's contribution is capped at \$1,530 pmpm in FY 19, and \$1550 pmpm in FY 20 and FY 21.³⁸

³⁶ District Exhibits 20-23.

³⁷ District Exhibit 24, at p. 3.

³⁸ District Exhibit 25, at p. 30.

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e. Mat-Su's Contribution to the Trust for Support Staff

Mat-Su provides health insurance through the Trust. The N.A. with the Classified Employees' Association requires Trust premiums to be split 50%-50% between the District and the employee participants once the District pays the first \$1,514 pmpm.³⁹ CEA members can choose Trust medical plans A, B, F, and the HDHP.⁴⁰ The District contributes \$1,757 pmpm, annualized at \$20,928 for each of the Trust's plans, with the exception of the HDHP where contributions are \$1,619 pmpm, annualized at \$19,426.80.⁴¹

f. Fairbanks North Star Borough School District's Contribution to its Support Staff.

Fairbanks provides the same self-insured plans to its support staff and teachers. Its FY 19 contribution is \$1605 pmpm for "The High Deductible Health Plan (HDHP) Plan B and Plan C."⁴² That amount "will become a hard cap of District contribution for ensuing years."⁴³ Fairbanks' low deductible "Plan A will not be an option for new to District employees after January 1, 2017."⁴⁴

g. District Exhibit 38

This bar graph summarizes the annual cost differences between the Big 5 School District's annual contributions for their support staff bargaining units. Kenai contributes

³⁹ District Exhibit 27, at p. 15.

⁴⁰ District Exhibits 28-32.

⁴¹ District Exhibits 32, and 38, at p. 1.

⁴² District Exhibit 34, at p. 32.

⁴³ *Id.*

⁴⁴ *Id.*

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the most, in amounts ranging from a high of \$4,722 to a low of \$162, over annual contributions of other districts.⁴⁵

7. Discussion

The high plan usage by Kenai's participating members was not presented by the District as a "fault" of its employees. It was presented as a material fact to this bargaining. The Associations sought to minimize what is uncontroverted--those costs result from fees and expenses incurred by doctors, hospitals, clinics, pharmacies, and other providers for the services, equipment, and medications provided to participating members and their families.

Matt Fischer, the HCPC's chair, asserted his "volunteer" status to disassociate himself from responsibility for the members' high health care costs, and the HCPC's failure to reduce those costs. John O'Brien, the District's Assistant Superintendent of Instruction and a member of the Committee, testified that the Committee only picked the low hanging fruit when belatedly exercising its responsibility to implement "cost containment measures"⁴⁶ such as BridgeHealth and Teledoc.⁴⁷ The Committee has not addressed the hard choices.

Without a shred of evidence, Matt Fischer blamed the District's administration for failing to provide support to the HCPC for the implementation of wellness

⁴⁵ District Exhibit 38, at p. 1.

⁴⁶ Footnote 5. *Supra*.

⁴⁷ See District Exhibit 6. at pp. 14-15 for the Public Education Health Trust's description of those programs.

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programs—another committee responsibility.⁴⁸ He backhandedly faulted Dave Jones, the District’s Assistant Superintendent of Operations, for having other duties detracting him from plan administration, blaming an undefined portion of the 45% load on Dave Jones’ alleged failure to obtain a greater discount from a local hospital. Dave Jones testified to his efforts, in conjunction with the Borough, to increase that discount by an additional 5%. Mr. Jones stated that such a discount alone, in the absence of fixed rates for services, is a pyrrhic victory when the hospital can unilaterally increase its charges to make up that difference. Mr. Jones’ efforts to negotiate fixed rates for services have been hampered by the State of Alaska’s delay in implementing its Health Care Cost Transparency Law.⁴⁹

Mr. Fischer also blamed stagnation by the HCPC on the failure of the District’s Broker to provide requested information. John O’Brien attributed delays in receiving Broker information to the HCPC’s failure to adequately define the information it was seeking. What was not disputed was the testimony of Elizabeth Hayes, the District’s Director of Finance, as to Broker attendance at monthly HCPC meetings. The Broker has been presenting detailed information and reports as to the Plan’s ongoing operations, and its fiscal and claim status.⁵⁰

⁴⁸ See para. 1. b. above. “[T]he committee will determine and control the health care program...including...implementing any wellness measures it deems beneficial to employees and the health care program.”

⁴⁹ AS 18.23.400.

⁵⁰ See District Exhibit 41, at pp. 4-5.

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MSEA witness Jesse Bjorkman inaccurately testified that the current language requires employees to pay 50% of catastrophic claims, ignoring the \$220,000 specific stop loss limit that requires payment of excess amounts by the stop loss carrier. The future lasering of stop loss coverage for a specific individual is speculative. If it occurs, the costs would be shared according to the negotiated formula. But the District would not be the cause of future lasering, it would be a claims based stop loss carrier decision presented to the District in the carrier's proposed stop loss insurance renewal rate--a proposal subject to negotiation, rejection, and competition from other stop loss carrier proposers.

The current N.A.s require that a health care subcommittee comprised of the union representatives to the HCPC "determine the employee contribution amount separately for both the Tradition Health Plan and the High Deductible Health Plan."⁵¹ "The District ... independently calculate[s] its contribution amount separately for both the Traditional Health Plan and the High Deductible Plan."⁵²

Mr. Fischer challenged the current District contribution to each plan. He asserted that the established rates were intentionally set higher than needed, so that the excess at plan year end could be taken by the School Board for purposes unrelated to health care. He claimed that this had occurred in the past, but provided no supporting evidence.

⁵¹ District Exhibit 2, at p. 11; District Exhibit 3, at pp. 29-30.

⁵² *Id.*

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Elizabeth Hayes testified to the inaccuracy of Mr. Fischer's assertion. In the many years that Ms. Hayes has been involved in or been responsible for the financial and accounting aspects of the District's health insurance program, the School Board has never taken any year end surplus for non-health insurance purposes. In the event of a surplus, those funds are placed in the District's health insurance internal services account, a reserve that can only be used for health plan purposes, such as paying year end deficiencies in the District's contribution. According to Ms. Hayes, any other use would be a violation of generally accepted accounting standards that govern the District's year-end audit. The District's use of reserves is no different than the employee subcommittee's use of its Health Care Reserve Account.⁵³

Mr. Fischer also challenged the professionalism and wisdom of Dave Jones because the District's pmpm contribution was based upon the recently contracted Broker's recommendation. However, with major reluctance, Mr. Fischer sheepishly acknowledged that after the open enrollment period, the employee subcommittee also set employee contribution rates as recommended by the Broker.⁵⁴

Ms. Hayes testified to the reasonableness of setting the District's contribution rates as recommended by the broker. Monthly fluctuations in plan claim costs are the

⁵³ *Id.*

⁵⁴ See Association Exhibit 5, at p. 58 showing the Broker's recommendation for a 50% migration of participants from the Traditional Plan to the HDHP at a per participant contribution of \$307.70; Association Exhibit 6, at 5. "Employee Contribution;" See District Exhibit 40, at p. 1, Section 2. titled "FY19 Contribution Amounts Based on Subcommittee 9/24/2018 Rate Determination", showing the subcommittee set rate of \$307.70.

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norm. The final plan year accounting determines the accuracy of the monthly contribution rates for both the plan participants and the District.⁵⁵ With that information the District and the employee subcommittee independently determine whether reserves are needed to make up a deficit, or a surplus exists to be added to their respective reserve accounts.

Matt Fischer testified that in making that year end determination, the employee subcommittee sets final contribution rates using a composite methodology. They total the employee contributions and costs for both plans. As a result, deficiencies in employee contributions become the shared responsibility of all employee participants regardless of their plan. The result has been a subsidization of Traditional Plan participants by the HDHP participants who are already paying higher deductibles and out-of-pocket limits than the Traditional Plan participants.

The District has challenged the fairness of that methodology. The District's health care program proposal to the Associations requires that the Broker recommendations for each plan be used to set each plans' employee contribution rate unless the subcommittee provides "written justification of the rationale for any such different employee contribution amounts for each plan."⁵⁶ The District's proposal also requires that at year end, any reserve funds needed to make up contribution deficiencies,

⁵⁵ District Exhibit 1. At p. 9. ("Program costs are solely a product of administrative expenses and actual claims experience as reported in the District's final annual CAFR" (Comprehensive Annual Financial Report).

⁵⁶ District Exhibit 7 at pp. 19-20; District Exhibit 8 at pp. 43-44.

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or to replenish prior year drawdowns, be determined and tracked separately for each plan.⁵⁷

8. Conclusion

From FY 09 to FY 18, annual District health plan costs increased from \$15,367,426 to \$28,963,575.⁵⁸ The prescription drug component alone is now at \$5,003,029.⁵⁹ The Associations propose to shift the responsibility for those increased costs back to the percentages in effect in the FY 15 N.A., prior to the current N.A.'s alternative HDHP, soft caps, and 50%/50% above-cap cost sharing.⁶⁰

Ms. Hayes' unchallenged testimony was that the Associations' proposal would increase the "Monthly District Cost Per Employee" for the Traditional Plan from the current \$1,923.49 to \$2,057 and, for the HDHP from the current \$1,770.47 to \$1,870.35. Employee contributions would decrease accordingly. This regressive approach would increase the District's total annual contribution for both plans by \$1.513 million in FY 19, with further increases as Health Care Program costs increase.⁶¹

The inclusion of the HDHP, the soft cap, and the 50%/50% cost sharing have not provided program cost decreases that would reduce the contribution rate for both the participants and the District, and fund the salary increases agreed to in FY 13-15,

⁵⁷ *Id.*

⁵⁸ District Exhibit 38, at p. 2.

⁵⁹ *Id.*

⁶⁰ District Exhibits 9 and 10.

⁶¹ District Exhibit 40, at p. 2; District Exhibit 51, line titled "Health Care Proposal to the District", showing Exhibit 40's \$1.513 million "Yearly Increased Cost to District."

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without resort to use of fund balance. The reasons include a 45% load increase in utilization. This reflects a 40% load increase from the Trust's load calculation of only 5% in 2016, less than 3 years earlier.⁶²

The reasons also include the failure of the HCPC and its leadership to assert and exercise Committee power and authority. With the exception of the "low hanging fruit," no evidence was presented by the Associations of HCPC implementation of wellness programs, programs to incentivize healthier lifestyles, programs to discourage drug and/or alcohol misuse/abuse, or programs to educate or encourage employees to make wise and informed decisions regarding their health care program utilization.

Mr. Fischer even criticizes the District for establishing open enrollment periods that allow those enrolled in the more costly Traditional Plan to migrate to the HDHP with its lower contribution rate--the very reason for the inclusion of the HDHP as an alternative to the Traditional Plan.

It is a fantasy to believe that a change back to the District paying 85% of all Traditional Plan costs, and 90% of all HDHP costs, will do anything but de-incentivize the HCPC from the challenge it has already avoided—implementing meaningful programs and cost saving measures.

Matt Fischer claims breached promises by the District are the reason for each plan's high costs. The health care program obligations of the District are set forth in the

⁶² District Exhibit 6, at p. 1, third paragraph.

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current N.A.s. Violations of those obligations can and should be grieved.⁶³ No evidence of alleged promises or violations of alleged promises was presented. His testimony continued the Associations' strategy of blaming the District for employee health care utilization that is beyond the District's, but not the HCPC's, control.

The average cost per employee per year has increased from \$23,728 in FY 16, to \$25,120 in FY 17, to \$25,723 in FY 18 (the last audited year).⁶⁴ Although total annual plan costs have decreased from their FY 17 high of \$29,466,286 to \$28,963,575 in FY 18,⁶⁵ that decrease primarily resulted from a decrease in the average number of employees per month, not a decrease in health care program utilization.⁶⁶

In the 2012 advisory arbitration, the Associations argued that "Comparable districts (Anchorage, Mat-Su, Fairbanks and Juneau) have no such 50/50 split..."⁶⁷ Arbitrator Whalen recommended the elimination of the 50/50 percentage split quoting Matt Fischer's testimony "that no other comparable school district had a 50/50 split such as this District."⁶⁸ Seven years later, every one of the comparable districts have hard caps, with the exception of those grand-parented teachers in Fairbanks with access to a phased out Plan A at an 80% District /20% employee split, and Mat-Su's support staff

⁶³ Joint Exhibit 1, at pp. 39-41; Joint Exhibit 2, at pp. 33-36.

⁶⁴ District Exhibit 38, at p. 5.

⁶⁵ *Id.* at p. 3.

⁶⁶ *Id.* at p. 2.

⁶⁷ Association Exhibit 30 at p. 13 (C.3.).

⁶⁸ Association Exhibit 30 at p. 18.

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at a 50/50 percentage split above a soft cap. And each of the other Big 5 districts have negotiated district contribution rates up to \$4,722 per member per year less than Kenai.

During the 2012 arbitration, the Associations' argued that "The District can afford the Associations' [health care] proposal," pointing to District reserves, including a Self-Insurance Health Care fund of over \$6.8 million.⁶⁹ That fund is shown in Dave Jones' budget exhibits discussed in detail below. It was almost \$6 million in FY 12, and decreased over the ensuing three fiscal years to zero in FY 16.⁷⁰

After considering the Big 5's comparable district contribution information, the budgetary impact to the District, and the ongoing annual decrease in the District general fund balance,⁷¹ the District has only proposed a one year agreement. It has not proposed a hard cap similar to Anchorage, Juneau, Mat-Su, and Fairbanks. The District proposes the status quo contribution formulas and the continuation of the FY 16-FY 18 negotiated changes to the health care program. It hopes that new cost savings measures will be implemented by a more decisive and motivated HCPC to reduce both the District and employee contributions, and help create a balanced general fund budget that does not rely on the further depletion of annual reserves to meet expenditures. The District requests that the Arbitrator reject the Associations' health care proposals.

⁶⁹ Association Exhibit 30, at p. 14.

⁷⁰ District Exhibit 46, at p. 10. *See* first column, "Assigned to" section, "Self-Insurance Health Care" line.

⁷¹ *Id.* at first column's "Total Fund Balance" line.

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C. SALARY AND WAGES

1. The District's Fiscal Circumstances

Alaska law requires school districts to “establish, maintain, and operate under a balanced budget.”⁷² Districts are required to submit their “budgets for each fiscal year to the [Department of Education and Early Development] not later than July 15 of the fiscal year.”⁷³ A budget that is not balanced will be rejected.⁷⁴

Assistant Superintendent Dave Jones testified that from FY 12 to FY 18, the District's general fund balance decreased annually by \$2,994,764, \$740,979, \$1,226,433, \$1,147,325, \$1,379,600, \$1,315,015, and \$355,072 respectively, in order to achieve the required balanced budget.⁷⁵ As a result, the District's total general fund balance, including funds that were Nonspendable, Restricted, Assigned, and Unassigned, was reduced from the FY 11 amount of \$23,369,042 to \$14,199,854 by the end of FY 18. This reflects a decrease of \$9,169,188, or almost 40%.⁷⁶

During each fiscal year, the budgeting process for the subsequent fiscal year takes place so that a balanced budget can be presented to the Department of Education and Early Development by July 15 of the next fiscal year. If anticipated revenues will not

⁷² AS 14.17.900(a).

⁷³ 4 AAC 09.110 (a).

⁷⁴ 4 AAC 09.120(b)(2).

⁷⁵ District Exhibit 46, at p. 10. *See* Change in Fund Balance line immediately above the bar graph.

⁷⁶ *Id.* The FY 11 \$23,359,042 is determined by using the FY 12 fund balance of \$20,364,278 and adding the drawdown of \$2,994,764 that occurred in FY 12. *See* also District Exhibit 46, at pp. 8-9.

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meet anticipated expenditures, and a reasonable and fiscally sound drawdown of fund balance is not sufficient to achieve the required balanced budget, the programs and operations of the District must be reduced.

Dave Jones testified to programmatic and operational expenditure reductions required to balance each of the District's FY 15-FY 19 budgets, totaling almost \$8.5 million. Those 33 separate itemizations are part of the arbitration record.⁷⁷ Considering that in FY 19 almost 81% of the District's budgeted expenditures relates to salaries and benefits,⁷⁸ it is no surprise that budget reductions over those 5 fiscal years included the positions of teachers, counselors, custodians, administrators, district office staff, tutors, and specialists.⁷⁹

A balanced budget means that revenues, including general fund balance transfers, equal expenditures. The State of Alaska provides 63.78% of those revenues, and the Kenai Peninsula Borough appropriates 35.22%—a total of 99%.⁸⁰

State funding is through the student based Alaska's Public School Funding Formula. The formula starts with a district's Average Daily Membership with adjustments to the ADM based on school size, district cost factors, special needs funding, vocational & technical funding, intensive services funding, and the ADM of a

⁷⁷ District Exhibit 46 at pp. 5-7.

⁷⁸ District Exhibit 46 at p. 4.

⁷⁹ Footnote 77, *Supra*.

⁸⁰ District Exhibit 6, at p. 11, numbered p. 9.

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district's correspondence program. That final adjusted ADM (AADM) is multiplied by the Base Student Allocation (BSA) to determine a school district's basic need.⁸¹

"The BSA is \$5,930 for FY 2020."⁸² The BSA has been at that \$5,930 amount since FY 17.⁸³ As will be discussed below, the Governor's proposed budget for FY 20 proposes substantial reductions to public school funding. Survival of a BSA at \$5,930 for FY 20 and beyond is not a certainty. The only certainty regarding FY 20 public school funding is its uncertainty.

Moving back to the funding formula, the basic need amount is then reduced by a number of factors that include a Required Local Contribution by a district's municipality.⁸⁴ In addition to that required amount, "The City or Borough can contribute more than is required but may not exceed the maximum local contribution."⁸⁵ That additional or discretionary local contribution is formula based and "is added to the required local effort to reach the maximum local contribution."⁸⁶

The maximum local contribution for the Kenai Peninsula Borough in FY 19 is \$51,796,193.⁸⁷ The School District requested that full amount when it submitted its FY 19 proposed budget to the borough assembly for approval of the total amount by the

⁸¹ District Exhibit 46.2 pp. 1-5; District Exhibit 46.3, (showing the specific formula calculations for each district).

⁸² District Exhibit 46.2 at p. 5.

⁸³ Association Exhibit 13 at p. 1; District Exhibit 46 at p. 12, but numbered p. 10.

⁸⁴ District Exhibit 46.2 at p. 6 ("Basic Need minus a Required Local Contribution...equals State Aid Entitlement.").

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ District Exhibit 46 at p. 21, numbered p. 15.

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May 1, 2018 deadline.⁸⁸ On May 1, 2018, the assembly rejected the District's request and approved funding at the FY 18 amount of \$49,738,432, \$2,057,761 less than the maximum amount allowed by law.⁸⁹ On June 5, 2018, the assembly increased the district's funding by \$652,609.⁹⁰ The Mayor vetoed that increased appropriation and the assembly failed to override the veto. The District's funding from the borough remained at the FY 17 and FY 18 level, i.e. flat funding.⁹¹

With the District receiving \$2,057,761 less than it requested from the borough, a transfer of \$1,430,222 from the general fund balance achieved the required balanced budget.⁹² The District's budget gets amended during the fiscal year for a variety of reasons that include student enrollment differing from projections, changes in the special education census, and changes in the health care program through participant migration from the Traditional Plan to the HDHP, employee opt outs, or changes to Broker recommendations.

The Associations have focused on the January 2019 budget revisions to assert that moneys are available in the FY 19 budget to reduce their members' health care program contributions. That is not the case.⁹³ As explained in detail by David Jones, expenditures were reduced in three categories.

⁸⁸ AS 14.14.060(c).

⁸⁹ Footnote 87, *Supra*.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² District Exhibit 46 at p. 15, but numbered 13.

⁹³ District Exhibit 46 at p. 19.

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Unfilled positions resulted in a \$381,153 reduction to salary line items. However, the need to fill those positions by contracting with Physical Therapists, Occupational Therapists, and Speech Specialists added \$334,459 in expenditures to the contracted services line item. Corresponding benefit line items for PERS/TRS, FICA/Medicare, and Unemployment benefits were reduced by \$76,591. Most relevant to the Associations was a reduction in District health care program contributions resulting from the migration of participants from the Traditional Plan to the HDHP, and employee opt outs. Those factors reduced that line item by \$1,170,029. Additional budget adjustments including increases in travel, purchase services, and supplies totaled \$195,850. The reductions in expenditures totaled \$1,097,464.

On the revenue side, a decrease in student enrollment resulted in a loss of \$322,997 in state foundation funding. The net reduction was \$774,467. That amount reduced the fund balance transfer from \$1,450,222 to \$675,755.⁹⁴ As Mr. Jones testified, the \$774,467 was not a sum of money available for expenditure, it only represented the use of a lesser amount of fund balance to balance the FY 19 budget.

The Associations propose that their respective salary schedules be increased by .5% in FY 19, 1% in FY 20, and 2% in FY 21.⁹⁵ Elizabeth Hayes calculated the total cost of the Associations' FY 19, FY 20, and FY 21 salary proposals at \$4.1 million

⁹⁴ That is the number set forth in Exhibit 46. The additional budget adjustments of \$195,850 were not itemized by Mr. Jones in Exhibit 46, but were disclosed as part of the written record at the public school board meeting on January 14, 2019.

⁹⁵ Association Exhibit 2, at pp. 1-7.

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(\$2.823 million for KPEA and \$1.28 million for KPESA). Her calculations were not challenged.⁹⁶

The District's calculation of the costs for all Association proposals, including increased District health care contributions, additional personal leave cash outs, and additional teaching staff to cover increased time during the student contact day for teacher preparation, totaled \$8.5 million. This reflects a grand total of \$12.6 million over the proposed three year duration.⁹⁷ The difference from the total of \$7.43 million discussed by Dave Jones in his FY 19 budget preparation⁹⁸ is the inclusion of the three year cost of additional teachers for KPEA's teacher prep time proposal.⁹⁹

All of the parties expressed concern that Governor Dunleavy would not release the FY 19 appropriated \$20 million in one-time money outside the funding formula--Kenai's pro-rata share being \$1.405 million.¹⁰⁰ Arguments as to the legality of such action abound, but a Memorandum from the Legislative Counsel for the Legislative Affairs Agency opines that the Governor can rely upon AS 37.07.080(g) for such authority, stating "Until more facts become available, it is difficult to predict how a court might decide if the governor attempts to withhold this education expenditure."¹⁰¹

⁹⁶ District Exhibit 51.

⁹⁷ *Id.*

⁹⁸ District Exhibit 46 at p. 22, but numbered p. 16.

⁹⁹ See Association Exhibit 11 at p. 1, ("**The cost of this proposal is currently being determined, as it will likely require additional staffing"); District Exhibit 50 setting forth the calculation of that annual \$1.7 million expense.

¹⁰⁰ See Association Exhibit 13 at pp. 2-4; District Exhibits 46.4, 46.6.

¹⁰¹ District Exhibit 53 at p. 3.

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Equally, if not more problematic, is the uncertainty of FY 20 funding. The Governor proposes a 25% decrease to education funding—Kenai’s hit being \$21 million.¹⁰² There will be no certainty until the current legislative session ends (hopefully before the July 1 start of FY 20), any Governor vetoes occur, and any Legislature veto override vote takes place. The process is described by the Legislative Information Office:

The Governor may veto or reduce items in appropriation bills. This is commonly called the power of “line item veto”, because the Governor can veto any line item of an appropriation bill and approve the balance. The Legislature, meeting in a joint session of both houses, can overturn the veto if two-thirds of the membership (three-quarters for revenue and appropriation bills) votes to do so.¹⁰³

Jesse Bjorkman testified for the Associations that State Senator Peter Micciche, who represents the Kenai area, told him that the final “budget deal will not be anywhere close to a 25% cut” in education funding. Even assuming the Senator’s prescience, on cross-examination, Mr. Bjorkman could not define what “anywhere close to a 25% cut” means. Is 20%, 18%, 15%, 5%, “anywhere close”? Notably, Senator Micciche did not predict that there would be no cuts. The more important question is how should the District’s FY 20 budget preparation proceed? Does it budget for the status quo, the worst case scenario, or somewhere in between?

¹⁰² See District Exhibit 46 at pp. 32-33, numbered 20-21; District Exhibits 42, 46.5 and 46.7.

¹⁰³ District Exhibit 46.1, (emphasis added).

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As Dave Jones states in his public budget presentations and in his testimony at this hearing, “What should we do? Where will the cuts come from?”¹⁰⁴ The options he placed on the table are drastic, especially after the staffing and programmatic reductions that occurred in prior fiscal years. These options include the loss of more certified and support staff positions, cuts to extra-curricular activities, and consolidating or closing schools, at a minimum.¹⁰⁵

Mr. Jones uses the elimination of teaching positions as an example to demonstrate the reduction in expenditures for just that one option. The average teacher cost for salary and benefits such as health insurance and retirement contributions, is \$100,000 per year.¹⁰⁶ A three year phased in reduction of 37.5 teaching positions scattered through all grade levels reduces expenditures by \$3.75 million, not enough over three fiscal years to pay for just the Associations’ \$4.1 million in proposed salary schedule increases, assuming a status quo budget.¹⁰⁷

2. The Big 5 School District Comparisons

It belies the complexity of this topic to only compare salary and wage schedules with the Anchorage School District’s negotiated 2% salary schedule increases for FY 19, 20, and 21. As the Anchorage School Board acknowledged when it approved its FY

¹⁰⁴ *Id.* at numbered p. 22.

¹⁰⁵ *Id.* at numbered p. 23.

¹⁰⁶ *Id.* at numbered p. 18.

¹⁰⁷ See Post-Hearing Brief text for Footnote 9, *Supra*.

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19 budget, before any adjustments required to balance the increased expenditures mandated by the new teacher N.A.:

For fiscal years 2019-2020 [the next school year] through 2021-2022, the District expects to contend with the same current revenue challenges as well as medical, workers' comp, compensation, and general liability cost increases above the rate of inflation, normal inflation on salaries, benefits, services and supplies, and excise taxes imposed on the District in accordance with the Affordable Care Act. The budget shortfall over the next three years is expected to be between \$30 and \$50 million and result in the elimination of up to 500 positions in order to close the fiscal gap and balance the budgets.¹⁰⁸

The Anchorage School Board, along with the other Big 5 School Boards are elected to manage and control their respective school districts. There is no "one size fits all." Each Board member takes an oath of office to "honestly, faithfully, and impartially discharge my duties as a school board member to the best of my ability."¹⁰⁹

School District health care program decisions that are approved by the Boards through ratification of N.A.s, directly impact the availability of revenues for other purposes, primarily teacher and support staff salaries and wages. Negotiated salary and wage schedules dictate the number of staff positions revenues can cover. Each school board has approved and ratified Pupil Teacher Ratios (PTR) that it determines to be in the best interests of the students, staff, parents, community members, and businesses. Increases to the PTR require less positions, lowering overall salary and benefit costs. Reductions to the PTR have the opposite impact.

¹⁰⁸ District Exhibit 39, at p. 13.

¹⁰⁹ AS 14.12.090.

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Numerical comparisons of the Big 5 PTRs have been made, but without knowledge of the thought processes, discussions, and ultimate rationale for those numbers. This is solely the province of the elected school boards. However, the numbers do reflect the trade-offs that districts make when they determine how best to sustain the quality of educational programs.

Among the Big 5, the numbers are telling, especially at the middle and high school levels. Last school year (FY 18) Kenai's Middle School PTR was 19.1, compared to Anchorage's 27, Fairbanks' 28, Juneau's 22, and Mat-Su's 32. The high school numbers show a greater disparity.¹¹⁰ Kenai teachers, on average, have instructional responsibilities for fewer students than the other Big 5 districts.

The Kenai School Board has determined that its PTR is necessary to the continued implementation of its 2017-2022 Strategic Plan, including the "Guiding Principles...of a quality education" with students "immersed in a high quality instructional environment."¹¹¹ Dave Jones' budget testimony demonstrates that Kenai's PTR may be unsustainable at its current low level depending upon the ultimate determination of FY 20 and beyond state foundation funding—a matter out of the District's control.

The Strategic Plan also addresses the importance of "a personalized learning system."¹¹² Personalize learning was criticized by the Associations. The criticism

¹¹⁰ District Exhibit 45.

¹¹¹ District Exhibit 43, at p. 1.

¹¹² *Id.* See District Exhibit 44, at p. 2, describing personalize learning.

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related more to the importance and impact of the system than to its budgetary impact. The Arbitrator noted at the hearing that differences of opinion among educators as to such instructional matters are the norm. Further, Assistant Superintendent for Instruction John O'Brien testified that funding for this program did not increase expenditures. Instead, it was a three year allocation, ending in FY 19, from a curriculum budget line item. No Association testimony addressed other specific District expenditures as unreasonable or unnecessary.

Salary and wage schedules are not easily compared. It is true that one can find the same or comparable cell for a teacher in each district with the same degrees and credits, and the same years of experience. The District has presented some of this information, along with each of the Big 5 teacher salary schedules.¹¹³ Cherry picking shows that although Juneau's FY 19 beginning base salary is \$2,115 more than Kenai, it takes 16 years for that starting teacher to reach the maximum base salary. That maximum is \$2,533 less than Kenai's maximum which is reached after only 12 years. It takes an Anchorage teacher 13 years to reach the end of the B 18 column, earning \$68,582, while a Kenai teacher on the comparable column earns \$71,146 after 13 years, and \$72,716 after 14 years.

The District has compared hourly rates for certain support staff job classifications in the Big 5.¹¹⁴ The Associations have done the same, disclosing that Kenai compares

¹¹³ District Exhibit 47.

¹¹⁴ District Exhibit 57.

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well with those other districts.¹¹⁵ Kenai's support staff schedule also discloses an average, annual, automatic step increase of 4.98 percent.¹¹⁶

Throughout the hearing and in this brief, the District has stressed the fiscal impact of the high health care program utilization by its staff, and the resulting impact on available funds for other purposes including salary and wages. When comparing Big 5 salaries and wages, the fact that Kenai contributes up to \$4,254 more per member per year for teacher health insurance, and up to \$4,722 more per member per year for support staff health insurance, is critical to such comparisons, as is each school district's determination as to the size of its teaching staff through its PTR formula.

The specter of teacher resignations was raised by the Associations as a consequence of the impasse reached in this bargaining. However, Dr. Ermold, the District's Director of Human Resources, testified as to the District teacher resignation trend since FY 15. As of the dates of the hearing in this matter, FY 19 resignations are on the low side of that trend.¹¹⁷

The pall over this bargaining is the looming gubernatorial/legislative battle over state funding cuts to every aspect of public service. Education must share reduced funding with health care, transportation, public safety, prisons, the court system, natural resources, the University of Alaska, environmental conservation, and fish and game. Governor Dunleavy's warning that his proposed cuts will affect every Alaskan has been

¹¹⁵ Association Exhibit 25, at p. 2.

¹¹⁶ District Exhibit 49.1.

¹¹⁷ District Exhibit 58.

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taken to heart as Alaskans determine the best course for themselves and their loved ones, and school boards discharge their duties in the best interests of their school districts.¹¹⁸

D. KPEA SECTION 320 PERSONAL LEAVE

This Association proposal constitutes another means of increasing the compensation of teachers by providing an additional paid leave day that can be cashed out. It increases each teacher's paid personal leave benefit from 4 to 5 days. It increases the accumulation of those leave days from 8 to 9. It increases the number of days that can be cashed out each year from 4 to 5.¹¹⁹ If not cashed out, use of that leave day would reduce student-teacher contact time and require the payment of a substitute. The uncontroverted annual cost of this proposal if the cash out is fully utilized is \$248,926.¹²⁰

The current Section 320, which the District desires to maintain, compares favorably with the other Big 5 districts. Anchorage provides 5 days, with a maximum of 5 days to be carried over from one year to the next. Fairbanks provides 5 days, cumulative to 11 days. Mat-Su provides 4 days cumulative to 7 days, and Juneau provides 4 days, cumulative to 10 days.¹²¹

¹¹⁸ District Exhibit 46.5; See *Abood v. Detroit Board of Educ.*, 431 U.S. 209, 230 (1977), 'The uniqueness of public employment is not in the employees nor in the work performed; the uniqueness is in the special character of the employer' (internal citation omitted).

¹¹⁹ Association Exhibit 4 at p. 1.

¹²⁰ District Exhibit 51.

¹²¹ District Exhibit 56.

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Another significant comparison is the cash out value. Fairbanks caps that at \$300/day, and Juneau at \$150/day. Kenai, along with Anchorage and Mat-Su allow cash out at a teacher's actual daily rate.¹²²

KPEA sought the same increase in the prior bargaining. Arbitrator Axon's recommendation was brief. "The KPEA proposal to add an additional day of leave to Section 320, Personal Leave, should not become part of the successor CBA."¹²³

E. KPESA ARTICLE 20 PERSONAL LEAVE

KPESA also proposes an increase to its members' personal leave entitlement.¹²⁴ There was no testimony of comparability. The annual cost of its proposal has been calculated at \$35,839. The District believes that the current leave entitlement is fair and reasonable and no evidence contradicts that belief.

F. KPEA SECTION 475 TEACHER PREPARATION PERIODS

The current language requires the District to provide all elementary teachers "with at least one uninterrupted thirty (30) minute preparation period per day."¹²⁵ KPEA seeks to increase that minimum time to "forty-five (45)" minutes.¹²⁶ Dr. Ermold's uncontroverted testimony was that acceptance of KPEA's proposal would require an additional 17.18 full time equivalent teaching positions at a cost of \$1.718 million.¹²⁷

¹²² *Id.*

¹²³ District Exhibit 1 at p. 27.

¹²⁴ Association Exhibit 1 at p. 2.

¹²⁵ Association Exhibit 17, (emphasis added).

¹²⁶ *Id.*

¹²⁷ District Exhibit 50; District Exhibit 51.

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With the reduction of current teaching positions a likely outcome as the District meets the challenge to balance its FY 20 and beyond budgets, this proposal should not to be recommended.

G. KPEA SECTION 340 SICK LEAVE

KPEA proposes that teachers be allowed to cash out unused sick leave “Upon resignation after ten years of service with the District or upon retirement...”¹²⁸ This proposal is contrary to a Department of Education and Early Development regulation that prohibits a sick leave cash out.¹²⁹ The proposal should not be recommended.

H. KPESA ARTICLE 10 WORK RULES, PARAGRAPH N

This proposed Association addition to paragraph N gives an employee the right to “elect” to take their duty free lunch period at the end of their shift. This would permit employees to leave work 30 minutes to 1 hour early by foregoing their mid-shift lunch upon supervisor approval.¹³⁰ The proposal is devoid of any procedure or standards to be met that justify an early departure from work. It ignores the common sense reasons why mid-shift lunch periods are bargained in the first place, and leaves schools understaffed at the end of the school day. The lack of standards fosters inconsistency, claims of favoritism, and community perception of District employees abandoning their positions without consequences. It changes the existing informal practice respecting a

¹²⁸ Association Exhibit 16, at p. 2.

¹²⁹ District Exhibit 54 at p. 406, (“a teacher is not entitled to reimbursement for accumulated sick leave except as service credit toward retirement”).

¹³⁰ Association Exhibit 18, at p. 4, (emphasis added).

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supervisor's discretion to allow employees to leave early to deal with emergencies or other infrequent circumstances beyond an employee's control, and not use leave. In bargaining, it is reasonable to expect a proposal to present a clear, concise, fair, and definitive solution to an existing problem. This proposal only creates problems. It should not be recommended.

I. KPESA ARTICLE 10 WORK RULES, SUBPARAGRAPH P. 1

This KPESA proposal requires the District to issue paychecks twice monthly, rather than monthly.¹³¹ Elizabeth Hayes testified that meeting this mandate requires more than just a software change. She described the complexity of the District with its multiple sites, and the varying number of employees at each site, some of whom are on salary, and others paid by the hour, all taking leaves during payroll periods in varying amounts and varying categories. She explained that the existing District Office payroll staff, already reduced by budget cuts, would need to be increased if this proposal was accepted. The necessity for this change was not demonstrated. The proposal should not be recommended.

J. KPESA ARTICLE 10 WORK RULES, SUBPARAGRAPH 1.e.

This proposal, in conjunction with the proposal just discussed, mandates that employees working less than a full year, could "elect for their pay to be annualized and paid twice per month totaling twenty-four (24) installments."¹³² The Association's

¹³¹ *Id.*

¹³² *Id.*

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rationale for this change was the employee's need to have income during the summer months. Elizabeth Hayes testified that the District already has a fair and workable process to meet this need, going back to 2005. As former District CFO Melody Douglas explained to employees:

You may want to consider setting up a savings plan through your bank or credit union at the beginning of this school year to address those times of the year when you will be off work; winter holidays, spring break and summer vacation.¹³³

The Association entered two Memorandum from prior District CFO Melody Douglas. The earliest, dated June 10, 2003, states: In our efforts to comply with a recent change in reporting... to the Public Employees Retirement System, the district has learned that our 12 month payment option method for employees not working 12 months is not allowed.”¹³⁴ Ms. Douglas' August 22, 2005 Memorandum reiterates that the 12 month option was out of compliance with the statutory requirements of the Public Employees Retirement System covering classified employees.¹³⁵ However, that Memorandum goes on to state that depending on new software capabilities, “[w]e hope to be able to offer a 12 month pay option....”¹³⁶

¹³³ *Id.* at p. 7.

¹³⁴ *Id.* at p. 8.

¹³⁵ *Id.* at p. 7.

¹³⁶ *Id.*

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Less than a month later, a KPESA grievance was withdrawn in part because of a District assurance “that purchasing software which will allow the ‘12 month pay option’ to resume is a high priority.”¹³⁷

Elizabeth Hayes did not have information to explain the inconsistencies in the three exhibits. However, Ms. Hayes testified to her belief that the PERS statutes prohibit the District from paying a PERS employee less than what was actually earned in a payroll period. That is why the District does not allow the 12 month option.

Current PERS statutes were included in the Association’s exhibit.¹³⁸ The most significant language is in AS 39.35.170 that “[p]ayment of an employee’s compensation...is a full and complete discharge and satisfaction of all claims and demands...relating to remuneration of services during the period covered by the payment...”¹³⁹ Alaska Statute 39.35.255 was not included. That statute requires the District to pay its PERS contribution on “the total of the greater of all base salaries.”

No PERS directive, memo, policy, or other document was presented by the Association stating that a 12 month pay option for less than 12 month employees is permissible. The Association’s exhibits, Ms. Hayes’ testimony, and the language of AS 39.35.255, raise a significant question as to the legal validity of the Association’s proposal. As such, it should not be recommended.

¹³⁷ *Id.* at p. 12.

¹³⁸ *Id.* at p. 9-11.

¹³⁹ *Id.* at p. 10.

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K. KPESA ARTICLE 12 RESIGNATION, PARAGRAPH D

Current language allows a 20 year employee who resigns or retires to cash out unused sick leave at 67% of the employee's normal hourly rate.¹⁴⁰ The Association proposal reduces that service requirement to 15 years for the 67% cash out. Further, it adds new language that allows the 20 year employee who resigns and retires to cash out unused sick leave at 75%.¹⁴¹

Elizabeth Hayes reviewed the FY 19 wages of every KPESA member who meets either of the service requirements.¹⁴² She calculated the increased costs that must be reserved by the District to meet this obligation as \$103,251.¹⁴³ The District does not believe that any further compensation increases are warranted at this time, especially those that require a further reserve of general operating funds. It requests that this proposal not be recommended.

L. KPEA SECTION 110 SALARY CONDITIONS, PARAGRAPH F

The Association proposes two changes to this paragraph. It wants the \$2,000 to be increased to \$5,000, and wants the National Board for Certified Counselors (NBCC) added to the list of recognized professional certifications.¹⁴⁴

¹⁴⁰ The regulation that prohibits the cash out of sick leave only applies to teachers. *See* footnote 129, *Supra*.

¹⁴¹ Association Exhibit 19.

¹⁴² Association Exhibit 11 at p. 5-6.

¹⁴³ District Exhibit 51.

¹⁴⁴ Association Exhibit 15, at p. 1.

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Current language recognizes educators who obtain a doctoral degree or certain national board certifications by adding a flat amount to their annual salary. Dr. Ermold testified that approximately 28 teachers receive the additional \$2,000 for certifications, while far fewer receive the \$4,000 for a doctoral degree. The monetary difference between the two reflects the higher cost incurred by a teacher earning a doctoral degree, as well as the commitment of effort and time invested by that teacher. The current monetary amounts are fair and reasonable. The additional cost of the proposal is \$252,000 over the Association's proposed three year duration.¹⁴⁵

Regarding the proposed NBCC, Dr. Ermold compared it to the currently accepted National Board Certification to demonstrate and explain why the District does not agree to add it to the list.¹⁴⁶ As she made this fact based comparison, Joshua Yea, the Association representative presenting its case, expressed surprise that the NBCC had not been dropped from KPEA's proposal, and offered to do so.

For these reasons, the District requests that the Arbitrator not recommend the proposed changes to KPEA Section 110.

M. KPESA ARTICLE 17 PAYMENT CONDITIONS, PARAGRAPH G

The Association proposes a new paragraph that adds a step at the end of each salary schedule range. The step would be 1.5% greater than the current last step.¹⁴⁷

¹⁴⁵ District Exhibit 51.

¹⁴⁶ District Exhibit 52.

¹⁴⁷ Association Exhibit 20, at p. 1.

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Justification for the proposal is the increased cost of employee contributions to health insurance.¹⁴⁸

Two points of clarification regarding the Association's justification exhibit. First, the monthly cost of health insurance is computed on the 9 paychecks received by the less than 12 month employees. On a 12 month basis, the amount is \$512.18. Second, the exhibit only references the employee contribution for the Traditional Plan. The Broker recommended, and the employee subcommittee accepted, a twelve month employee contribution for the HDHP at \$307.70. The Broker recommended amount for the Traditional Plan is \$498 pmpm.¹⁴⁹

The District's dynamic status quo proposal on each Association's salary and wage schedule requires the payment of eligible step movement. For KPESA, the average, automatic annual step increase is 4.98%. That compares favorably to KPEA's average, automatic step increase of 2.67%.¹⁵⁰ This proposal would increase the District's three year cost by \$526,881.¹⁵¹ A new step is not appropriate. For the reasons set forth in Section K. above, the District requests that this proposal not be recommended.

¹⁴⁸ Association Exhibit 20, at p. 1.

¹⁴⁹ *Supra* at Footnote 54.

¹⁵⁰ District Exhibits 49.1 and 49.

¹⁵¹ District Exhibit 51.

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N. KPESA ARTICLE 17 PAYMENT CONDITIONS, PARAGRAPH A

This Association proposal increases the hourly wages of employees working the “swing shift” by 25 cents, and the “graveyard shift” by 35 cents. The cost increase over three fiscal years is \$92,076.¹⁵²

Justification for the proposal is a 2010 article from the University of Milano in Italy. It states that “epidemiological studies...show that shift and night work may cause severe long term effects with regards to health...”¹⁵³ The Abstract discusses that “...careful health surveillance and social support for shift workers are important preventive and corrective measures that allow people to keep working without significant health impairment.”¹⁵⁴

Basically, the Associations’ position is that these employees are susceptible to severe health impairments and should be paid more. That is not what the article recommends as a solution. The gravity of the findings in this article are not taken lightly. The use of swing and graveyard shifts should be reviewed by the parties, and the HCPC should be considering the article’s recommendations from both the perspective of improving employee health, and achieving health care cost savings. The District asks that the Arbitrator’s recommendation be limited to such review and consideration by the parties.

¹⁵² *Id.*

¹⁵³ Association Exhibit 20, at p. 7.

¹⁵⁴ *Id.* at p. 3.

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O. KPESA ARTICLE 21 ASSOCIATION LEAVE

The Association proposes that its “President shall be considered an employee for the administration of benefits,”¹⁵⁵ although only health insurance was addressed. President Rachel Sinclair is not an employee of the District. She does not perform duties for the District, and the District does not control the hours or content of her work for the Association. The Association compensates her for her work, and pays benefits, including health insurance. Ms. Sinclair testified that her District health insurance benefit continued under COBRA with the Association paying the required amount. Her COBRA entitlement has ended, but she has not sought Association paid for replacement coverage.

When Ms. Sinclair’s predecessor, Patty Sirois, became the Association’s first full time president, the District removed Ms. Sirois from the District’s payroll. A grievance ensued claiming that the District’s action violated Article 21, and interfered with the Association’s Article 5 rights.¹⁵⁶ The grievance was dismissed in both respects by Arbitrator Whalen. Ms. Whalen’s decision referenced the position of PERS that Ms. Sirois as “a full-time union president is not a direct employee of the District for retirement purposes.”¹⁵⁷

The Association will argue that full-time KPEA President David Brighton receives health insurance benefits under the District’s health care program. According

¹⁵⁵ Association Exhibit 21 at p. 1.

¹⁵⁶ District Exhibit 55.

¹⁵⁷ *Id.* at p. 13.

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to Dave Jones, with the exception of elected school board members, the plan documents only allow District employees to participate in the program. The distinguishing facts and circumstances of Mr. Brighton's situation were not made part of the hearing record by the Association. The District requests that the Association's proposal not be recommended.

P. KPESA NEW ARTICLE 37 EXTRACURRICULAR PROGRAMS

KPESA proposes a new article that allows its members to volunteer and be accepted as a coach or other sponsor of an extracurricular activity, compensated by a nominal fee.¹⁵⁸ Concerns for employer liability due to violations of the federal Fair Labor Standard Act's (FLSA) overtime pay and minimum wage requirements has put a damper on the District's use of classified coaches and sponsors. The KPEA N.A. has a similar provision,¹⁵⁹ but teachers are exempt from the overtime and minimum wage requires of the FLSA so District liability for wage violations is not an issue.

The Association submitted a 2005 Department of Labor guidance letter to an unnamed school district as to whether the payment of stipends "to non-teaching, nonexempt school employees who volunteer as coaches or advisors...constitute 'nominal fees' exempting those individuals as volunteers and exempt from FLSA's overtime and minimum wage requirements." It asserts that "[i]f the stipend is no more than 20 percent of what the district would otherwise pay to hire a coach or advisor for

¹⁵⁸ Association Exhibit 22.

¹⁵⁹ Joint Exhibit 2 at pp. 7-8.

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the same purposes, it would appear to be a permissible ‘nominal fee’.”¹⁶⁰ The guidance is fact and circumstance specific to that district.

The District remains concerned with potential liability and defense costs should classified coaches/sponsors spend multiple 24 hour duty days during an out of district tournament or activity. In that event, their calculated hourly rate would not meet the legal minimum, or overtime pay entitlement. As a result, the District discussed indemnification by KPESA, and the parties in concert reviewed federal court decisions holding that such indemnification is not legally permissible.

Setting aside FLSA issues, the problematic aspect of the Association’s proposal is the “second opportunity” requirement in paragraph I. At the hearing, the Association did not disabuse the District of its concern that a “qualified” coach/sponsor must be given the position. Does qualified relate only to the technical or skill knowledge of the position? Does it take into account the impact on the District of the employee’s loss of work time? What if the employee works after the school day, and therefore practices, games, and activities would impact the employee’s normal work day? What if the employee’s job performance is subject to a plan of improvement, or the employee’s job history includes reprimands or suspensions? As the Arbitrator noted at the hearing, the District exercises discretion in hiring decisions. Does this “second opportunity” language negate that discretion?

¹⁶⁰ Association Exhibit 22 at pp. 2 and 5.

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The Arbitrator offered the parties the opportunity to work these issues out, and not submit this proposal for decision. The Association declined. It is the District's position that the proposal should not be recommended.

**Q. DISTRICT PROPOSAL KPEA SECTION 343
AND KPEA ARTICLE 25A**

The District proposes the insertion of the sentence "Members must maintain a balance of 12 days of accrued leave in order to donate."¹⁶¹ Dr. Ermold testified that teachers experiencing health related issues have had to request donations of sick leave because their donations have left them with an insufficient number of accrued sick leave days. In the absence of donated sick leave, those teachers would have to request leave without pay. The best of intentions can have unintended negative consequences. The District seeks to protect against that vulnerability by requiring a minimum balance of accrued sick leave before a member can donate days. It requests that the proposed language be recommended.

R. CONCLUSION

The Associations' presentation was silent as to the need for further reductions in teaching and support staff positions to balance future fiscal year budgets. However, Joshua Yeh did question Assistant Superintendent Dave Jones as to how an increase of three students to the District's PTR would compare to Anchorage's PTR, implying that

¹⁶¹ District Exhibit 59.

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in comparison to Anchorage, Kenai could reasonably increase its PTR. As explained above, a PTR increase means a staffing decrease.

As employee witnesses painfully and emotionally described the financial stress of paying higher health care program contributions, there was only Association silence as to the responsibility of their leaderless and inert HCPC, and to the uncontroverted testimony that increases in District health care contributions, salaries, and benefits will result in the further loss of jobs for KPEA and KPESA members--a loss of income, a loss of health insurance, and a loss of paid leave and other benefits.

For the reasons discussed in this brief, the District respectfully requests that the Arbitrator recommend the District's position on all outstanding proposals.

Respectfully submitted this 1st day of April, 2019.

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