IN THE MATTER OF INTEREST ARBITRATION
BETWEEN
KENAI PENINSULA EDUCATION ASSOCIATION
AND KENAI PENINSULA EDUCATIONAL SUPPORT ASSOCIATION
AND
KENAI PENINSULA BOROUGH SCHOOL DISTRICT

ARBITRATOR: DOROTHY FALLON

ADVISORY INTEREST ARBITRATION 2019

Appearances: For the Associations:
Joshua Yeh, NEA – Alaska
Uni-Serv Director

For the District:
Saul Friedman, Esq.
Jermain Dunnagan & Owens, P.C.

INTRODUCTION

As provided for in Alaska Statute 23.40.200 this interest arbitration took place once the parties reached an impasse in negotiations for the Agreements that expired in June 2018. A hearing was held on February 26, 27, 2019 in the Soldatna Prep School in Soldatna, Alaska. The Kenai Peninsula Education Association (KPEA or Association) and Kenai Peninsula Educational Support Association (KPESA or Association) exclusively bargained for teachers and support personnel with the Kenai Peninsula Borough School District (KPBSD) all having concerns regarding health care costs and benefits, wages, and certain other areas pertinent to each Association. The Agreement effective through June 2018 remains in effect. Upon expirations of the two previous contracts, the District and Associations found they were unable to reach resolutions and in arbitration, an unsettling trend. As a result, the parties have almost fully adopted the advisory recommendations of two other arbitrators, and now seek a third interest arbitration advisory opinion.

A significant element of the District's focus is the Strategic Plan, effective through 2022, which calls for delivery of a quality education experience with students being "immersed in a high quality instructional environment." (Exh. D #43) This Strategic Plan vision translates into lower class sizes in KPBSD when compared to Anchorage, Fairbanks, Juneau and Mat-Su Districts, jointly recognized comparators. (Exh. D #45)

As a result of the interest arbitration in 2017, the parties adopted language to provide for a Health Care Planning Committee (HCPC) This committee, having representatives from all constituencies, was given enormous latitude to address the big issues affecting the cost of health benefits. The same HCPC language was incorporated into both the KPEA and KPESA agreements:

The HCPC shall be empowered to determine health care benefits different from benefits in the plan in place on July 1, 2015/January 1, 2017. The committee will determine and control the health care program for all District employees covered by the program during the term of this agreement including but not limited to the following: benefits and coverage 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. The District shall not be required to adopt changes made by the HCPC which would result in violations of established laws or regulations.

The only limitations on the HCPC are related to Broker selection, Third Party Administration and Stop-Loss Insurance where the committee role is limited to being advisory, not determinative.

In this proceeding, the parties were afforded a full opportunity to call and present witnesses, to adduce evidence, to cross-examine witnesses and to argue their respective positions. All witnesses testified under oath, and as neither party raised objection to the fairness of the proceeding, the record was closed upon the submission of post-hearing briefs on April 1, 2019.

ISSUES

While the parties were not in complete agreement on the issues to be determined, they agreed the arbitrator could consider the evidence and arguments submitted and make a determination of the issues to be considered. Based on my careful examination of the extensive evidence and thorough arguments presented, I have determined the following are the jointly pertinent issues:

Health Care / cost containment

Personal Leave Allowances and Carry Over

Salary/Wages

Duration of Agreement

Additional proposals having more limited impact/application are also addressed.

FACTS IN EVIDENCE

1. Health Care:

The District has maintained a self-funded health insurance program for all District employees. Self-funding means that the actual costs to provide the benefit coverage and to cover administrative fees and Stop Loss Insurance is provided for by the District and employees. The Stop Loss insurance kicks in when individual high cost or "catastrophic" claims occur. The health care plan provides for a full range of benefits, (medical, dental, and vision,) for employees and their eligible dependents. Other school districts used for comparison purposes, i.e., Anchorage and Mat-Su, are members of the Public Education Health Trust, (the Trust) a consortium, which no longer makes all plans available to other Districts (i.e., Juneau,) or are self-insured (Fairbanks North Star.) The comparable Districts do offer certain options for the level of coverage provided under the Trust, and each have caps on employer contributions or different levels of coverage. After reviewing the various exhibits provided by the District, it is clear that there is no one perfect comparator to work with, and each District has found its own best program for providing health care coverage. The evidence is irrefutable that it is costing KPBSD more to provide health care coverage, and that employees experience higher costs than virtually all of the other comparable Districts. This is reflective of numerous factors, not limited to the levels of coverage, the utilization of benefits, age of the workforce, access to care, and importantly, the inability to spread costs and risk over a larger population.

During negotiations the parties obtained information on the cost(s) of potentially joining the Public Education HealthTrust. As a result of that inquiry, the parties were shown how high the District's health care costs are in comparison to comparable Districts with closely aligned coverage. (Exh. D #6) The HCPC recognized that there is a limited option for participation in the Trust, without consideration of providing lesser levels of coverage and a tiered approach, (i.e., single employee, employee +spouse, employee + children, full family.)

Since 2017 the District has provided employees with two options for participation in the health care benefit. Employees can be covered under a High Deductible Health Plan, (HDHP), having a $1,500/Individual or $3,000/Family deductible, or to remain in the Traditional Plan (TP) with lower deductibles, $200/Individual or $600/Family. Again, since 2017, the cost of each of these plans has been split between the employees and the District with HDHP participants paying 10% of the costs, and TP participants paying 15%. Significantly, the parties implemented a dollar "soft" cap on the District's cost sharing percentages by agreeing to District maximum contributions for each of the two plans. The parties agreed to the following language in the CBA:

In FY 18, the District's contribution to the Traditional Health Plan shall be no more than $1731.45/month. If the total premium exceeds the cap, the District and the employees will share the cost over the cap 50/50.
In FY 18, the District's contribution to the High Deductible Health Plan shall be no more than $1645.61/month. If the total premium exceeds the cap, the District and employees will share the cost over the cap 50/50.

The District's share of cost of providing benefits is HDHP, 90% or TP, 85% until a maximum dollar amount is reached on the cost of providing the plans benefits. Then the cost sharing for the District is significantly reduced as participants move to the 50/50 split of providing coverage. Employees participating in the plan have no maximum dollar spend, and when costs exceed the District maximum dollar amount, their share of the burden moves from either HDHP 10%, or TP 15% to the 50/50 split. The CBA calls for costs for each offered plan option (HDHP v. TP) to be independently calculated and reported to the Health Care Planning Committee. On this provision of the agreements, there is no distinction made between members of KPESA or KPEA, although there are significant differences on wage schedules.

The parties negotiated the HDHP in recognition of the constant, significant increases in the costs of providing health care benefits. It was also a result of an advisory opinion that the District implemented the HDHP with employees contributing 10% of the costs of providing the plan. Even though the District assumes a higher percentage of the cost of the HDHP, costs have gone down since the implementation of the HDHP as greater numbers of employees have migrated or shifted from the TP.

Being a self-insured plan, the District and employees have the shared burden of dealing with the actual costs of providing benefits. The establishment of the District Health Care Program Committee (HCPC) was an additional element of the most recently negotiated Agreements. This is significantly different as compared to Anchorage and other comparator Districts who are in the Trust, and/or have greater sharing of costs of care._ With the soft cap that was established, the District was able to gain a somewhat higher level of certainty over its health care costs. If the HCPC modifies premium payments due from employees mid-year, to fund the costs of the program, employees do not have the opportunity to know for certain the percentage of their wages that will be going to provide medical coverage.

The HCPC has the extraordinary opportunity and the burden of examining "to determine and control the health care program for all District employees covered by the program….." The committee is comprised of four representatives from KPEA, three from KPESA, one administrator and 3 employees selected by the Superintendent. The CBA's both provide the HCPC is empowered to *"determine health care benefits different from benefits in the plan in place on July 1, 2015/January 1 2017. The committee will determine and control the health care program for all District employees covered by the program during the term of this agreement including but not limited to the following: benefits and coverage 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."*

DISTRICT PROPOSES:

Continuation of the two types of plan offerings, Traditional and High Deductible, and maintenance of the 50/50 split for costs over the established maximum contribution. It does not propose a hard cap on contributions as exists elsewhere.

The District asserts that the Base Student Allocation (BSA) is at risk of reduction based on early proposals to reduce school funding made by the governor. The BSA has been held steady since the FY 18. But the District rejects all financial proposals made by the Associations, including the additional steps and the across the Board increases due to this uncertainty even though it has faced similar difficulties in virtually every recent budget cycle.

ASSOCIATION(S) PROPOSE:

- Elimination of the 50/50 split once District maximums have been reached, and a return to the Traditional Plan split of 85% payments being made by the District and the employees being responsible for 15%. The Association argues that other comparable Districts have increased the amount they are contributing, for health care, and that KPSD should provide the same types of funding increases.
- Salary increases of the following: FY 19, 0.5% increase, FY 20, 1.0% and FY 21, 2% increase.
- Increase in Personal leave by one day, which would allow for a full week personal time during the school year.

CONCLUSIONS/ RECOMMENDATIONS

The District claim of uncertainty about state funding while understandable is not a sufficient reason to withhold consideration of the increases and proposed changes sought by the Associations. Every District in the state has the same uncertainty, yet others have been able to determine that they can settle their contracts and in certain instances to agree to wage increases. Clearly both parties recognize that reducing the number of certified positions through higher

PTR is an option. If state and local funding does not increase or hold steady with FY19's levels, there will be no question but that the parties will have to work to determine how best to manage significantly reduced revenues.

The Borough Council and Mayor are or should be aware of the fund balance allocations that have been made over the course of the last 5 years. The rejection by the Borough of the FY 19 request left the District in the situation where it again had to allocate fund balance reserves to balance the budget. There may be no certainty that these revenue sources will provide resources to eliminate the need to utilize the remaining fund balance, but state and local legislators recognize there are now more limited available reserves. How serious a priority those legislators have to public education will be determined in the weeks ahead. I am no better equipped than those who testified for both parties about the difficult choices that will have to be made with regard to class sizes, programs and the strategic plan should funding not improve or keep pace. The Associations have proposed a number of changes that when viewed in isolation might seem to have a limited financial impact. When fully considered as a part of a package, I find a number of items that while very worthy of consideration, still increase spending levels at a time when resources have to be viewed through a lens that is tainted with uncertainty. That said, the parties have asked me to deliver an advisory opinion and based upon a careful review of the evidence and testimony before me, I here provide my recommendations:

The Association proposal to increase teacher prep time is both understandable and laudable. Teachers seem to be universally expected to complete all their lesson planning and other administrative duties in the blink of an eye, here, in one 30-minute period/day. While I am loath to reject the proposal, the cost estimate for such a change makes it prohibitive. Likewise I do not find it critical or feasible to add an additional day to personal leave time. The evidence and argument presented, while compelling, have to be considered in light of the full package of demands. I cannot support a change in this benefit, or to change the current CBA with regard to the ability to cash out an additional unused day. I recommend no changes to the current CBA provisions.

KPESA proposes amending the current CBA Article 10 to allow employees to determine when to take their duty free lunch. Understanding that there are current supervisor/staff agreements, where feasible and appropriate, to allow for lunch periods at the end of a shift, I see no need to amend the current language. Administrators/supervisors have the right and responsibility to oversee scheduling functions and to manage the flow of work, and I find continuing such to be in the best interests of the parties.

Next, I find KPESA's proposals to require the District to issue payroll twice monthly, and to spread payments over 12 months for 9-month employees, in spite of compelling testimony from Association witnesses, have to be rejected. The District moved to a monthly payroll system years ago. That change affected the workflow for members of the administrative staff, and my own understanding of payroll systems makes it impossible for me to find that additional resources would not be required to make such a change. Additionally, Ms. Hayes testified credibly to her understanding that employee PERS contributions must be made simultaneous to wage payments. Employees have the responsibility to manage their own cash flow and expenses, and to require a return to a bi-weekly payroll, or to change the manner in which 9-month employees are paid would add unnecessary costs, so these proposals have to be rejected.

Next, although the District articulated concerns about how it might be implemented, the parties seemed to have a general willingness to allow members of KPESA the opportunity to apply for coaching positions. Members of KPESA are part of the school communities, with known skills, qualities and work habits. I direct the parties to meet and resolve how the proposal can be implemented, with certain caveats, (i.e., provided there can be a higher level of confidence that in doing so, the District would not be subject to claims of wage and hour law violations, that The District maintain the right to consider qualifications and job performance, and such other factors as may be appropriate, in making those opportunities available, and to ensure no adverse impacts upon a KPESA member's normal job duties. Discussions should be held in order that implementation would be possible for the next school year.

Next, The Association proposes modifying the current KPESA language to recognize the full-time released KPESA President as a District employee, thus providing benefit coverage, albeit paid for by the Association. After careful review of the Opinion and Award rendered by Arbitrator Whalen and the evidence presented, I am unable to recommend a change to the current application of Article 21.

Next let me get to the two most important matters: health care and wages. First, the "empowerment" language adopted concerning the HCPC is comprehensive and provides for clear expectations. The obligation of the members of the committee is to get control over the cost of providing health care coverage for all eligible employees. The composition of the committee, with representation from each of the two Associations, and with the Superintendent controlling 3 random members, diminishes my sense that any one constituency, (as each party asserts,) could drag their feet and cause the committee to avoid tackling the difficult issues. There are difficult choices to be made, and the members of the committee bear the burden equally if the health costs aren't effectively tackled.

Cost sharing is an effective method for reducing rates of increases for health care coverage. Other efforts, which encourage employees to take greater responsibility for their own "wellness," have also proven very effective. A multi-faceted approach to the issues is needed, one of controlling costs when someone is sick, (such as through negotiating better rates with service providers,) and also finding ways to reduce the need for benefit usage. The HDHP was a critical step in getting costs to a more sustainable level, but the Association argues that the realized savings do not benefit its members. Without evidence, I expect that the vast majority of Association members live somewhere within the boundaries of the school community. It follows therefore that any effort that reduces rates of increase or allows for lower funding requirements on the Borough is to the benefit of all residents/members.

While joining the Public Education Health Trust would come with higher initial rates and front-loading costs, which would be very challenging, it seems that is the one approach for the long term that would eliminate some of the variables and uncertainties that are present with being self-insured. If the HCPC, which has the power to make such a change, has not formally voted to accept or reject such a move, they should do so.

The evidence is clear that the HDHP has had a significant positive impact on the costs of providing coverage. Employees have been able to make their own decision that absorbing higher deductibles is better than paying the higher costs associated with the TP. Members have to be prepared for absorbing those deductibles should they need to utilize benefits, but the large numbers who have chosen to switch is encouraging. Eliminating the HDHP option, since it has proven an effective cost saving approach, is out of the question. Additionally, I recommend the parties eliminate the TP option for new hires.

The national news is replete with studies of entities reducing health care costs by incentivizing efforts to reduce obesity rates, to educate people on the causes of high blood pressure, the benefits of good nutrition, and to encourage more active lifestyles. While it is not in my purview to direct it, I encourage members of the HCPC to focus on encouraging healthier lifestyle choices and to explore having the third party administrator examine usage data that might show unnecessary benefit uses and abuses. Both efforts should lead to positive cost reductions in providing health benefits. Thus far, the HDHP coupled with the 50/50 split have been a part of a successful effort to focus participants on the high costs associated with health care and to recognize the stake each member plays in impacting the cost of providing coverage. The District's proposal, while maintaining cost sharing, does not establish a firm cap or ceiling on their share of the costs, something other Districts have established. Elimination of these two important program elements, which the Association proposes, cannot be supported.

That said, the Association provided critical evidence in support of its proposal to eliminate the 50/50 split, citing employees experiencing increased contribution amounts, the level of uncertainty with take home pay, and comparisons with other Districts. I am convinced that the current approach needs to be slightly modified for some participants. The evidence before me reflects that the parties have agreed to a number of distinctions between how KPEA and KPESA members are treated. I find it is not in the best interest of the members of KPESA, the lowest wage earners, to have to experience the same dollar impact with the 50/50 split as KPEA members. I therefore find the CBA for KPESA should be modified to reflect a 70/30 split with the District when costs exceed the current District maximums. This maintains the same approach to cost sharing, but would reduce the burden borne by the District's lowest wage earners when the need arises. The parties are certainly free to consider and modify this recommendation, but I urge the concern be addressed.

Next, I am convinced that with the level of difficulties the parties have had in reaching their last two Agreements that it is in their best interest to recommend a 3-year term, thus effective through June 2021.

Next, the Association proposes wage increases based on comparisons with similarly situated Districts, and argues that with the higher costs associated with health care that Association members earn less, and continue to earn less over the course of their careers. After considering this and the rest of the evidence before me, I find that the Association proposal for .05% for 2018-19, 1.0% for 2019-20, and 2% for 2020-21 is warranted and so recommend:

1. The KPESA and KPEA salary schedules to be increased for FY 2019 by 0.5%, with retroactivity to July 1, 2018 for those who continue to be employed. Those at the top step are to receive a 0.5% increase in their salary. The following year(s) increases will be applied to the revised salary schedules moving forward.

2. The KPESA and KPEA salary schedules to be increased for the FY 20 by 1.0%. Those at the top step shall receive an additional 1.0% increase in their salary.

3. The KPESA and KPEA salary schedules to be increased for the FY 21 by 2%. Those at the top step shall receive an additional 2% in their salary.

In addition, I recommend the shift differential for those working swing shift be increased to forty cents (.40) per hour, and to sixty cents (.60) for employees working the graveyard shift.

There were a few other proposals the Associations sought to be modified, which I have determined not to address, and therefore no change is recommended. Again, in developing the wage recommendations, I recognize that if the state and Borough funding is not increased or held to last year's levels, reserves will again have to be utilized and/or the District's strategic plan with lower PTR will have to be reevaluated. Those hard choices will be left to the Administration and School Board.

AFFIRMATION

On this the 23rd day of April 2019, I do hereby affirm the foregoing is my recommendation and award.