In the Matter of the Arbitration)
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between)
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KENAI EDUCATION ASSOCIATION) AAA Case No. 75 390 00156 12
KENAI EDUCATION SUPPORT) TAFL
ASSOCIATION)
(Associations))
) ADVISORY INTEREST
and) ARBITRATION
)
KENAI PENINSULA BOROUGH)
SCHOOL DISTRICT)
(District))

BEFORE: Kathryn T. Whalen, Arbitrator

APPEARANCES: For the Associations:

Keri Clark
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For the District:

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PLACE OF HEARING: Kenai, AK

DATE OF HEARING: October 1 and 2, 2012

HEARING CLOSED: November 6, 2012

AWARD ISSUED: December 21, 2012

I. INTRODUCTION

This is an advisory interest arbitration proceeding pursuant to AS 23.40.200(g). Kenai Peninsula Education Association (KPEA) and Kenai Peninsula Educational Support Association (KPESA) and Kenai Peninsula Borough School District (KPBSD or District) were unable to reach an agreement on certain terms for Collective Bargaining Agreements for the period from July, 1, 2012 through June 30, 2015.

After reaching an impasse in negotiations, the parties' remaining issues are: Salary/Wages; Health Care; Salary Conditions, Extracurricular Salary Schedule; Physical Exam Reimbursement; Automated Substitute System; Donation of Sick Leave; Duty Free Lunch; and Workday. There are additional issues for KPESA concerning Definitions and Work Rules.

This case is administered by the American Arbitration Association. Tammie R. Flynn is the Case Manager. The Arbitrator was selected pursuant to AAA procedures and applicable state law.

A hearing was held on October 1 and 2, 2012 in Kenai, Alaska. The parties had a full opportunity to present evidence and argument in support of their respective positions. The parties elected to file post-hearing briefs. The Arbitrator closed the record upon receipt of those briefs on November 6, 2012. The parties agreed the Arbitrator could submit her recommendations and award electronically on December 21, 2012.

II. APPLICABLE STATUTORY PROVISIONS

AS 23.40.200 (g) provides:

> Under the provisions of (d) of this section, if an impasse or deadlock is reached in collective bargaining negotiations between a municipal school district, a regional educational attendance area, or a state board school and its employees,
>
> (1) the parties shall submit to advisory arbitration before the employees may vote to engage in a strike; the arbitrator shall
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> (A) be a member of the American Arbitration Association, Panel of Arbitrators, or the Federal Mediation and Conciliation Service;
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> (B) have knowledge of and recent experience in the local conditions of the school district, regional educational attendance area, or state boarding school, and
>
> (C) be determined from a list containing at least five nominees who meet the qualifications of this subsection; this list shall be considered a complete list for the purpose of striking names and selecting an arbitrator; * * *

III. <u>SALARY/WAGES</u>

A. <u>Background</u>

The State of Alaska's educational funding formula is based upon a school district's student count, referred to as average daily membership (ADM). ADM is adjusted by a number of factors, including: school size, district cost factor, special needs factor, intensive services count and correspondence student counts. A final adjusted ADM is multiplied by a Base Student Allocation (BSA).

In 2007-2008, House Bill (HB) 273 was passed by the state legislature and approved by the Governor. It contained a multi-year funding formula for school districts that provided predictability to school districts through Fiscal Year (FY) 2011. Increases to formula factors, however, were not established for FY 12 or FY 13.

B. Parties' Proposals

1. Associations

For each of the 3 years of the Agreements, KPEA and KPESA propose increases equal to the previous year Consumer Price Index-U. This CPI is the one annually issued in July by the Alaska Department of Labor for the Anchorage area. For FY 13, the annual CPI-U published in July 2011 was 2.8%; for FY 14, that percentage was 2.5%. The percentage for FY 15 is unknown, but will come out in June of 2013. For costing purposes for this arbitration, the Associations used 2% for that year.

2. District

The District proposes a one percent (1%) salary schedule increase for each year of the Agreements. Additionally, for KPEA teachers, the District proposes a one-time payment of $600 for each year of the Agreement outside the salary schedule. For KPESA members, the District proposes a one-time payment of $300 to each employee for each year of the Agreement outside the salary schedule.

The District's proposal further provided that had a CBA been ratified by the end of FY 12 there would have been a one-time inflationary payment for teachers of $800 in FY 12; plus, those at the bottom of certain columns (C+54/M, C+72/M, and C+90/M) and not receiving a step increase in any year, would have received a $400 payment. For KPESA, the District proposed that had the CBA been ratified by the end of FY 12, employees would have received a one-time inflationary payment in FY 12 of $300 with a $400 payment to all employees at the end of a row, if the employee did not receive a step increase.

C. Parties' Arguments

1. Associations

1. The universally-used standards for advisory arbitration of cost of living, comparability, ability to pay and ability to attract and retain personnel should be used in this proceeding and support the Associations' proposal.
2. Cost of Living (CPI): From 1977 through 1992 cost of living for salary increase was the standard relied upon by the Association and the District. It is in line with a 1996 arbitration decision from Arbitrator William Dorsey. Agreeing to a CPI increase is not novel in the current political and financial climate—the District's Superintendent did it as did Kenai Borough employees (CPI plus 1%). Fairbanks Borough employees recently negotiated a COLA based on the CPI.
3. Budgeting for a CPI increase is no different than budgeting for a percentage increase; the District has operated for years creating budgets on information on hand in November though the state legislature does not pass its budget until April. District concerns over state funding are baseless; and at any rate have been remedied by the Associations' proposals that use the mid-year CPI one and one-half years prior to the actual salary increase.
4. Kenai teachers have steadily lost ground over the past years when comparing salary schedule increases with the CPI. The District's proposal of 1% each of three years does not make a dent in teachers' historical loss of buying power nor does it match inflationary impacts.
5. Comparability: Teacher salaries also should be equivalent with those teachers in comparable school districts. Teacher salaries and benefits may be compared with other large school districts in Alaska—Mat-Su, Anchorage, Juneau and Fairbanks. According to the Association of Alaska School Boards (AASB) 2011-12 Salary and Benefit Report, KPBSD ranks last among the five comparable districts in salaries and benefits. The District's proposal does not correct this discrepancy. The District's staffing formula (pupil/teacher ratio) is not so superior to comparable jurisdictions to knock out other comparability considerations. Besides, Kenai is on par with other comparable districts on that ratio.

6. At the bargaining table the District gave a couple of reasons for its unwillingness to settle. First, that it could not create a budget based on the CPI. To remedy that, the Associations proposed using a CPI number far in advance of the budgeting process. Further, this District excuse is belied by a substantial number of years that the District did budget for a CPI increase. Another reason the District gave at the table for unwillingness to go beyond 1% was that it had other uses for the money.
7. Ability to Pay: The District stated it did not have the ability to pay for the first time at arbitration. The District's eleventh hour claim of inability to pay is unsupported by the evidence. Comparing cost of the parties' proposals for the first year for salary and health care, the Associations cost less than the District's by $903,128 (teachers) and $689,607 (support). These calculations include money in the District's proposal that expired on June 30, 2012. Even with those monies removed, the Associations' proposals would be less in the first year for salary and health care.
8. Further, the District's undesignated fund continues to be replenished and to grow. For FY 12 it is up to $6,808,518—an 18% increase over the prior year.
9. The District's concern with the state education funding mechanism is not warranted. In the State's history, it has only forward funded for the one 3-year period. Other than that, school districts have budgeted for years with the current mechanism and at no time did the State fail to put money into education. (Testimony of John Alcantra).
10. In addition, when the District sent its budget to the State Commissioner for Education it anticipated only a 1% increase; although evidence does not show that the State House Finance Committee advised the District of such a cap to employee salary increases.
11. The District has money: It had to return monies to the Borough two years ago because it had too much in reserves (more than 10%). This year the Borough reduced money to the District by $1 million because the District was receiving more than anticipated from the State. A review of District history of revenues shows increased revenue is predictable despite decreasing enrollment and allegedly what is happening to budgets in other school districts.
12. The District should not be allowed to continue to grow fund accounts at the same time its employees need to work more than one job just to pay for fuel or buy food. (Testimony of Matt Fischer; Terri Tidwell).

13. Ability to Attract and Retain Personnel: The evidence shows that except for 2009, the District has budgeted less for teacher salaries while FTE has increased. This is not consistent with District claims of a world class district and some of the highest student test scores; it is clear its employees are not high on the District's priority list. It is increasingly difficult to fill support positions and retain support employees, especially because of the cost of health insurance. (Testimony of Terri Tidwell).

2. District

1. At the time HB 273 passed, the parties had a CBA for FY 07-FY 09. The salary schedule increased 2.5% in FY 08 over the FY 07 schedule; FY 09 provided another 2%. Despite an ongoing enrollment decrease, the District was able to end FY 09 with a 10% unreserved general fund balance. The next CBA for FY 10-FY 12 contained the following increases: FY 10 each cell of the salary schedule $3,000 along with automatic step increases; FY 11 and FY 12 another 2% along with automatic step increases for those eligible. The District's response to HB 273 and in agreeing to the FY 10-FY 12 Agreements was reasonable and protective of its primary educational mission. A mission that emphasizes small class size and resulting benefits to student achievement, not just pupil/teacher ratio (PTR).
2. In this context, contrary to current claims by the Associations that top level administration is untrustworthy and unfair, the District has a Superintendent that is politically savvy, read the landscape and decided not to battle with the Borough over funding.
3. The District's proposal for FY 13 constitutes average increases for both KPEA and KPESA members that far exceed the 2.8% CPI-U increase. In fact for FY 08-12 and over the years, District salary schedules have exceeded the rate of inflation. (Testimony of Assistant Superintendent Dave Jones).
4. Cost of District's proposal: The BSA has not increased since FY 11; and the Legislature only appropriated one-time earmarked funds for FY 12 and FY 13. The District's proposal over 3 fiscal years needs to be understood in the context of that stagnant BSA. Plus, there is a cumulative and compounding impact of multiyear percentage increases on the salary schedule. The three-year cost of the District's KPEA proposal is $4.3 million over the FY 12 schedule; the District's KPESA proposal is approximately $1.7 million—for a total of about $ 6 million for both Associations.

5. The District's FY 13 Budget: Jones' assessment to the School Board included the increased costs described above and anticipated changes to previous revenue and expenditure projections—the net result reflects a shortfall in revenues over expenditures in FY 13 of $2,762,120—to be appropriated from the non exempt, unreserved general fund balance. The District used almost $3 million of that fund in FY 12 so the additional projected use in FY 13 shows a disturbing and unsettling trend. Without additional state funding the combined cost of health care and salary proposals will decimate that fund the District has so painstakingly preserved. (Testimony of Dave Jones).
6. Still, the District went beyond its comfort level in attempting to reach a compromise with the Associations. The bottom line is that the District's health care and salary proposals are substantial, fair and reasonable. Without the use of the unreserved general fund balance and exempt general fund self-insurance health care reserve (not Committee reserve) the District would be in the same dire situation as those school districts the Associations view as comparable—massive cuts to programs and staff as well as increased class sizes.
7. The KPEA's FY 13 proposal would cost an additional $1.35 million; KPESA's proposal an additional $551,520. And, for example in FY 14—taking into account the compounding effect—KPEA's proposal is $1.26 million more than the cost of the District's FY 14 proposal.
8. The Associations are asking the Arbitrator not just to consider the CPI-U; but to recommend that the CPI-U as the sole and determinative measure of salary/wage increases for FY 13-FY 15. Such an approach is not supported by arbitral authority. The CPI-U has some relevance but is recognized as imprecise—as factors such as housing costs and medical costs demonstrate. Housing costs are lower in Kenai compared to Anchorage, Juneau, Fairbanks, Kodiak, Mat-Su, and the rest of Alaska. And, the District's medical proposal reduces the employees' basic contribution rate from $340 to $270---a 20% decrease.
9. KPEA also has proposed changes to Article 470 Workday that would compensate members for additional work—the value of one day per diem for each of the four quarters of the school year. Combined with the KPEA's salary proposal, it adds on cost that would increase the shortfall of revenues over expenditures.
10. Comparability/Ability to Pay/Interest and Welfare of the Public: KPEA's comparability argument does not address the meaning of that term in the context of Alaska's school districts.

A school district, through improvident bargaining, can seriously erode its ability to deliver a quality educational program; it cannot mitigate consequences as private companies. Its services are mandated by law; it cannot close shop and move to another location with lower labor and utility costs.

11. KPEA's comparability fails to take into account all factors that are needed to measure comparability. The District could pay Fairbanks' salaries and reduce employee health contributions but with the larger cost to the detriment of the education program and shortchanging students—less positions, less instructional support, larger class sizes, less SPED services, less equipment and supplies, and the list goes on. FY 11 class sizes: Mat-Su 22.4 (elementary), 26.5 (middle), and 28.1 (high school); Anchorage 27 (grades 4-6), 26.25-27.91 (grades 7-12); Kenai: 20.6 (high school), 19.8 (middle school), 19.8 (elementary), and 10 (small schools).
12. For FY 13, Fairbanks North Star Borough School District required major reductions in positions (support and teachers), services, supplies and equipment.
13. Summary: Associations advocate for their members; the District for a broader constituency. Associations' proposals are asking the Arbitrator to accept and recommend expenditures of funds not within available revenues and to make comparisons to school districts in crisis. Kenai is not in such a mode. With well thought out and factually supported proposals the District hopes to avoid the plight of the Associations' "comparable" districts. The District's proposals are, ultimately, most beneficial to employees, to its students and to the educational community as a whole.

IV. ARBITRATOR'S RECOMMENDATION: SALARY SCHEDULE

A. Recommendation

For FY 13, FY 14 and FY 15, the pay scales in each year of these Agreements shall be increased by two percent (2%).

B. Explanation

In arriving at my recommendation on the salary schedule I have considered all of the usual interest arbitration standards, particularly those argued by the parties: interest and welfare of the public, comparability, cost of living, ability to pay and ability to attract and retain personnel. I have applied those standards to the record in this case.

I have taken into account in my recommendation the District's concerns that the BSA has not increased since FY 11, the uncertainty of state funding, differences in other jurisdictions identified as comparable by the Associations, the compounding effect of salary base increases and District responsibility to employees, students and the educational community.

I have recommended a 2% increase in each year because I am convinced by the evidence that members of the Associations deserve a base percentage increase to the salary schedule that is more than the District's proposal of 1% in each year. Yet, with the issue of health care also an important financial issue, the Associations' combined economic proposals are too much.

V. HEALTH CARE

A. Overview

Health Care provisions are contained in Article 210 (KPEA) and Article 27 (KPESA) of the parties' 2009-2012 Collective Bargaining Agreements.

The District health care program is self-funded. A health care cost committee determines and controls the health care program. That program includes but is not limited to: setting the amount of employee monthly contributions and dependent coverage costs, benefits and coverage provided, cost containment measures, evaluating and deciding the outcome of appeals, regulating the use of the health care cost reserve account, and implementing any wellness measures it deems beneficial to employees and the health care program.

The Committee is composed of nine members and KPEA and KPESA are entitled to at least three members each. The plan administrator is the Director of Human Resources.

Permanent and permanent part-time employees who currently work 4 or more hours per day are eligible for year-round health care benefits. Effective for FY 11 and FY 12, all permanent and permanent part-time employees who work 6 hours or more per day were required to participate in the KPBSD health plan. Employees first hired on or after July 1, 2010, for at least 4 hours per day (.50 FTE) but less than 6 hours per day, could opt out of health care coverage altogether. Effective FY 12, the District provided health benefits to employees only; family members could be added for an additional fee.

The parties' 2009-2012 Agreements required the District to pay minimum monthly contributions for each participant in the following amounts for FY 10, 11 and 12: $950, $975 and $975, respectively. Employee participants were required to pay monthly, at a minimum, respectively: $175; $200 and $200. Expenditures in excess of available health care cost account reserves were to be borne equally between the District and all eligible employees (50/50 split).

Correspondingly, if expenditures were below the negotiated cap, savings were to be applied to a health care cost reserve account. Funds deposited into this account were to be used only to offset future health care cost increases and/or provide additional benefits.

Actual employer and employee contributions were in excess of the minimum amounts for all three contract years. For July 1, 2011-June 30, 2012, the total cost per month was $1455 for each participating employee. The District paid $1115 per month; each employee paid $340 per month (over 12 months; $453 per month for a 9-month employee). Percentage-wise, these 2012 contributions are a 77%/23% split between the Employer and employee.[1]

B. <u>Parties' Proposals</u>

1. <u>Associations' Proposals</u>

The KPEA and KPESA seek to eliminate the 50/50 split. The Associations propose that the District make contributions on a 12-month basis equal to 85% of the cost and employees make contributions equal to 15% cost of the health care program. The Associations also seek to eliminate any separate contributions for family members and propose that benefits be afforded to the employee, spouse and all eligible dependents.[2]

2. <u>District's Proposals</u>

The District proposes the following minimum monthly contributions for FY 13, FY 14 and FY 15, respectively: Employer--$1330; $1350; and $1380; Employee--$ 270; $270 and $270. The District further proposes that for FY 13, excess expenditures be borne at a rate of 60/40 (rather than the current 50/50 split).

The District proposes to develop and support a Health Care Task Force that will look at all aspects of the KPBSD health plan and other avenues to

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[1] The District calculates the percentage ratio as 76%/24%.

[2] The Associations' proposal also broadens the opt-out provision. This proposal was not addressed by the parties in their briefs and is not a primary issue.

contain health care costs. The task force will be made up of employees, administration and health care experts. The recommendation from this group is to be presented to the Health Care Committee during the FY 14 school year.

For FY 14 and FY 15, the rate for excess expenditures would change if the employee is a participant in KPBSD Wellness program: FY 14—65/35; FY 15—70/30.

The District proposes that .75 FTE permanent and part-time employees be eligible for year-round health care benefits rather than the current four (4) or more hours per day requirement for said employees. The District also proposes a 30-day probationary period before health care benefits are provided.

The District further proposes that the task of evaluating and deciding appeals be removed from the Committee's purview.

C. <u>Arguments</u>

1. <u>Associations</u>

1. In 2009 negotiations, the employees made a substantial concession by agreeing to employee-only coverage with an additional fee for family members. At the same time, the District held on to the 50/50 split which has had a devastating financial impact on employees. Increases to employees have ranged from 28% to 70%.
2. District projected health care cost increases have changed over the course of bargaining from 10%, to 8%, to 12% and most recently to 15.69%. Regardless, the result is a further and dramatic increase in cost to employees, even with the District reduction proposed with a wellness plan. Any sort of split in addition to a substantial base amount is unsustainable for employees.
3. Comparable districts (Anchorage, Mat-Su, Fairbanks and Juneau) have no such 50/50 split and Kenai has the highest monthly contribution rate. The proposed 85%/15% split is in line with what employees in other districts pay.

4. The Associations' proposal for full family coverage returns health care to what it was prior to FY 12 and is the standard in comparable districts except for Fairbanks. In fact, the majority of districts across Alaska offer coverage for families. In contrast, the District's proposal for a 30-day waiting period for insurance coverage is not supported by evidence: either an industry standard; or actual health care costs for employees who quit within 30 days.
5. The District can afford the Associations' proposal. After the FY 11 audit, Committee health care reserves totaled over $2.9 million; the District recently added to the reserve so that the total health care reserve is $3.6 million.
6. These reserve amounts demonstrate, according to Health Care Committee member Matt Fischer, that the current $1455 being collected is sufficient to cover health care costs.
7. In 2007, the District created another fund called the self-insurance health care fund which started with $2.2 million and increased each year so that in FY 11 the total was $6.8 million. This fund is regulated by the District with approval from the school board; not the Committee.
8. There are sufficient funds to pay for the Associations' 85%/15% proposal either if current District contributions remain sufficient or if District predictions on health care costs occur.
9. The District is experiencing difficulty in attracting and retaining its employees with the high cost to employees for their health care contribution. For example, support employees must decide each payday what they can afford: rent, food or gas. Many have more than one job. Some cannot go to the doctor because they cannot afford the deductible (Testimony of Terry Tidwell; Patty Sirois).

2. <u>District</u>

1. There are three baseline factors that are important to analysis of the District's proposal. First, The Health Care Committee continued the FY 12 monthly contribution rates of $1115 for the District and $340 for the employees thereby continuing the contribution percentage ratio (76%/24%);
2. Second, the Committee chose not to reduce monthly contributions of the District and employees in FY 12 despite $2,921,298 in the health care cost reserve account (over which it has complete control).
3. Third, from FY 08 to FY 12, total health care costs increased from $13,053,373 to $21,247,476 for an average annual increase of approximately 15%. Yet, because of total

employer and employee contributions the reserve account at the end of FY 12 (start of FY 13) increased by $681,895 bringing the reserve to $3,603,193.

4. The District's proposal for FY 13 sets minimum monthly contributions of $1330 for the District and $270 for the employee—a $215 increase for the Employer and $70 decrease for employees (from FY 12). These contributions are estimated to generate an amount that would exceed the FY 12 health care costs by 11.5%. The District's proposal returns the District/Employee percentage rate to the FY 08 level of 83%/17% and maintains it at that level unless 50/50 cost-sharing is required; and now the Committee has over $3.6 million in its reserve account to use an offset if it so chooses.
5. Despite state and federal funding changes, District administrative leadership acted with wisdom and foresight to manage the funding stream. The District maintained an unreserved, nonexempt general fund balance through FY 11 of 9.78% and at the same time maintained a separate self-insurance reserve in its general fund of almost $6 million. The District's proposal reflects a determination to use it own reserves and not rely on the Committee's reserves to subsidize the cost of the health care plan—with the hope that ever escalating health care costs will be resolved ultimately at the state or federal level. The entirety of the District's 3-year proposal is extremely protective of its employees. (Testimony of Dave Jones).
6. The FY 12 contract language provided for the 50/50 split if health care costs exceed the established minimums in the event the Committee does not utilize its reserves to eliminate or reduce additional required monthly contributions. The District proposes an additional incentive and reduction in the 50/50 percentage rate. That is, for FY 13 a 60%/40% rate; and FY 14 and FY 15 further reductions to 65%/35% and 70%/30%, respectively, with employee participation in a wellness program. The District also proposes developing and supporting a health care task force to review the health care plan and present recommendations to the Committee in FY 14 in another effort to reduce overall costs and, correspondingly, employee contributions.
7. Focusing primarily on KPESA, the District proposes completion of 30-day probationary period and benefits only for employees working 6 or more hour per day. This proposal is consistent with other urban school districts; reflects the economic reality of the District's costs for providing health care coverage; and provides a measure of protection against

an employee who is terminated within 30 days who is able to incur significant health care costs.

8. The District proposes that the Committee no longer have the authority for "evaluating and deciding the outcome of appeals." This change already has been implemented by a 2011 amendment to the Plan requiring that an Independent Review Organization (IRO) be the final and binding administrative decision-maker for health claim disputes.
9. The Associations' proposal to cap an employee's contribution rate at 15% while still giving the Committee total responsibility to determine benefits and coverage is a patently unfair approach to real life health care cost problems. No prudent school district with a self-funded health care plan could agree to pay a fixed 85% of its plan's costs, and then delegate to a Committee comprised of a super majority of bargaining unit appointees the sole power and responsibility to establish benefit and coverage levels.

VI. ARBITRATOR'S RECOMMENDATION: HEALTH CARE

A. Recommendation

For FY 13 the District will make contributions on a 12 month basis equal to 80% of the cost of the health care program and employees will make contributions on a 12-month basis equal to 20% of the cost of the health care program.

For FY 14 the District will make contributions on a 12 month basis equal to 83% of the cost of the health care program and employees will make contributions on a 12-month basis equal to 17% of the cost of health care program.

For FY 15 the District will make contributions on 12-month basis equal to 85% of the cost of the health care program and employees will make contributions on a 12-month basis equal to 15% of the cost of the health care program.

The paragraph that provides for the 50/50 split between the District and employees for health care costs shall be eliminated. Additional amounts for dependent, spouse and family coverage shall be eliminated. That is, no additional fees for family coverage.

The District's proposed language for a Health Care Task Force shall be added. That is:

> The District will develop and support a Health Care Task Force that will look at all aspects of the KPBSD health plan and all other avenues to contain health care costs. This task force will be made up of employees, administration and health care experts. The recommendation from this group will be presented to the Health Care Committee during the FY 14 school year.

The Committee's authority for "evaluating and deciding the outcome of appeals" shall be eliminated for the reasons proposed by the District. This change already has been implemented by a 2011 amendment to the Plan requiring an Independent Review Organization (IRO) be the final and binding administrative decision-maker for health claim disputes.

No other proposed changes by the parties to the health care articles are recommended. Status quo, or 2009-2012 language, shall be retained for the term of these successor Agreements.

B. <u>Explanation</u>

Once again, I have applied the common standards of interest and welfare of the public, comparability, cost of living, ability to pay and ability to attract and retain personnel to the record in order to arrive at my recommendations on health care.

It is undisputed that there have been significant increases in health care costs. The record also established significant adverse impacts on members of the Associations' bargaining units. Both parties' proposals recognize the need to reduce the current amount paid by employees. The parties just have different approaches for achieving a more reasonable sharing of such costs for the term of the next Agreements.

I have carefully reviewed all of the evidence regarding health care costs and insurance, including all of the available information from other Alaska school districts. Fischer testified that no other comparable school district had a 50/50 split such as this District. His testimony was undisputed and other evidence supports his testimony. (Association Ex. 11 [Health Care]).

The bottom line is: the Associations made a compelling case for the elimination of the 50/50 percentage split. And, I agree that straightforward percentage splits are more predictable and easily administered.

As said above, I have fashioned my recommendations considering both changes to the salary schedule and health care. I find a graduated approach to reaching a percentage split of 85%/15% is financially affordable and takes into account District concerns of sufficient funding and maintaining adequate reserves.

I have considered and understand the District's concern that the Committee, controlled by members of the Associations, has not acted recently to reduce monthly contributions.

Still, there is no proposal or argument from either party to change Committee structure. The District's HR Administrator is the plan administrator who provides information and advises the Committee. There is no indication of historical problems with the current Committee structure. Rather, testimony suggests the parties have gone through difficult negotiations and distrust has developed between them.

I have recommended the District's proposal on a Health Care Task Force because the record demonstrates that more information on cost containment strategies could benefit all involved. If incentives are needed for participation in a wellness program, the Task Force can include those in their report to the Committee which ultimately has the authority to implement such a program.

I did not recommend other proposed changes by the parties because I was not satisfied by the evidence for the need for them for the term of these Agreements.

VII. OTHER PROPOSALS

A. Recommendations

KPEA has proposed: (1) **Section 121 Extra Curricular Salaries** be changed so that the fixed dollar amount currently paid is a percentage tied to the teacher's base salary; and (2) **Section 470 Workday** provide each certified staff with the value of one-day per diem each quarter for increased professional responsibilities. I do not recommend these proposals. **I recommend the status quo (2009-2012 language)**.

KPEA and the District recommend changes to **Article 110-Salary Conditions**. Their dispute concerns continuing education credits (CEUs) for column advancement on the salary schedule. **I will not award either proposal and recommend the status quo.**

Employees have long received monetary reimbursement to partially cover the costs of a **physical exam (Section 130; Article 26)**. Since federal health care reform, the cost of a physical is covered by the plan at no cost to the employee. The Associations propose to contribute the negotiated dollar value for a third of the employees each year to the health care reserve fund as a way of maintaining the monetary benefit. The District proposes reimbursing an employee not covered by the health plan; but otherwise eliminating it. **I recommend the District's proposal.**

KEPA proposes that **Article 339 Automated Substitute System** be modified to include the requirement that the District maintain a "functioning" automated substitute system for certified employees. The District proposes the exclusion of the word "functioning" (as unnecessary) and also proposes that certain communities be excluded from the above automated substitute system because it is unnecessary at such sites. **I recommend the District's proposal**.

Article 343 of the KEPA/District Agreement concerns **Donations of Sick Leave.** It was added to the Agreement in 2009. Over 2200 hours have been donated by over 130 employees. The current language has a sunset provision at the end of the Agreement with the qualifier that the provision will be subject to review for future agreements.

The Association proposes the deletion of the sunset provision and the continuation of the program. The District proposes continuing the program with a teacher maintaining a 320 hour sick leave balance before being allowed to donate sick leave to another teacher.

I recommend the Association's proposal. This program has been extremely successful and I am not convinced that the cap proposed by the District is necessary or justified.

By state law, teachers the District must provide teachers with a 30 minute **duty free lunch period**. This subject is addressed in **Article 420** of the KPEA/District Agreement. The Association proposes to add a 10-minute passing time; the District proposes a 5-minute passing time. The Association states that 5 minutes is not enough because students currently have those five minutes once the bell rings. The District responds that 5 minutes is a reasonable compromise between the needs of some teachers and the District's need for finite student instructional time to be preserved.

I recommend the District's proposal. The parties can revisit this subject (if necessary) once the parties have had experience with a 5-minute passing time.

KPESA and the District have remaining issues unique to their Agreement. KPESA proposes a change to **Definitions (Article 2)** that would create one category of employees instead of having grant-funded employees segregated from permanent employees. Grant-funded employees do not have rights similar to permanent employees; for example, they are not guaranteed rehire rights and do not have reduction-in-force rights which affect other things such as health insurance coverage, sick and personal leave.

KPESA also proposes changes to a number of **Work Rules (Article 10)**: Paragraph E – Shift Changes; Paragraph G – Leave During Emergency Closures; Paragraph I – Call Back; Paragraph M – District Meetings; Paragraph U – Student Instruction/Supervision.

Head Custodian and KPESA President Terri Tidwell testified in support of most of these proposed changes. Tidwell was a genuine and credible spokesperson for her members. Still, as explained below, I do not recommend any of the above proposed changes. **I recommend the status quo.**

B. Explanation

Besides the two primary issues of salary schedule/wages and health care, I have recommended few changes. I have done so because I believe a narrow focus and less ambitious approach better serves the parties in reaching an Agreement. Also, in some instances, proposed changes were not supported sufficiently for me to recommend a change in contract language.

VIII. CONCLUSION

In arriving at my recommendations, even if not specifically mentioned, I have reviewed and considered all of the evidence, authorities and arguments submitted by the parties. I will issue an advisory award consistent with my above recommendations and explanations.

In the Matter of the Arbitration	)	
	)	
between	)	
	)	
KENAI EDUCATION ASSOCIATION	)	
KENAI EDUCATION SUPPORT	)	
ASSOCIATION	)	AAA Case No.75 390 00156 12
	)	TAFL
(Associations)	)	ADVISORY AWARD
	)	INTEREST ARBITRATION
and	)	
	)	
KENAI PENINSULA BOROUGH	)	
SCHOOL DISTRICT	)	
(District)	)	

Having carefully considered all evidence, authority, and argument submitted by the parties concerning this matter, pursuant to AS 23. 40. 200(g) the Arbitrator issues the following advisory recommendations and award:

1. Salary Schedule: For FY 13, FY 14 and FY 15, the pay scales in each year of these Agreements shall be increased by two percent (2%).
2. Health Insurance:

For FY 13 the District will make contributions on a 12-month basis equal to 80% of the cost of the health care program and employees will make contributions on a 12-month basis equal to 20% of the cost of the health care program.

For FY 14 the District will make contributions on a 12-month basis equal to 83% of the cost of the health care program and employees will make contributions on a 12-month basis equal to 17% of the cost of health care program.

For FY 15 the District will make contributions on 12 month basis equal to 85% of the cost of the health care program and employees will make contributions on a 12-month basis equal to 15% of the cost of the health care program.

The paragraph that provides for the 50/50 percentage split between the District and employees for health care costs shall be eliminated. Additional amounts for dependent, spouse and family coverage shall be eliminated.

The District's proposed language for a Health Care Task Force shall be added. Specifically:

> The District will develop and support a Health Care Task Force that will look at all aspects of the KPBSD health plan and all other avenues to contain health care costs. This task force will be made up of employees, administration and health care experts. The recommendation from this group will be presented to the Health Care Committee during the FY 14 school year.

The Committee's authority for "evaluating and deciding the outcome of appeals" shall be eliminated for the reasons proposed by the District. That is, this change already has been implemented by a 2011 amendment to the Plan requiring and Independent Review Organization (IRO) be the final and binding administrative decision-maker for health claim disputes.

No other proposed changes by the parties to the health care articles are recommended. Status quo, or 2009-2012 language, shall be retained.

3. Section 130 and Article 26 – Reimbursement for Physical Exam: The District's proposal is recommended.
4. Article 339 – Automated Substitute System: The District's proposal is recommended.
5. Section 343 – Donation of Sick Leave: The Association's proposal is recommended.
6. Article 420 – Duty Free Lunch: The District's proposal is recommended.
7. All other proposed changes: I recommend the status quo (2009-2012 contract language).
8. My fees and costs will be borne equally by the parties.

Respectfully submitted,

Kathryn T. Whalen

Kathryn T. Whalen
Arbitrator
Date: December 21, 2012