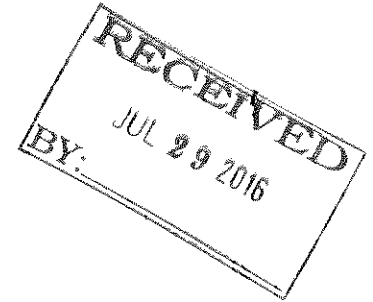


BEFORE ARBITRATOR GARY L. AXON



In the Matter of the Advisory Arbitration between:)

KENAI PENINSULA EDUCATION)
ASSOCIATION and KENAI EDUCATIONAL)
SUPPORT ASSOCIATION)

-and-)

KENAI PENINSULA BOROUGH SCHOOL)
DISTRICT)

Advisory Arbitration
Case Number 01-15-0005-1440
June 1-2, 2016

JOINT POSTHEARING BRIEF OF KPEA and KPESA

Keri Clark
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I. INTRODUCTION

The Kenai Peninsula Education Association (“KPEA” or “Association”) and the Kenai Peninsula Educational Support Association (“KPESA” or “Association”) are the exclusive bargaining agents for teachers and support employees, respectively, within the Kenai Peninsula Borough School District (“KPBSD” or “District”). The negotiated agreements between KPEA, KPESA and the District covered three years, beginning July 1, 2012 and ending June 30, 2015. In accordance with Alaska’s Public Employment Relations Act, the parties held bargaining sessions beginning in February 2015 but were unable to reach a successor agreement. *See* AS 23.40.070 *et seq.* Advisory arbitration took place June 1-2, 2016 pursuant to AS 23.40.200(g).

II. STANDARDS FOR ADVISORY ARBITRATION

This advisory arbitration is conducted under AS 23.40.200(g)(1). The statute outlines certain requirements or expectations of the arbitrator, including knowledge of and recent experience in the local conditions in the school district. However, the statute is silent with respect to the standards used in formulating an advisory arbitration award. The most universally used standards for advisory arbitration include cost of living, comparability, ability to pay, and ability to attract and retain. ELKOURI AND ELKOURI, *HOW ARBITRATION WORKS*, 1106-1145 (5th ed. 1997).

A. Cost of Living

The cost-of-living standard is frequently used by arbitrators in reviewing changes in the cost-of-living and inflationary trends. In applying the cost-of-living standard, arbitrators rely heavily on the Consumer Price Index (“CPI”). The analysis focuses on whether wage increases are sufficient to insure that an employee’s standard of living is not eroded. (*Id.* at 1118-1121.) The application of this standard to the present dispute shows that the District’s salary proposal is

not reasonable and does not provide the wage increase needed to maintain a cost-of-living standard.

B. Comparability

The most extensively used standard for interest arbitration in the public sector is a comparison of wages, hours and conditions of employment for employees performing similar work in comparable communities. (*Id.* at 1109.) In the present dispute, the teacher salaries and benefits in KPBSD may be compared with other comparable school districts in Alaska, including Mat-Su, Anchorage, Juneau, and Fairbanks. When compared against these four districts, it is readily apparent that KPBSD's salaries lag behind the other four.

C. Ability to Pay

A public sector employer's ability to pay involves considerations different than the private sector. While employee salaries and benefits must come from limited federal, state and local revenues, employees should not be expected to subsidize the community in its efforts to obtain quality education. (*Id.* at 1129.) In applying the ability-to-pay standard, the interest arbitrator may consider the public employer's obligation to make an added effort to obtain additional funds to finance the proposed improvements. (*Id.* at 1130.) One study found that some arbitrators do not emphasize the ability to pay because "[T]he majority of arbitrators recognize the self-serving nature of such arguments. . . . [A]ny good city budget manager can manipulate the budget to look like the city can't afford anything – relying on this type of information is not bargaining." (*Id.* at 1143.)

D. Ability to Attract and Retain

The ability to attract and retain is a standard often used in public sector cases. (*Id.* at 1141.) Considerations used to recommend salary increases for employees include keeping a district in a

competitive position in order to recruit new employees, to attract competent experienced employees, and to retain valuable employees currently employed. (Id. at 1142.) As one arbitrator noted, employees should “receive compensation which is sufficient to maintain reasonable standards of health and decency without the necessity to hold alternate employment.” (Id.)

III. ISSUES PRESENTED

The order of the issues presented for both KPEA and KPESA begin with health, followed by salary. The remaining KPEA contract sections will then be presented followed by the remaining KPESA issues.

A. Health Insurance

Based on KPEA and KPESA’s testimony and exhibits presented at the hearing, the Arbitrator should determine that the four standards outlined above weigh in favor of the Associations’ health insurance proposal.

KPEA and KPESA’s final health insurance proposals dated April 1, 2016 accepted the District’s February 9, 2015 offer with three noted exceptions. (Ass’n Ex. Ass’n LBO Tab; Dist. Ex. 18, Health Insurance Binder.) First, the Associations clearly stated in the introductory paragraph on their proposals that the two tier coverage is understood as the current traditional plan and an HDHP.¹ Second, as the District’s February 9, 2015 proposal was intended for FY 16 and at the time of the Associations’ April 1, 2016 proposals FY 16 was almost at an end, the

¹ At arbitration, the District seemed surprised and not in agreement with the Associations’ explanation of what two tier meant in the introductory paragraph of the Associations’ proposals. The District’s disagreement is misplaced. Any interpretation other than what the words plainly state cannot be presumed.

Associations applied the District's offer to FY 17.² Third, the District's proposed language related to the ACA excise tax was deleted as no longer required for the immediate future.

The District's health insurance last best offer strays far from its opening approach. Its initial offer, dated February 9, 2015, was for one year only, FY 16. Recognizing that FY 16 was at its end, the District's last best offer ("LBO"), dated April 15, 2016 rolled over its FY 16 health care terms to FY 17. (Ass'n Ex. District LBO Tab; Dist. Ex. 20, Health Insurance Binder.) The parties have reached agreement on that term. Further, in addition to the traditional health care plan, the parties have reached agreement that an HDHP option should be included in contract language. Additionally, the parties are in agreement that an employee can opt out of coverage with the caveat that employee must provide evidence of other non-District coverage. Finally, the Associations agreed to the District's proposal that new hires working less than 30 hours per week not be provided with health insurance coverage.

The Associations seek only a two year agreement, retroactive to July 1, 2016 and for FY 17. The District seeks essentially a four year agreement, a rollover for FY 16³, and an additional three years for FY 17, FY 18, and FY 19. The differences between the District's initial offer for health insurance and its LBO come into play for FY 18 and FY 19. Now the District wants more from its employees by capping its monthly contribution amount towards health insurance and moving away from the percentage split. The District currently contributes \$1590.45 per month per employee. It seeks a cap for all three years of its proposal of \$1731.45 for the Traditional plan and \$1645.61 for the HDHP.

² The District's LBO also rolled forward its initial health insurance FY 16 proposal to FY 17.

³ The District's LBO wasn't entirely a rollover. Its offer included money off the salary schedule for FY 16 as well as for the subsequent three years.

Four arguments favor the Associations' proposal as opposed to the District's last best offer. As a result of the last interest arbitration, Arbitrator Whalen recommended the parties change from a cap with a 50/50 share for costs above the cap to a percentage cost share. The District agreed with that recommendation and that is what is currently in place. Now the District wants to revert to a cap with the added price that employees become responsible for 100% of the costs over the cap.⁴ The District provided no fair rationale to change from the current, easy and predictable method of an 85/15 cost sharing to a cap. Indeed it appeared from the District's presentation that it wishes to punish the KPEA and KPESA members of the District's health care committee for not taking cost-cutting measures.⁵ That is not a sufficient reason to justify changing from a percentage cost share to a cap.

The District presented information showing that other school districts use caps. As Matt Fischer testified the district's with the caps all belong to the Public Education Health Trust ("PEHT"). Notably missing from the group is the Fairbanks School District. Like Kenai, Fairbanks is self-funded and uses an 85/15% split. It does not use a cap.

The District also attempted to highlight the close working relationship of the Fairbanks health care committee with that district's administration. They are fortunate in that regard. It was evident from Laurie Olsen's testimony that the District deliberately does not share all the broker advice and information with the entire committee but only with the management health care committee members. As Mr. Fischer testified, that is at the crux of the problem of the relationship with the Kenai health care committee: lack of information shared by the District

⁴ Prior agreements had a cap with a 50/50% split above the cap. See Arbitrator Whalen Decision, pg. 11.

⁵ As Mr. Fischer explained, the health care committee, per the contract language, has no control over costs related to the third party administrator, the stop-loss or the consultant fees. As of April 2016, YTD costs for these three totaled more than \$2.6 million. See Ass'n Ex. Health Tab, "Health Insurance Costs Minus Grant Employees," p. 3.

with the committee members. Perhaps if the District's management health care committee members adopted the policy of the Fairbanks management health care committee members with regard to sharing information and a desire to work together, the outcome may change.

A further indication of the District's desire to punish KPEA and KPESA is a review of the cost calculation to an employee if the District's method was applied.⁶ Currently employees pay \$275 per month, or \$3300 a year towards the cost of health care coverage. Using the new projected health care plan increase of 9% presented for the first time by the District at arbitration, in FY 18 employees would pay \$488.88 or \$651.84 over nine months and in FY 19 employees would pay \$918.28 over nine months.⁷ (Dist. Ex. 48 Health Binder.) Yet the District's own document prepared for the health care committee in April 2016 shows that year-to-date income is at a positive 20.16 variance with only two months left in the fiscal year. (Ass'n Ex. Health Tab, "Health Insurance Costs Minus Grant Employees," p. 3.) If the District is serious about trying to get a contract ratified this is not the route.

Third, in a matter of two years the District attempts to increase the annual employee's cost for health care from the current \$3300 to \$8264. This is an increase of 150%. This is a blatant attempt to cost shift an unprecedented amount to the employee's pocketbook. And it is done with a zero increase to the employee's salary. It is also an attempt to force employees into no other option than choosing the HDHP, creating a false choice. No other District has taken such a calculated move to burden employees with shouldering a 150% increase in their contributions

⁶ There are a handful KPESA employees who work year round and have the \$275 deducted from their paychecks over the corresponding 12 months. The majority of other KPESA and all of KPEA employees must pay the cost over a 9 month period, thus the \$275 is in effect \$366.67.

⁷ District witness Laurie Olsen provided no explanation why the health care committee had not received this new information. As Mr. Fischer explained, the District's refusal to share critical information with the health care committee hampers the committee's ability to make informed decisions.

over a two-year time period and leaving them with no salary increase. (Compare District Exs. 24, 28, 27, 38, 41 and 44.)

Finally, in addition to cost-shifting, the District over-estimates the annual health care costs in its budget. What the District does not take into account in its budget number is that over 70 KPEA and KPESA employees are funded through grants for the entire cost of their salaries and benefits. (Ass'n Ex. Tab Health "Health Insurance Costs Minus Grant Employees.") The salary and benefit costs for employees paid through grants do not come out of the general fund budget. Accounting for the health care cost of the grant employees in the operating budget acts as a "savings account" for the District. This inflated amount totals approximately \$1.3 million. (Id.)

At no time has the District ever claimed that it has an inability to pay. What it seeks in its health insurance proposal goes too far. It makes sense that the parties limit themselves to a two year agreement for FY 16 (retroactive) and for FY 17. Both sides will then have the opportunity to review updated health insurance information including more accurate numbers related to those who select the HDHP without being forced to that option and for those employees who opt out of plan coverage.⁸ For the above reasons, the Arbitrator should recommend a two year agreement, retroactive to June 1, 2015 that includes retention of the 85/15 split, allowing dual non-District covered employees to opt out for FY 17, and reducing coverage for new hires to those who work 30 hours or more per week for FY 17.

⁸ In the health care consultant prepared document provided to the Association February 27, 2015, it was estimated that 30% would select the HDHP, and in a different document created by the same consultant that was provided by the District at arbitration it was estimated that only 15% would select the HDHP. Compare Ass'n Ex. Health Tab, "Health Insurance Estimating Number of Employees for Various Coverage Options," p. 2 and Dist. Ex. 48, p. 2. With such variation on this one point alone furthers the cause for allowing the new plan to work in its entirety before committing to future contract years.

B. Salary

Taking into consideration the four standards for advisory arbitration, and based on the documents and testimony submitted at the hearing, the Arbitrator should recommend the Associations' salary proposals. The Associations' LBO proposes a 1.5% salary schedule increase for FY 16 and a 1% for FY 17 if the State's Basic Student Allocation ("BSA") increases by \$50.⁹ (Ass'n Ex. Tab "KPEA LBO and Ass'n Ex. Tab KPESA LBO.") Subsequent to the arbitration hearing, Alaska's Governor Walker vetoed half of the \$50 BSA increase with additional reductions in pupil transportation. (Dist. Ex. "Alaska Dispatch News Article, mailed to Arbitrator Axon 7/13/16.) The impact of Governor Walker's veto on the Associations' salary proposals for FY 17 is a ½% reduction.

The District's LBO proposed paying no later than June 30, 2016, all employees who completed their FY 16 work calendar an additional \$750 in salary, pro-rated for those working less than full-time. Any teacher on the "longevity" step would receive an additional \$250. For FYs 17-19 the District proposes a static salary schedule, allowing for step and column movement for teachers, and step movement for support staff, together with a 1% increase off the schedule. The District's proposals should not be recommended for several reasons.

When applying the interest arbitration standards, there can be no doubt that the Kenai teachers lag behind the four other districts in salary. (Ass'n Ex. Salary Tab, "Salary Comparison of Five Districts FY 15.") Not only does this exhibit show that Kenai lags behind the other four districts in starting salary, but the requirements for Kenai teachers to advance on the salary

⁹ The Associations' salary proposals of April 1, 2016 stated that "Any increase in the BSA for FY 17 above \$5880, the FY 17 salary schedule shall increase .02% per dollar increase. (The intent is a 1% increase to the salary schedule if the BSA goes up \$50)."

schedule is more restrictive. This creates two hurdles facing the Kenai teachers. The four other school districts receive the same formula funding from the state as does Kenai. The other four districts have many of the same on-going budgetary concerns as Kenai. The other Districts have not allowed these budgetary concerns to interfere with their willingness to fairly compensate their employees. It is past time for Kenai to honor its employees by providing a slight increase to the employees' salary.

The 2014 legislature-funded study shows that Kenai teachers would require a 14% salary increase in order to be comparable to Anchorage. (Ass'n Ex. Salary Exhibits Tab, "Salary & Benefits Schedule and Teacher Tenure Study, p. 16.") In the case before this Arbitrator, KPEA is seeking only a 1.5% for FY 16 and what amounts to a ½% for FY 17, far from what the legislature-funded study recommends.

The District, as usual, claims it can't afford to put money in salary and health. The Associations disagree. First, the District overstates in its budget the amount needed for salaries. The grant-funded employees' salaries and benefits are not excised from the general fund budget, thereby increasing the amount the District claims it needs from what it knows it will need. (Ass'n Ex. Salary Tab, "KPEA Salary Cost Increase.") For example, in FY 15 the District had 25 teachers that were paid from grants. Using the average teacher salary ("ATS") of \$67,225 as the calculator, in FY 15 the total salary adjusted for the grant-funded teachers was reduced by \$1.6 million. (*Id.*) Thus, the 1.5% salary increase and the ½% salary increase does not "cost" as much as the District claims.

Several of the comparable Districts recently bargained contracts. In FY 16, the Anchorage teachers received a 1% salary increase on the salary schedule; Fairbanks received a 1.75% salary schedule increase; and Mat-Su received a 1.25% salary schedule increase. (Ass'n Ex. Salary Tab

“Salary Comparison of Five Districts FY 15, attached documents). For FY 17, the Juneau teachers negotiated a ½% salary increase, the same as the Associations seek. (Dist. Ex. 24, p. 3, Health Insurance Binder.) The employees in the comparable districts are not receiving money off the salary schedule nor should the Kenai employees be required, under comparable circumstances, to have such a recommendation made. The Associations seek a modest increase, which is in line with what employees in other comparable districts received.

C. KPEA Remaining Sections

1. Section 110 Salary Conditions

KPEA proposed two changes in Section 110. The first change was new language added to the end of paragraph G. During arbitration, the District agreed to the language change. The second change added paragraph H, allowing a certain group of employees to gain additional credits through the use of CEU’s (continuing educational units). As Mr. Fischer explained, the occupational therapists, physical therapists, speech language pathologists, psychologists, and audiologists have difficulty finding college courses that are applicable to their specific field. Instead, the licensing entities for each of these groups offer CEU’s for purposes of maintaining licensure. KPEA seeks to allow this group of employees to take advantage of this coursework to count towards the employees’ salary advancement.

The District disagrees, arguing that it opposes giving a certain group of employees special treatment. Typically that is the union’s argument. Further, it is not an uncommon provision. Currently the Mat-Su teachers in similar categories have use of such a provision. (Ass’n Ex. Salary Tab, “Salary Comparison of Five Districts FY 15,” p. 25.) In the past, Mr. Friedman has bargained this contract for the district and is likely familiar with the language.

This group of employees represents such a small number. It is a small gesture that is of little consequential cost to the District. The Association requests the Arbitrator recommend the proposed language change.

2. Section 120 Extracurricular Program

KPEA seeks two changes in Section 120. The first is a housekeeping language change in paragraph H and the other is new language found in paragraph J. The District had no objection to the language proposed in paragraph H.

The purpose of the new language in paragraph H allows current teachers and their families to attend, free of charge, all co-curricular events, based on available seating. Adding this language provides teachers quality time to spend with their families while still supporting their students. As Mr. Fisher testified, often the teacher is the only spectator attending the game in support of the child. This dual-purpose language is of little to no cost to the District.

The District argues that this is a slippery slope – where will it end? This argument ignores the fact that parents and other community members are not in the same role as the teacher. The classroom teacher spends an inordinate amount of time away from their family during evenings and weekends preparing for the school day. In order to provide further support to their students during non-work hours at the expense of their own family cannot be justified. If a teacher and his or her family could attend these sports activities at no additional cost, the benefit is two-fold: both to the teacher's family and to the student. There is no slippery slope; only an added benefit to all involved.

3. Section 121 Extracurricular Salary Schedule

KPEA's proposal links the extra-curricular salary schedule to the teacher base salary. The effect would be that each year the salary schedule increases, the coach's stipends would also

increase. KPEA also proposes to increase the high school and middle school athletic director's stipend to higher ranges and to add categories of coaches eligible for stipends. The District proposes to increase the schedule by 5%.

Mr. Fischer testified about the District study conducted a few years ago to help determine how many hours coaches were spending in their extra-duty activity. Of course it was not to determine hourly wages but it went to the purpose of determining the amount of time coaches were working. The District argued that this is old information. While the information gathered may be five years old, the impact of the information doesn't change. In fact it only highlights the need for the coach's stipends to continually and incrementally increase to keep up with the need for changing costs. The District recognizes this when it explained that the reason it proposed to raise the stipends 5% was in recognition that there had been no increase in several years. By tying the stipends to the base salary, it will solve the need to continually bring this issue forward in bargaining. KPEA requests the Arbitrator recommend the Association's proposal for Section 121.

4. Section 320 Personal Leave & Section 325 Personal Leave for Less Than Full-Time Employees

KPEA proposes an additional personal leave day, an increase from four to five days a year with allowance of an additional day to cash out. The District opposes the additional day, arguing that it would allow teachers to be out of the class room an additional day and is a subterfuge for additional income.

Mr. Fisher explained that many employees rely on hunting to put meat on the table. Having an extra day of personal leave will allow employees to have a block of uninterrupted time to accomplish the hunt. There is no subterfuge on the Association's part of seeking an additional

day as a means of gaining additional income. The parties recognize that an additional day of personal leave equates to a half percent in salary. Certainly the District is not confined to whatever proposal it wants to put across the table. If adding an additional personal leave day costs a half percent, the District was free to balance it with some counter proposal. The Association is seeking, as expected, what is in the best interests of its membership. As a whole, adding an additional personal leave meets that interest. Therefore, KPEA requests the Arbitrator recommend the Association's proposal.

5. Section 545 KPEA Professional Leave

KPEA seeks language change in this section allowing the full-time release president to have all the benefits of the contract. The District argues that Arbitrator Gaba's decision precludes it from allowing the full-time release president to participate in the teacher retirement system. (Dist. Ex. 43, Salary Binder, p. 25.) What Arbitrator Gaba states is that the full-time release president's participation in TRS is not governed by the CBA. That does not preclude the District from negotiating language into the CBA to allow TRS to be governed by it. Additionally, Arbitrator Gaba recognizes that the auditor who came up with this idea may, in fact, have been in error. (*Id.*) The Association seeks the Arbitrator recommend its language proposal for Section 545.

6. Section 650 Duration

KPEA seeks a two-year agreement with all the terms finally agreed to retroactive to FY 16 and continuing through FY 17. One significant reason favors this approach versus the District's four-year agreement proposal. As noted at arbitration, Alaska's education budget is not as stable as anticipated. While the legislature is constitutionally bound to fund education, it appears from the current political situation, the Governor is maintaining rather than approving an increase to

the education budget. Binding the parties to future contracts for FY 18 and FY 19 does not make sense in light of the current budgetary situation. Further, it makes sense to see what the savings to the health insurance plan will allow before committing the parties to a flat cap into the future. Even the District's witness, Dave Jones, testified that there is no forward funding by the legislature for FY 18, 19, and 20. This statement reinforces the Associations' position. Therefore, KPEA requests the arbitrator recommend a two year agreement, for FY 16 and FY 17.

D. KPESA Remaining Articles

1. Preamble and Article 36 Contract Conditions Term and Savings Clause

The Preamble identifies the date on which the successor CBA begins. This provision corresponds to Article 36 regarding the term of the Agreement. KPESA's position is the same as outlined above in KPEA's presentation that the successor agreement cover FY 16 (retroactive) and FY 17.

2. Article 10, Paragraph G Leave During Emergency Closures

KPESA seeks new language that allows employees to maintain the number of hours worked per week in the event of an early release or late start due to different listed factors. As Patty Sirois testified even two hours of lost work time a week makes a huge impact on the KPESA employees, who are the lowest paid employees in the District. As she explained, most of these employees live paycheck to paycheck and cannot afford even the slightest cut in their pay. Allowing the employee to coordinate with the supervisor to make up lost work time does not present any additional cost to the District. It is money the District already has in its budget. Not allowing the employee to make up the lost time represents a windfall savings to the District on the backs of the lowest paid employee group.

The District claims it is an emotional issue. It is not. It is a simple economic issue. The obstacles the District attempts to throw up are tenuous at best. The proposed language clearly states that the employee must work with the administrator on a mutually agreeable make-up schedule. That language alone addresses all the barriers the District attempts to create. Employees are given a position for a certain number of hours per week. Honoring that agreement is the only sensible response. KPESA requests the Arbitrator recommend its proposed language.

3. Article 16 Salary Schedule

The one difference in KPESA's salary proposal is the request that a current copy of the appendix, that includes an up-to-date listing of each classification and range assignments shall be included as an appendix each year with the CBA. (Ass'n Ex. KPESA Binder, "Other" tab, "Appendix.") A similar request was included in Article 35, which limited it to posting on the District web page, which the parties TA'd at arbitration. KPESA requests the Arbitrator recommend the language to also remain in Article 16 for purposes of informing employees.

4. Article 20 Personal Leave

KPESA agrees for many of the same reasons as outlined above related to KPEA's personal leave provision. Ms. Sirois testified how important subsistence hunting is for the group of employees she represents. Allowing these employees the time-off that is necessary for them to fill their freezer through the use of their personal leave is a way for them to put food on the table. KPESA requests the Arbitrator recommend its proposed language.

5. Article 21 Association Leave

Ms. Sirois testified that KPESA is seeking new language that would allow the Association to reimburse the District in two possible ways for the time she spends as the full-time release

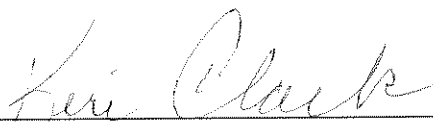
president. First, KPESA proposes that the full-time release president be put back on payroll. As Ms. Sirois explained, at one time she had been paid via District payroll but was taken off part way through her first two-year term. The District has replaced the full-time release KPEA president back on payroll and KPESA seeks the same.

Additionally if, through time records, KPESA establishes that up to 50% of the full-time release president's time is spent in service to the District that KPESA receive credit for the time spent in that role. As Ms. Sirois testified, she spends many hours working on issues in conjunction with the District and not solely for the employees of the KPESA bargaining unit. Thus KPESA requests the Arbitrator recommend its proposed language.

IV. CONCLUSION

The Associations cannot continue to lose footing among the five urban Districts. KPBSD should make its employees an important priority. The Associations' proposals go a long way in making Kenai an attractive place to teach and work with benefits that begin to be more comparable with other like Districts. The Associations' proposals are within the District's ability to pay. The District never claimed the contrary. For all the above reasons, the Associations respectfully request that its proposals be the recommended settlement.

DATED at Anchorage, Alaska this 25th day of July 2016.

By: 
Keri Clark
NEA-Alaska UniServ Director