BEFORE ARBITRATOR GARY L. AXON, ESQ.

THE KENAI PENINSULA EDUCATIONAL
ASSOCIATION

THE KENAI PENINSULA EDUCATIONAL
SUPPORT ASSOCIATION

And

THE KENAI PENINSULA BOROUGH
SCHOOL DISTRICT,
______________________________/

Advisory Interest Arbitration
Case No. 01-15-005-1440

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

Saul R. Friedman, Esq.
JERMAIN, DUNNAGAN & OWENS
3000 A Street, Suite 300
Anchorage, Alaska 99503

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

I. INTRODUCTION

When these negotiations commenced in February 2015, Alaska faced an immediate and deepening fiscal crisis. Over a year later, Governor Walker reflected on his efforts in the spring of 2015 that ultimately resulted in the development of his yet to be adopted New Sustainable Alaska Plan. As the Governor explained:

> Our state is in a difficult fiscal position. Due mainly to world oil prices and our overdependence on oil, we have only one-fifth of the revenue we need to balance the budget…
>
> That's why I kicked off a series of statewide conversations last spring. Using input from hundreds of Alaskans, we developed the New Sustainable Alaska Plan…
>
> The plan closes the budget gap within three years through a combination of spending cuts, structured and sustainable use of Permanent Fund earnings, and modest tax increases. The plan will remove the uncertainty hanging over Alaska because it balances the budget in a way that's sustainable for the foreseeable future.[1]

The initial positions of the parties reflected their differing views of the import of the state's fiscal crisis. The District's initial offer to the Associations on the two major issues of health care and salary reflected the "uncertainty hanging over Alaska." The District cautiously proposed a one year agreement covering FY 16 (the next fiscal year, and now the past fiscal year). Its health care proposal provided both health plan and opt out options that would reduce total plan costs.[2] Its salary proposal maintained the current

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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1 District Salary Exhibit 18, at p. 2.
2 District Health Care Exhibits 2 and 3.

salary schedule, allowing both step and column movement, with modest one time bonuses paid to the bargaining unit members.[3]

The Associations' initial offers discounted the state's fiscal reality and the resulting uncertainty. They proposed a three year contract with the District paying a larger percentage of the status quo traditional health plan's costs.[4] Their salary proposal called for salary schedule increases over those three years totaling 8.5%.[5]

The parties' initial proposals heralded the current bargaining status 18 months later—impasse and advisory arbitration.

During the course of bargaining, the Alaska Legislature not only failed to adopt the Governor's fiscal plan, it failed to pass any comprehensive plan of its own. It focused on spending cuts, with the remaining multibillion dollar deficit filled by the state's reserve funds. As the Governor explained, that approach would "patch the budget hole on a one-time basis…[b]ut it will cost us dearly" by emptying those reserves.[6]

Once it became apparent that FY 16 would be a status quo year, the parties' focus also turned to the state's FY 17 budget. As the June 1st start of the advisory arbitration hearing approached, the parties knew that although both houses of the Legislature had passed differing versions of a state budget, both versions included a $50 increase to the

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

3 District Salary Exhibits 1 and 3.
4 District Health Care Exhibits 4 and 5.
5 District Salary Exhibits 8 and 10.
6 District Salary Exhibit 18, at p. 2.

education foundation funding formula's Base Student Allocation (BSA), forward funded by 2014 legislation.[7]

That legislative agreement brought a measure of fiscal certainty to the District's finalization of its FY 17 budget. It resulted in teaching contracts being provided to 13.5 full time equivalent teaching positions that would have otherwise been lost.

Unfortunately, that measure of fiscal certainty was short-lived. On May 17, 2016, the legislative conference committee tasked with resolving differences between the two budget bills slashed that forward funded $50 increase from the FY 17 BSA.[8] Then, the Monday before the advisory arbitration began, the Legislature passed a state budget that reversed the conference committee action and included the $50 BSA increase for FY 17, the last year of forward funding.

Recognizing that the education funding roller coaster had at least one more twist and turn, the specter of the Governor's line item veto power over the Legislature's state operating budget remained a cloud over the BSA increase and the advisory arbitration itself. As a result, the Arbitrator directed that information as to the Governor's veto action, if any, be forwarded to him post hearing.

The Governor's displeasure with the Legislature's failure to address all the legs of his proposed fiscal plan was glaring.[9] That displeasure manifested itself with the June 29,

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[7] 14.17.470, Delayed Amendment Note increasing the BSA for FY 16 from $5,880 to $5,930.
[8] District Salary Exhibit 20.
[9] District Salary Exhibit 18.

2016 Governor's line item vetoes, including vetoes of K-12 education funding. As described by the Anchorage Dispatch News the following day:

> Saying the Alaska Legislature failed to do enough to solve the state's deep fiscal woes, Gov. Bill Walker used his veto pen Wednesday to slash next year's state spending, including … cuts in education programs…"[10]

The article explained that those funding reductions were approximately $6.4 million each from both the funding formula and pupil transportation, plus an additional $4.7 million in one-time education funding.[11] The Alaska Department of Education and Early Development was ready with a spreadsheet demonstrating the financial impact of those cuts on each of the state's school districts. Kenai's revenue loss from the funding formula cut is $444,812, compounded by a $655,072 reduction in pupil transportation funding, for a total revenue loss of $1,099,084.[12] That decreased funding will require further use of the District's unallocated reserves to balance its FY 17 budget. The Legislature has adjourned without overriding the Governor's vetoes.

It is against this introductory backdrop that the following review and analysis of the issues and evidence presented at the advisory arbitration must be viewed.

II. ISSUE 1. HEALTH CARE

A. The District's Initial FY 16 Offer and its Last Best FY 17 Offer

The District's February 9, 2015 initial offer for FY 16, and its April 12, 2016 last best offer for FY 17, are the same.[13] FY 16 has passed. No bargained opportunities for

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[10] District Salary Exhibit 59.
[11] *Id.*
[12] District Salary Exhibit 60.
[13] District Health Care Exhibits 2; 3; 20, at numbered para. 1; and 22, at numbered para. 1.

health plan cost savings to either the District or its employees were put in place for FY 16. By April 2016, it was obvious that would be the case. As such, the District decided to roll over its FY 16 offer to FY 17, in the hope that health care cost savings could at least be accomplished in that then upcoming fiscal year.

Both the District's initial and last best offers provided options to employees. An opt out would be allowed for those employees with non-District provided alternate coverage meeting the minimum requirements of the federal Affordable Care Act. No opt out was or has been proposed by the District for employees whose alternate coverage is *District provided.* The Associations appeared confused as to this latter point regarding alternate coverage that is District provided, as in the case of employed spouses. They offered a February 24, 2014 communication from Dave Jones to the School Board regarding opt out options.[14] They pointed to Dave Jones' analysis of an opt out for "Double Covered Employees" that allowed a District employee to opt out of the District's plan while remaining covered as a spouse or dependent of another employee covered by the plan. As Dave Jones noted in this communication, the opting out employee would not be making his/her 15% contribution to the plan, but the plan would still be paying for all of that employee's medical, dental, vision, prescriptions, and administrative costs. "The result is a net deficit to the health care plan[,]"[15] explaining why no opt out has been proposed for employees whose alternate coverage is District provided.

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

14 Association Exhibit 1.
15 *Id.* at p. 2.

A new health care plan, a High Deductible Health Plan (HDHP), was proposed with specific basic deductibles and out of pocket maximums. A Health Reimbursement Account (HRA) funded by the District in the amount of $750 each year was offered to partially offset the higher employee deductibles/out of pocket maximums of the HDHP.

Even without the HRA, the District's HDHP provided a soft landing for those employees not wanting to continue in the traditional plan.[16] In fact, the HDHP's modest deductibles and out of pocket maximums hardly qualified it for that HDHP nomenclature.

The Public Employees Health Trust (PEHT), formerly named the NEA-Alaska Health Trust, provides an HDHP with the same deductibles as the District's proposed HDHP, $1,500 individual/$3,000 family. However, the District's proposed out of pocket maximums of $2000 individual/$4000 family contrast favorably with the PEHT's $3,500 individual/$7,000 family out of pocket maximums. Alternate plans offered by the PEHT, although not identified as high deductible plans, likewise establish out of pocket maximums exceeding those proposed by the District: $3,000/$9,000 (Plan E), $3,000/$6,000 (Plan F), and $3,000 /$6,000 (Plan G).[17]

The Anchorage School District provides three of its support personnel bargaining units the choice of two AETNA health plans. The AETNA Traditional Health Plan has out of pocket maximums of $4,800/$12,900 while the Consumer Driven Health Plan has

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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16 District Health Insurance Exhibit 1.

17 District Health Care Exhibit 16, containing the PEHT's description of its plans A through G as well as the HDHP.

out of pocket maximums of $5,300/$10,600.[18]

Kenai's last best offer reflects a mature and balanced solution to the ever increasing costs of, and contributions to, the status quo Traditional Health Plan. The inclusion of the HDHP, the HRA, a 90% employee contribution rate for the lower HDHP plan costs (compared to the 85% employee rate for the more costly status quo traditional plan), encourages thoughtful consideration by employees as to the option best for themselves and their families.

B. The Associations' Initial Offers

In stark contrast, the initial offers of the Associations were neither balanced or mature.[19] Rather, they merely continued the status quo Traditional Health Plan while reducing the employee contribution rates in two ways. First, they called for the current 85%-15% District/Employee contribution split to change to 86%-14% in FY 16, 87%-13% in FY 17, and 88%-12% in FY 18. Second, although an opt out was provided for employees with alternate non-District coverage, this did not generate savings to the District because the District's increased percentage contributions would be paid for each employee who opted out of the Plan. Mimicking the Anchorage School District's now bargained away "waiver" monies, the Associations' proposals required the District's contribution for employees who opted out of coverage to be paid into a reserve account

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[18] District Health Care Exhibits 31-36, with Exhibits 33 and 34 summarizing the benefits, coverages, and costs of the two AETNA plans.

[19] District Health Care Exhibits 4 and 5.

for the employees remaining in the plan to further decrease, or even eliminate, their required contribution.

To characterize the one-sided initial proposals as non-starters would be generous to the Associations. The District is not denying their right to make those proposals. It is only pointing to the obvious—the ever increasing costs of health care and health insurance is a local, state, and national concern that requires reasoned, thoughtful, fair, and balanced solutions.

C. The Associations' First HDHP Offer

On October 14, 2015, eight months into the negotiations, the Associations changed their approach and proposed the District's HDHP, with the District assuming 100% of the plan's costs.[20] The Associations stated in their proposals that "The District will enjoy all savings benefited from reduced usage through a High Deductible Plan."[21] At the same time, the Associations publicized a supposed $3,000,000 savings in health plan costs that their proposals would generate. The rest of the story was ignored.

In response, the District disseminated its analysis of the Associations' proposals, and discussed that analysis at the bargaining table.[22] The District demonstrated that while the plan's cost could decrease by $3 million dollars, the District's costs would actually increase by $1.1 million over FY 15 as a result of the decrease in employee contributions

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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[20] District Health Care Exhibits 9 and 10.
[21] *Id.*
[22] District Health Care Exhibit 11.

from 15% to 0% of plan costs.[23]

Furthermore, the Associations' proposals negated any incentive for employees with alternate coverage to opt out of the HDHP thereby reducing total plan costs. The Associations did not even propose an opt out, acknowledging at the table that employees provided an HDHP at zero cost would have no reason to opt out even if they had alternate coverage.

D. The Associations' Public Employee Health Trust (PEHT) Proposals

On January 29, 2016, almost four months later, the Associations proposed two distinct health care plans, both provided by the PEHT, one of them being the Trust's HDHP. The other plan would be determined by a newly constituted Health Care Program Committee (HCPC) comprised of only KPEA and KPESA representatives.[24]

As an incentive for the District to change from its self-funded status quo Traditional Health Plan to plans owned, operated, and managed by the Trust, with benefits, coverages, premiums, etc., determined by the Trust, the District's premium was capped at $1,580 per month per employee, with any premium costs in excess of that cap paid by the employees.

The cap was not an "up to" amount. Rather, if the PEHT premiums were below the cap, employees would be "rebated the difference." Opt outs would be allowed but the District would pay each opting out employee $4,800/year. The proposals were noted as

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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23 *Id.* at the Consultant's Comparison of Costs showing current plan costs at $27,270,201 and HDHP plan costs at $24,317,311, and a corresponding increase in the District's costs from $23,179,671 to $24,317,311.

24 District Health Care Exhibits 13 and 14.

being for FY 16 and FY 17, with FY 16 being a status quo Traditional Plan Year, but also established a cap for FY 18 that would be 10% higher--$1738 per employee per month.

The District did not reject or accept those proposals. It informed the Associations that further bargaining needed to await the PEHT's analysis of District claims and other data requested by the Trust, and the Trust's publication of Kenai's FY 17 premium rates for the various Trust plans in the event a move was made to PEHT. It was anticipated that those rates would be available on March 30, 2016. Bargaining was set for that evening.

The rates published by the Trust on that date shocked the Associations. The HDHP premium increased from the FY 16 monthly rates of $1,200 plus $100 for Dental Plan B,[25] to $1,481 plus $144 for Dental Plan B.[26] That overall increase of $325 per month ($1,300 to $1,625) was 25%. The 22% increase for the Trust's popular Medical Plan C and Dental Plan B was from $1,625 in FY 16 to $1,984 in FY 17.

Those premium increases not only insured that no rebate would be forthcoming based on the Associations' proposed District cap of $1,580, they required that premiums be paid by the employees in the amount of $45 per employee per month for the HDHP and $404 per month per employee for Health Plan C/Dental Plan B.[27] That $404 PEHT

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[25] District Health Care Exhibit 15.
[26] District Health Care Exhibit 16, at second page. Rates for Plan Year FY 1017.
[27] District Health Care Exhibit 17.

premium exceeded the estimated FY 17 monthly employee contribution of $305.55 per month per employee for the District's status quo Traditional Health Plan.[28]

At the March 30th bargaining session, the Associations withdrew those proposals. Two days later, the Associations proposed their April 1 last best offer "accepting" the District's FY 16 initial proposals for FY 17.

E. The District's Last Proposals

The District submitted its last best health care proposals to the Associations on April 15, 2016.[29] No HDHP or opt out right would be available to employees in FY 16, the fiscal year ending in two and a half months. The District's self-insured status quo Traditional Health Plan would continue and would not see any FY 16 cost savings as a result. The safe landing provided by the District's initial health care proposals would be postponed, along with the opportunity for employees to review, consider, analyze and determine whether the Traditional Plan, the HDHP, or utilization of the opt out was best for themselves or their families.

The District decided not be deterred by the lost fiscal year. It proposed an extension of its initial proposal into FY 17. Unfortunately, by the time of this advisory arbitration, that extension of time had already expanded to January 1, 2017 (mid- FY 17), as the more realistic date for implementation of the HDHP, the opt out, and other cost saving measures that might be adopted by the HCPC.

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[28] District Health Care Exhibit 48, FY 17 estimate column, at the line for Monthly Cost per employee.

[29] District Health Care Exhibits 20 and 21.

For FY 18, the District proposed a $1,731.45 per employee per month cap on the District's contribution to the costs of the traditional plan, and a cap for the new HDHP of $1,645.61 per employee per month. Those caps continued for FY 19.

Those caps provide the incentive to the HCPC to seriously consider cost savings measures for both plans or even the adoption of alternative or additional plans. They further incentivize all employees to consider a move to the HDHP and employees with alternate coverage to opt out of the plan. Those caps protect the District from paying 85% or 90% of the ever increasing costs of providing health insurance coverage to its employees, costs that can be further decreased by action of the HCPC if properly incentivized to do so.

Such caps are part of the landscape for Alaska's school districts. The Juneau School District and the Anchorage School District have negotiated caps on their share of PEHT premium costs. Juneau's current FY 16 cap for teachers is $1,569 per month.[30] That cap remains in place for FY 17, FY 18 and FY 19.[31] Juneau's FY 16 contribution of $1,569 is slightly lower than Kenai's projected FY 16 contribution of $1,580 per employee per month for its Traditional Plan. The Juneau employee's monthly FY 16 cost is $328 per month, higher than Kenai's projected monthly FY 16 contribution rate of $275. Juneau's PEHT plan, which appears to be unique to Juneau, has coverages and

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

---

30 District Health Care Exhibit 22.

31 District Health Care Exhibit 24. VanBronkhorst May 12 and 26, 2016 emails. The FY 17, 18 and 19 Negotiated Agreement setting forth this cap in Article 17., Section 1., is now on-line at the Juneau School District web site under Human Resources.

benefits extremely lower than Kenai's Traditional Plan.[32] According to Juneau's Human Resources Director VanBronkhorst, the FY 17 teacher contribution will rise to $415 per month based on FY 17 monthly PEHT rates for Medical Plan A and Dental Plan B of $1,984.[33]

The Anchorage School District's FY 16 teacher cap is $1,540 per month. The agreement closes the door on any waiver payments, stating that "no contributions for eligible members waiving health insurance will be retained or paid by the District."[34] Anchorage increases its cap to $1,580 in FY 17 "per eligible member…who elects health coverage through the [PEHT]."[35]

Anchorage teachers not waiving coverage will be covered under the PEHT Medical Plan C/Dental Plan B at a total premium rate of $1,889 per month. The teacher contribution rate will be $1,889 minus $1,580, or $309 per month.

That $1,580 per teacher per month in FY 17 is substantially lower than this District's anticipated contribution rate for FY 17 of $1,731 for its status quo Traditional Plan.[36] In fact, that $1,580 is even lower than the $1,645 anticipated for Kenai's proposed HDHP which would begin halfway through FY 17.[37]

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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[32] District Health Care Exhibit 23.

[33] District Health Care Exhibit 22, May 12 email and following page containing PEHT FY 17 rates.

[34] District Health Care Exhibit 27, Section 205, paras. A and B.

[35] District Health Care Exhibit 28.

[36] District Health Care Exhibit 48, Section I, Column for FY 17 estimate at line titled Monthly Cost per employee-Employer Share and Section II, FY 17 estimate column, first line.

[37] *Id.* at Section II, FY 17 estimate column, lines for Employer Share HDHP.

Similar analyses of the Anchorage School District's caps on its contributions to support staff health care plans demonstrate significant savings to the Anchorage School District in FY 17.[38] In short, if Kenai's cap equaled the FY 17 Anchorage caps of $1,580 per employee per month, that $151 per month difference for the estimated 1,222 Kenai plan members would save Kenai over 2.2 million dollars.[39]

The Fairbanks North Star Borough School District also has a self-insured health plan. Its Negotiated Agreements with teacher and support staff offer Plan A and Plan B options that are "subject to revisions by the *Joint Committee on Health Benefits.*"[40] Those plans provide an employee contribution structure based on family tiers.[41] The deductibles and out of pocket maximums are also set forth for each Plan.[42]

The Fairbanks *Joint Committee on Health Benefits* has taken a proactive stance, a stance that Kenai believes its bargaining proposals for FY 17, FY 18 and FY 19 will generate. The Fairbanks Committee's March 31, 2016 Memo to the Fairbanks School Board summarizes its cost containment measures:

> The committee, however, was presented with information regarding the significant financial impact that the current plan designs were generating. The committee determined it was necessary to move forward with considerations for plan design changes to address cost containment concerns.
>
> ....

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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38 District Health Care Exhibits 30 through 36.

39 $151 x 12 x 1,222.

40 District Health Care Exhibits 37 and 38.

41 District Health Care Exhibit 39 at p. entitled Your 2016 Health Plan Options: Plan A and Plan B.

42 *Id.*

> The committee unanimously adopted design changes including increased deductibles in all plans and also added a third high deductible plan option to add to the two existing plan designs. Various other plan enhancements were amended or added in an effort to encourage wise consumer behavior and further contain costs.[43]

At the state level, negotiations with Alaska's largest public employee union has resulted in a cap on health insurance employer contributions for three fiscal years. As described by the Alaska Dispatch News:

> Over the contract's lifetime, state payments to the union's health care plan would average the same as the current contribution of $1,389 a month per member…[44]

Kenai has been frank and non-apologetic as to the intent behind its last best offer health care proposals establishing a cap for FY 18 and FY 19. It needs to decrease the costs of its self-insured plan, and to provide cost containment options to its employees. It recognizes that following years of budget deficits, balanced only by the use of reserve funds, health cost savings are critical to decrease the reliance on reserve funds and preserve funds needed to support the educational mission of the District, which can include salary increases. As will be discussed in more detail in Section III below, much of how those increases play out depend on the cost savings generated by the District's health care proposals, and by actions of the HCPC which, hopefully, will be similar to those taken by the Fairbanks *Joint Committee on Health Benefits*.

The Associations oppose a cap. As discussed below, their last best proposals were nothing more than a continuation of the status quo Traditional Health Plan. To the

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

---

43 District Health Care Committee Exhibit 40 at p. 1.

44 District Salary Exhibit 22.

Associations a cap is not needed to incentivize the reduction of plan costs through measures that include the option of an HDHP. They presented no evidence that the HCPC under the status quo has done anything significant in that regard and, in fact, the contrary is true.

They also argued that a cap provides no incentive for the District to reduce or even contain administrative plan costs such as stop loss insurance premiums. No evidence was presented to support this specious allegation that the District would act with intent harmful to employees and to the District's limited resources. To the contrary, through the testimony of Laurie Olson, the District's Director of Finance, the District demonstrated the professionalism, fairness, and integrity of its decision making process regarding the establishment of stop loss limits and the selection of the stop loss carrier.[45]

F. The Associations' Sham Acceptance of the District's FY 17 Health Care Proposal

The testimony of Matt Fischer regarding the Associations' identical April 1, 2016, last best Health Care proposals provides insight into the accuracy and professionalism of the Associations' hearing presentations. At the table, and publicly, those proposals[46] were asserted to be acceptances of the District's initial health care proposals for FY 16. They described the District's proposals as "includ[ing] a two tier program defined as the current traditional plan and an HDHP…" The Associations declared their acceptance of the District's defined HDHP commencing in FY 17, recognizing its unavailability as a health

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[45] District Health Care Exhibit 49, Colleen Savoie's December 22, 2015 letter regarding 2016 Stop Loss Renewal and Cost Projections.
[46] District Health Care Exhibits 18 and 19.

care option for employees in FY 16.

The District's proposed HDHP set forth specific deductibles and out of pocket maximums for both individuals and families. The District's testimony that all other HDHP coverages and benefits would be the same as the status quo Traditional Health Plan was not disputed. The District explained that its HDHP was an option for employees to reduce their required monthly contributions to the District. The Health Care Program Committee (HCPC) established in the Health Care provisions of the current Negotiated Agreements and comprised of a majority of representatives from the two Associations continued in effect. That committee could change deductibles, out of pocket maximums, and coverages for both the status quo Traditional Plan and the District's proposed HDHP, to further reduce plan costs and lower District and employee contributions.

Ironically, despite prior "acceptance", Matt Fischer's hearing testimony attempted to distance the Associations from their stated acceptance in two major respects. First, he testified that the Associations' acceptance did not include the specific deductibles and out of pocket maximums proposed by the District. Rather, the proposals they accepted only contained an undefined, conceptual HDHP. His justification was that inclusion of the District's defined HDHP precluded the HCPC from making changes to the deductibles, out of pocket maximums, and coverages. He disingenuously testified that the Committee did not have the authority to make changes to a bargained health plan that established specific deductibles, out of pocket maximums, or coverages.

That testimony is contradicted by the language of the current health care provisions, the language of the District's health care proposals, and the language of the

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
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Associations' March 19, 2015, October 14, 2015 and April 1, 2016 proposals. Each of those documents state that "The Health Care Program Committee shall be empowered to determine health care benefits different from benefits in the plan in place on [the effective date of the N.A.]." The committee has the authority to "determine and control…benefits and coverages provided, cost containment measures, preferred provider programs, co-payment provisions, … implementing any wellness measures it deems beneficial…"[47]

The Associations' plight was that they did not want to accept the specific HDHP proposed by the District, but wanted the public relations value of their stated acceptance of that proposal. Mr. Fischer's testimony was particularly ironic considering that the Associations' March 19, 2015 and October 14, 2015 proposals included the District's proposed deductibles and out of pocket maximums, along with the HCPC's authority language. His testimony ignored the Associations' April 1 acceptance language which noted only one exception to the District's initial proposal—the deletion of the excise tax paragraph--and the District's response which was an agreement to delete that paragraph.[48]

Second, Mr. Fischer testified that the Associations' proposals did not include language from the District's initial February 9, 2015 proposals that established District and employee contribution rates "…separately for both the Traditional Health Plan and the High Deductible Health Plan." Not only was there no exception to that language in the Associations' April 1 acceptance, that language was included in the Associations' April 1 proposals. Each proposal states with regard to both the District and employee

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[47] District Health Care Exhibits 2, 3, 6, 7, 9, 10, 18, and 19.
[48] District Health Care Exhibits 20 and 21.

contribution rates that they will be independently calculated "separately for both the Traditional Health Plan and the High Deductible Health Plan."[49]

If we were to accept Matt Fischer's testimony at face value, the Associations have not accepted the District's proposal for FY 17. Their April 1st proposal continued the health care status quo for FY 17, with only the Traditional Health Plan available to employees. There is no opt out and there is no increase in eligibility from 20 hours a week to 30 hours a week. More importantly, no defined HDHP would be available to employees until and unless the HCPC established one. When, or if, such action by the HCPC ever occurs is speculative and hypothetical. The Committee's history demonstrates that such action will not occur. Although the FY 13-FY 15 health care language empowered the HCPC to establish an HDHP, and/or to approve significant cost saving changes to the existing traditional plan, none of that happened. The District's proposals changed that status quo language by creating a defined HDHP. It could no longer wait for HCPC action.

The Associations' acceptance of the District's proposals has been exposed in this advisory arbitration as a sham, nothing more than a misleading public relations stunt. On April 1, 2016, had the Associations openly acknowledged their rejection of the District's defined HDHP, the District's last proposal before the Arbitrator for his recommendation would have been substantially more favorable to the District in terms of both health care cost relief and salary.

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
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49 District Health Care Exhibits 18 and 19.

G. The Cost of Health Care

District cost evidence confirmed the validity of its concern for the ever increasing costs of its current plan. The District's plan cost information was not disputed by the Associations. The health care exhibits prepared by Laurie Olson are based on actual cost data, and FY 16 and FY 17 estimates from the District's health care consultant Colleen Savoie. That information shows the rise in total health care plan costs from FY 08 to FY 16 (estimate)--from approximately $13 million in that early fiscal year to the FY 16 (estimate) of over $27.27 million.[50]

From FY 13 to FY 14, those costs increased by $1.6 million. From FY 14 to FY 15 the increase was almost $2.1 million. From FY 15 to FY 16 (estimate) the increase will be almost $2.17 million. And from FY 16 (estimate) to FY 17 (estimate) the increase for the status quo Traditional Health Plan will be over $2.4 million.[51] Exhibit 48 utilizes Colleen Savoie's most recent estimates for FY 17.[52] Laurie Olson testified to the credibility of Ms. Savoie's estimates based upon their historical accuracy when compared with subsequently determined actual costs.

The Association argues that those cost are not all paid out of the general fund because a small percentage of teachers and support staff are paid by grant funds. As will be discussed in more detail in the section below addressing the District finances and fund

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

50 District Health Care Exhibit 11, at pp. labeled Exhibits B, C (fifth column titled Total Care Plan Costs), and E.

51 District Health Care Exhibit 48, at p. 1, FY 17 Estimate column, last line.

52 District Health Care Exhibit 49, May 23, 2016 email from Ms. Savoie to Laurie Olson, contained in Saul Friedman's May 16, 2016 email.

balance, the fund out of which health care costs are paid is not relevant to the fact that those costs are increasing by well over $2 million each year. Nor does that argument negate the need to subsidize those grant programs and operations by use of the general fund balance.

From FY 12 to FY 17 District contributions to those total plan costs will have increased by over 55%, from $13,380 per year per employee to $20,770. Correspondingly, employee contributions will have decreased 10%, from $4,080 to $3,666.[53]

The District's last best health care proposals are essential to the fiscal health of the District, to the guarantee of employee health care options, and to the maintenance of programs and jobs. The District's last best offers provide a soft landing to employees. If implemented by January 1, 2017, they could still reduce the District's contributions to its health care plan by over $600,000. And that reduction does not include any additional cost containment measures that may be adopted by the HCPC.[54] To the detriment of the District and its employees, if the status quo continues in FY 17, FY 18 and FY 19, the total health care plan costs will continue those annual increases of over $2 million.[55] That situation is untenable.

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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53 District Health Care Exhibit 47.

54 District Health Care Exhibit 48, first page, the District's status quo contribution of $25,398,983 vs. its last best offer contribution for FY 17 at $24,779,901, second page.

55 *Id.* first page, FY 18 Estimate and FY 19 Estimate columns, last lines.

H. Conclusion

The District's last best health care proposals provide a fair, rational, workable, and meaningful path for the District to remain a vibrant, sound, and successful K-12 educational institution. They should be recommended.

III. ISSUE 3. SALARY AND WAGES

A. The District's Fiscal Circumstances

Alaska law requires school districts to "establish, maintain, and operate under a balanced budget."[56] Assistant Superintendent for Instructional Support Dave Jones testified that from FY 12 to FY 15, the District's general fund balance decreased annually by $2,994,764, $740,979, $1,226,433, and $1,147,325, respectively, in order to achieve a required balanced budget.[57] As a result, the District's total general fund balance, including funds that were Nonspendable, Restricted, Assigned, and Unassigned, was reduced from the FY 11 amount of $23,359,042 to $17,249,541 by the end of FY 15, a decrease of over 6.1 million dollars.[58]

The District's required FY 16 audit is not due until October 1, 2016.[59] Dave Jones testified that use of the general fund's balance will be required to balance the FY 16 budget, including further use of the unassigned fund balance to offset the health plan's final FY 16 cost computations.

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[56] AS 14.17.900 (a).
[57] District Salary Exhibit 31.
[58] *Id.*
[59] 4 AAC 09.130. A regulation of the Alaska Department of Education and Early Development.

During each fiscal year, the budgeting process for the subsequent fiscal year takes place. If anticipated revenues will not meet anticipated expenditures, and the District is not willing to expend a sufficient amount of its fund balance to achieve a balanced budget, the programs and operations of the District, i.e. its expenditures, must be reduced. In Dave Jones' testimony as to the District's step by step process to finalize its FY 17 budget, he reviewed the District's programmatic and operational reductions in FY 15 and FY 16 to achieve a balanced budget in combination with the use of general fund balance. In FY 15, those reductions in certificated and district office staffing, technology/software, supplies, utilities, and travel, totaled $1,254,000. In FY 16, the final budget's reduction in certificated staffing, curriculum supplies, utilities, and program restructuring totaled $1,375,000.[60]

As of the arbitration hearing, the FY 17 budget remained a work in progress due to uncertainty as to the amount of state revenue the District will receive for that fiscal year as chronicled in the Section I. Introduction above. As a result, the FY 17 allocations of fund balance and programmatic/operational reductions remain moving targets.

As of April 21, 2016, the fund balance allocation was budgeted at over 1.8 million dollars.[61] However, Mr. Jones testified to a more recent estimate of $992,000. Initial programmatic/operational reductions for FY 17 included loss of over 25 full time equivalent (FTE) teachers, a counselor, and 2 school level administrators. The total

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[60] District Salary Exhibit 32 at pp. titled FY 15 BUDGET REDUCTION DETAIL, AND FY 16 BUDGET REDUCTION DETAIL.

[61] District Salary Exhibit 33, revenue line for "Allocation of Fund Balance."

reduction was over 4.5 million dollars.[62] At the arbitration, Mr. Jones testified that the latest FY 17 budget added back 13.5 FTE teaching positions after both houses of the state Legislature passed differing state operating budgets, but with each budget maintaining the previously forward funded $50 increase to the BSA. The District's estimated share of that $50 BSA increase was $889,624. Unfortunately for the District, the Governor's subsequent vetoes decimated that increase when $442,812 was cut from the District's foundation funds and another $665,072 from pupil transportation. This total loss of $1,099,084 is approximately $210,000 more than if the vetoes had simply nullified the BSA increase.[63] The pre-vetoes estimate of a $992,000 FY 17 unassigned fund balance allocation increased to approximately $2 million with the vetoes.

Mr. Jones also testified that the Associations' unsupported, but expressed, perception of the District "finding $3,000,000" during the FY 17 budget process is inaccurate and misleading. When the District reduces an earlier estimate of FY 17 salaries and benefits by 2%, that reduction is not "found money." It is a decrease in expenditures that reduces reliance on the fund balance. When the District determined to add back 13.5 teachers in FY 17, those additional expenditures are not the result of "found money." They were the result of more solid revenue projections for budgeting purposes, or, if those projections do not materialize, a School Board determination that such staff positions are necessary and therefore must be funded by the use of additional fund balance.

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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62 District Salary Exhibit 33 at page titled FY 17 BUDGET REDUCTION DETAIL.
63 Footnote 12, *Supra*.

The Associations also focused on the District's general fund balance in support of its increased salary schedule and other wage proposals. They consider the $7,897,978 unassigned fund balance at the end of FY 15, an increase over the prior fiscal year, as ample funding to both pay their proposed salary schedule increases and to ameliorate District health care cost increases.[64]

In response to the Associations' singular focus on the unassigned fund balance, Dave Jones testified to the District's critical concern about the steady decrease in the total fund balance. He explained that the unassigned amount has been protected, and even allowed to increase, by the School Board's decision in FY 11 to assign almost $7,000,000 in the FY 11 general fund balance to the District's Self-Insured Health Care Plan to cover the plan's ever increasing costs. That assigned amount has been reduced to $815,000 as of the end of FY 15.[65] Mr. Jones further testified that once the health plan's final FY 16 costs are determined, more of the unassigned fund balance will be needed to balance not just the health plan's unbudgeted FY 16 costs, but the increasing plan costs in FY 17 and beyond.

Dave Jones explained that School Board policy requires an unassigned general fund balance of at least 3%, or almost $4 million dollars. Board approval is required to go below that amount.[66] Considering that the unassigned general fund balance was $7,897,978 at the end of FY 15, even if that same amount remained at the end of FY 16,

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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64 District Salary Exhibit 31, FY 15 Column, Unassigned line.

65 District Salary Exhibit 31, FY 11 Actual Column, Assigned to: Self-Insurance Health Care line.

66 District Salary Exhibit 54, Board Policy 3470, p. 2, Minimum Unassigned Fund Balance.

only $3,897,978 would be available to address future budget concerns. Mr. Jones further testified to his direction from the School Board that the use of the remaining unassigned fund balance is to be divided as evenly as possible over subsequent fiscal years to lessen the impact of programmatic and operational reductions over time.

As demonstrated by both the salary and wage evidence and the health care evidence, the District is at a tipping point regarding its general fund balance, in total, and the unassigned amount, in particular. An $8 million unassigned general fund balance quickly disappears in the absence of increased state funding. Assuming the District's 85% contributions to the status quo Traditional Health Plan increases by $2 million each fiscal year, a $2 million increase in FY 17 becomes a $4 million increase in FY 18, and a $6 million increase in FY 19 compared to FY 16 costs. If the District receives no additional state revenue from one fiscal year to the next, increasing expenditures can only be addressed by decimating the programs and operations of the District through spending cuts and/or utilizing the unassigned fund balance until it is gone. The devastating impact of that eventuality is what Governor Walker has so forcefully expressed regarding the state's fiscal crisis. "[P]atching the budget hole on a one-time basis…will cost us dearly."[67] In the School District, it is the students who will pay dearly for a fiscally irresponsible use of a non-recurring fund balance to support teacher demands to increase salary schedules in a manner and an amount that cannot be afforded and definitely cannot be sustained.

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
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[67] District Salary Exhibit 18 at p. 2.

The Associations assert that the above scenario is pure conjecture because the state will always increase it school district funding. That position is not supported by the facts. At the hearing, and before the Governor's line item vetoes, Dave Jones testified that the FY 17 increase to the BSA is the result of previously passed forward funding legislation. The legislative divisiveness this current session over whether to cut that relied upon BSA increase,[68] and the Legislature's decision last fiscal year to defund a previously forward funded one time increase outside the BSA formula, does not bode well for increased school funding in FY 18 and FY 19, and is more predictive of future funding reductions.[69] The Governor's subsequent vetoes and the state's fiscal crisis are not conjecture, they are reality.

B. The District's Initial Salary Proposals

The District's initial proposal to KPEA was only for FY 16. The salary offer was a rollover of the FY 15 salary schedule with step movement and column placement, and a $500 non-Teacher Retirement System (TRS) bonus for returning and new teachers.[70]

The District's initial proposal to KPESA was only for FY 16. The salary offer was a rollover of the FY 15 salary schedule with step movement, and a $500 non-Public Employees Retirement System (PERS) bonus for returning and new bargaining unit members.[71] The additional cost of both proposals, including both the general fund and grant funds, with benefits other than retirement contributions, was estimated at $645,545.

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[68] District Salary Exhibits 20 and 21.
[69] District Salary Exhibits 18, 55, and 56.
[70] District Salary Exhibit 1, para. 1.
[71] District Salary Exhibit 3, para. 2.

The general fund cost only was $574,562.[72]

C. The District's Last Best Offers

The District's last best salary proposal to KPEA continued the rollover of the FY 15 salary schedule with step movement and column placement for FY 17, FY 18 and FY 19. The FY 15 salary schedule has automatically rolled over for FY 16 as part of the status quo. A larger payment of $750 (TRS eligible) would be paid to teachers who completed their FY 16 work calendar, with an additional $250 to those teachers at the "longevity" step. In FY 17, FY 18 and FY 19, teachers would be paid an additional 1% (TRS eligible) of their then salary schedule amount. That 1% would be off schedule, i.e., not increasing and compounding the schedule each year.[73]

The District's last best salary proposal to KPESA was a rollover of the FY 15 salary schedule with step movement for FY 17, FY 18 and FY 19. The FY 15 salary schedule has automatically rolled over to FY 16 as part of the status quo. A larger payment of $750 (PERS eligible) would be paid to bargaining unit members who completed their FY 16 work calendar. In FY 17, FY 18 and FY 19, members would be paid an additional 1% (PERS eligible) of their then salary schedule amount. That 1% would be off schedule, i.e., not increasing and compounding on the schedule each year.[74]

The estimated costs of those last best offers increased the FY 16 KPEA general fund obligation to $546,877, including the 12.5% contribution to TRS, and increased the

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[72] District Salary Exhibit 5.
[73] District Salary Exhibit 2, at paras. 4, 5, and 6.
[74] District's Salary Exhibit 5.

KPESA general fund amount to $493,033, including the 22% PERS contribution. The total general fund increase for both Associations was almost $1,040,000.[75] The cost increase from the District's initial offer to its last best offer in just the general fund was approximately $465,000.

The District's 1% off–the-schedule payments in FY 17, 18 and 19 are estimated to increase the budgeted KPEA general fund salaries by approximately $500,000 in each of those fiscal years, after step increases.[76] The District's 1% off-the-schedule payments to KPESA in those three fiscal years increases budgeted general fund salaries by approximately $250,000 each year, after step increases.[77]

D. The Associations' Initial Salary Proposals

The Associations' proposed initial salary schedule increases in FY 16, FY 17 and FY18 of 3.2%, 2.2% and 3.1% respectively.[78] Steps were also added. They never costed out these proposals.

E. KPEA's Last Best Offer

KPEA's last best offer of April 1, 2016 was a 1.5% increase in the salary schedule for FY 16, and 1% in FY 17 if the BSA increase of $50 survived the legislative process. It did not. Although the $50 BSA increase was not expressly vetoed, it was negated when the Governor vetoed the equivalent amount of $12.7 million of educational foundation and pupil transportation formula funding. The resulting loss to Kenai's funding was $1.1

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[75] District's Salary Exhibit 6, first page.
[76] District Salary Exhibit 6, p. 2.
[77] District Salary Exhibit 7.
[78] District Salary Exhibits 8 and 10.

million. New steps were also added in KPEA's last best offer.[79] KPESA's offer followed suit.[80]

The District has costed out KPEA's FY 16 1.5% salary schedule increase in the general fund at $748,312, including benefits.[81] KPEA, using an average teacher salary, reaches the amount of $745,541.[82] However, KPEA's costing fails to include almost 14% for benefits.

The parties differ as to the cost of KPEA's FY 17 salary schedule increase of 1%. The District calculates a cost of $513,675 excluding benefits, and $587,182 with benefits.[83] KPEA costs that 1% on the schedule at $447,573 without benefits.[84]

The critical distinction between the District's last salary proposal and that of KPEA is the cumulative impact of KPEA's salary schedule increase. Using KPEA's numbers, the FY 16 increase of $745,541 is paid again in FY 17, along with KPEA's additional $447,573 if the 1% were to be paid in FY 17. With the 1% FY 17 proposal negated by the Governor's vetoes, cumulative salary cost increases of almost $1.5 million are still provided for in KPEA's two-year proposal. With projected flat enrollment and the legal obligation to balance its budget, the KPEA proposal would have to be funded from the general fund balance, or from reductions in programs and operations.

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

79 District Salary Exhibit 9.
80 District Salary Exhibit 11.
81 District Salary Exhibit 12.
82 KPEA Exhibit Binder at the first page of its Salary Exhibits.
83 District Salary Exhibit 12.
84 KPEA Exhibit Binder at the first page of its Salary Exhibits.

KPEA argues that "when considering the District's salary and health insurance proposal, the District gives too little. The District clearly has the money; it has never stated otherwise."[85] As expressed above, that statement is focused on the almost $8 million unassigned fund balance at the end of FY 15. KPEA does not address expected reductions in that amount resulting from further fund balance use in FY 16, FY 17, and FY 18. It ignores the lost opportunity for health plan cost savings by employees exercising their opt out right or changing to the District's proposed HDHP.

F. The KPESA Last Best Proposal

The District's cost estimate for KPESA's FY 16 salary schedule increase of 1.5% is $351,908 including benefits. Its cost estimate for KPESA's FY 17 salary schedule increase is $223,229, including benefits.[86] KPESA costs its FY 16 proposal at $216,000, and $108,000 for the FY 17 increase of 1%.[87] Considering just the PERS District contribution rate of 22%, KPESA has excluded benefits from its calculations.

Even using the Association's numbers, the FY 16 $223,229 increase is paid again in FY 17 with another $108,000 added, a compounding total of over $550,000. Using the District's numbers, that cumulative amount increases to over $927,000 ($351,908 twice plus $223,229), or to almost $754,000 now that the BSA increase has been negated.

Tracking the District's cost analysis above for both Associations, the rationale that the District "clearly has the money" falls flat. "The money" is the general fund's one time

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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85 *Id.* at KPEA LBO Tab, Section 105 Rationale Statement.
86 District Salary Exhibit 13.
87 KPESA Exhibit Binder at KPESA LBO Tab, at Article 16 Salary Schedule narrative.

unassigned fund balance. It is not a continuing flow of money to pay cumulating and compounding salary schedule increases and ever increasing health insurance costs.

G. Additional Association Arguments

1. Grant Funds

The Associations assert that grant funded positions negate a fiscal crisis with health care because grant funds will increase to cover the benefit costs of those positions. This distorts reality. First of all, less than 4% of the District's teachers and less than 10% of KPESA support staff are paid from grant funds. Moreover, as discussed in Section II above, there is no relationship between the health plan's total costs comprised of claim payments, stop loss premiums, and administrative expenses, and the source of funds from which teacher and KPESA salaries are paid.

Importantly, whether the District's 85% contribution is paid out of grant funds or the general fund has little bearing on the impact on programs and operations resulting from continuing Plan cost increases. When grant funding is no longer sufficient to sustain a grant's programs and operations, the District faces the same choices it faces when general fund revenues are insufficient to sustain programs and operations--cut those programs and operations and/or supplement them with unassigned general fund balance. Even if a grant is 100% self-sustaining in any fiscal year and can absorb higher health care plan costs per grant funded employee, that insignificant percentage of increased Plan costs that the general fund is not required to supplement does not alter the dynamics of $2 million plus District contribution increases year after year.

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

2. Non-KPESA Support Personnel

Regarding the KPESA salary proposals, the testimony of KPESA President Patty Sirois as to wage increases for non-KPESA support personnel was misleading.[88] First, according to Ms. Sirois, KPESA's salary schedule shortchanges its members by only providing nine steps, half of the steps provided to non-KPESA support personnel who have 19 steps.[89] She did not disclose that in prior negotiations KPESA negotiated a compression of the KPESA salary schedule from 15 steps to 9 steps. The obvious benefit of that compressed schedule is that KPESA members reach the highest wage step 6 years earlier. And, to achieve that result, the percentage increases between steps increased significantly. That reality was ignored by Ms. Sirois in her testimony.

Second, Ms. Sirois wanted the Arbitrator to know that the 2% to 3% wage increases for non-KPESA employees exceeded those of the KPESA members who were "only asking for a 1% increase in FY 17." In testifying to those non-KPESA wage increases, Ms. Sirois accurately identified the 2% to 3% increases as being found in the automatic step increases. However, when comparing KPESA's requested 1% salary increase to those non-KPESA salary increases, she disingenuously failed to include the KPESA automatic step increases. Those step increases average 4.9%, more than twice the average of the non-KPESA steps.[90] For KPESA members receiving steps, the additional 1% would increase wages by an average of 5.9%.

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[88] District Salary Exhibit 52.
[89] District Salary Exhibit 17.
[90] *Id.*

3. Recruitment and Retention

KPEA also argued, without any direct evidentiary support, that the current teacher salary schedule was negatively impacting the retention and hiring of teachers. That statement was contradicted by the testimony of John O'Brien, the District's Assistant Superintendent for Instruction. He presented evidence of Alaska school districts' percent of teacher turnover from 1999 through 2012. That evidence showed Kenai to have one of the best retention rates in the state. Kenai's percentage averaged approximately 10% over that period of time.[91]

Mr. O'Brien also provided a chart showing teacher "attrition rate[s]" for Kenai from FY 11 through FY 16. Those rates, ranged from a low of 8% to a high of 12%, averaging 9.8%, with FY 16 coming in at 10%.[92] Mr. O'Brien, as the District administrator primarily responsible for teacher recruitment and hiring, further testified to the District's success this spring in filling almost all of its vacant teaching positions as of the date of his testimony.

John O'Brien noted favorable working conditions in Kenai, especially with respect to class size, as a positive factor for both retention and recruitment of teachers. The class size comparison between Kenai and the 4 other large urban districts demonstrates lower class sizes in Kenai at all grade levels over the past three fiscal years. In many classrooms, Kenai's teachers have at least 10 less students than some of those other districts.[93] The

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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91 District Salary Exhibit 46 at p. 2.
92 District Salary Exhibit 47.
93 District Salary Exhibit 34.

National Education Association's policy brief recognizes the educational benefits of smaller class sizes:

> Meaningful reductions in class sizes have been difficult to achieve because of tight school budgets and competing priorities…The proven-term benefits of reducing class sizes—achievement gains and higher graduation rates—should determine our priorities.[94]

Kenai has achieved its favorable class sizes by balancing its priorities, including the number of teacher positions, and wisely using its general fund balance. It has maintained favorable working conditions that foster both teacher retention and recruitment. Districts such as Fairbanks that have reduced their unassigned general fund balance to unacceptably low levels going into FY 16 and beyond[95] may pay higher salaries but they also have larger class sizes. Importantly, such districts have failed to reflect the ability demonstrated by Kenai to carefully and thoughtfully navigate through these rough fiscal waters. Nor has the Association or the HCPC demonstrated the leadership exemplified by the Fairbanks *Joint Committee on Health Benefits* by adding or amending medical plan enhancements "in an effort to encourage wise consumer spending and further contain costs."[96]

4. Salary and Benefits Study

KPEA also presented a Salary & Benefits Schedule and Teacher Tenure Study published by the University of Alaska Center for Alaska Education Policy Research in

94 District Salary Exhibit 35.
95 District Salary Exhibit 27 at p.1, and Salary Exhibit 28 at p. 2.
96 Footnote 43, *Supra*

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JERMAIN DUNNAGAN & OWENS
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3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

November 2015.[97] One of the purposes of the study was to "[d]evelop base salary and benefit schedules for teachers and principals."[98] The authors acknowledged that "The timing for this study was less than ideal. At the time of this writing, the state is experiencing a drastic decline in revenue, resulting in a significant reduction in the resources available to implement and assess properly any new compensation or tenure systems."[99]

The study analyzed many community factor differentials including "community demographic and geographic characteristics, cost of living indicators, and student demographics…" The study "produce[d] a number for each Alaskan community that represents the salary differentials relative to a suggested salary schedule for Anchorage[.]"[100]

KPEA focused on Kenai's overall differential of 14% relative to the suggested Anchorage schedule.[101] John O'Brien met with the study researchers when they traveled to Kenai obtaining data for the study. Mr. O'Brien was told that Kenai's current salary schedule for its large urban locations such as the City of Kenai and the City of Soldotna should actually decrease relative to the Anchorage schedule. The off-road small community sites in the Kenai Peninsula Borough showed a 40% differential based on the community factors considered in the study. According to Mr. O'Brien, the researchers

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

97 KPEA Salary Exhibits Tab behind 2nd blue divider.
98 *Id.* at numbered p. 1.
99 *Id.* at numbered p. 2.
100 *Id.* at numbered p. 4.
101 *Id.* at Table 2, at numbered p. 16, last column.

determined that the greatest percentage of District teachers would be overpaid under the existing salary schedule relative to the proposed Anchorage schedule.

The study confirms that analysis. Table 2 shows the differentials at minus 7% for those large sites and 40% for those smaller sites.[102] While the relative percent change from the current schedule may average 14%, it does not mean that every teacher's salary would increase by that percentage. Rather, the implementation of "a single schedule with community differentials would increase salary costs for most districts."[103] But, in Kenai's case, the current, traditional salary schedule paying teachers with the same experience and education the same wage regardless of their teaching site, does not comport with Kenai's in-district community differentials. As the study notes regarding salaries, "[d]o we continue the same model we have had in place for nearly forty years, or do we think differently and perhaps more creatively?"[104]

Interestingly, school districts that would experience reduced salary costs include Juneau at -3% and Fairbanks at -6%. In any event, as noted by the study, the state's fiscal crisis has rendered the study untimely and irrelevant. Neither party has proposed a different salary model in these negotiations. The study is intellectually stimulating, but it is not practical and does not provide support for the Associations' salary positions, especially to the extent of the Associations' use of other district schedules for comparability" purposes. The study teaches that individualized community factors

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[102] *Id.* at Table 2, "Community differentials varying across districts" column.
[103] *Id.* bottom of Table 2.
[104] *Id.* at numbered p. 30.

between districts and even within districts render that term obsolete.

IV. ISSUE 4. OTHER

The following discussion briefly addresses the language changes proposed by KPEA and KPESA. Neither Association has provided appropriate or valid justification to support the need for these changes. For each of the proposals, the District seeks a recommendation that existing language be maintained.

A. KPEA Section 120 Extracurricular Program

KPEA's proposed Section J. allows KPEA members and their dependents to attend all co-curricular events free of charge, provided seating is available. The Association's approach to this issue at arbitration was primarily emotional and personal. The implication was that such attendance is essentially an extension of the school day regarding student contact and should be encouraged. John O'Brien, the District's Assistant Superintendent for Instruction, made it clear that voluntary attendance at such functions was not officially, unofficially, or by implication, such an extension, nor were members evaluated on whether they attended such events.

The District's position was one of policy. If teachers are to be admitted free of charge, what about parents, siblings, grandparents, uncles/aunts, and other family members of participating students? What about other District employees? Whether a teacher is required to pay what others pay to attend such functions is not a term and condition of employment. In Alaska's Public Employment Relations Act, terms and condition of employment are defined as "the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

the employee…"[105] The Alaska Supreme Court has a held that a matter closely related to school board policy is non-negotiable.[106] Without commenting on whether the School Board should adopt a policy allowing what KPEA is seeking in Section 120, that decision should be left to the Board and decided through the public process regarding the adoption of policies.

B. KPEA Section 545 Professional Leave

KPEA's position at the bargaining table was that inclusion of the word "reimburse" in Section 545 would incorporate the Teacher Retirement System (TRS) as one of the Association President's benefits. The Association did not argue otherwise at the arbitration. Nor did the Association assert that the District was violating the grievance arbitration decision. That decision does not support the Association's proposal for this Section and certainly does not support their stated intent behind the proposal. Arbitrator Gaba held that the TRS issue was between the Association and the Teacher Retirement System. "The matter of Mr. Brighton's eligibility for, and participation in, the Alaska TRS is not governed by the parties' Collective Bargaining Agreement."[107] No change is required to Section 545.

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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105 AS 23.40.250(9).
106 District Salary Exhibit 36, at p.9.
107 District KPEA Professional Leave Exhibit 43, at p.25.

C. KPEA Section 110 Salary Conditions

KPEA proposes the insertion of a new paragraph H allowing certain bargaining unit positions to receive college credit for earned Continuing Education Units (CEU). KPEA presented no evidence either at the bargaining table or at arbitration to support its proposal, including no evidence of a paucity of relevant college courses, no evidence of the educational criteria that CEUs must meet to earn that label, no evidence of the time at task that CEUs must meet to earn that label, and no information as to the cost to the District of less restrictive column movement. The Association did not even address whether the language was limited to CEUs earned subsequent to a successor N.A., or whether all CEUs, regardless of when taken, would be eligible.

As with its presentations for all cost related issues, KPEA asserted the 2% cost of living average as support for its proposal. In fact, the CPI-U for Anchorage has been well below 2%. The difference from the second half of 2014 to the second half of 2015 was a negative .1 percent. The annual change from 2014 to 2015 was .5%;[108] moreover, Kenai remains the top location in Alaska for affordable housing.[109]

In short, to the extent that the moving party has to provide evidence, not just argument to justify a change to existing language, that has not occurred here.

D. Section 121 Extra Curricular Salary Schedule

KPEA proposes a complete rewrite of the existing salary schedule for extracurricular duties. It did not cost out its proposed methodology of paying teachers

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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108 District Salary Exhibits 14.
109 District Salary Exhibit 15.

who volunteer to coach or lead such activities. John O'Brien computed the additional costs of KPEA's proposal at $539,726, including benefits.[110]

In response, the District proposed a 5% increase to the existing schedule. John O'Brien computed that additional cost at $56,737, including benefits.[111] To the extent that both parties recognize a need to increase the stipend amounts paid to such volunteers, the District's counter is reasonable and appropriate, considering the fiscal constraints underlying this bargaining.

E. Section 320 Personal Leave and Section 325 Personal and Sick Leave for Less than Full–Time Employees

These KPEA proposals constitute another means of increasing the salaries of teachers by providing another paid leave day that can be cashed out. If not cashed out, use of that leave day would reduce the student-teacher contact time so essential to student learning.

The current Negotiated Agreement already provides 4 personal leave days, cumulative to 8 days. That number compares favorably with each of the other 4 large urban school districts. Anchorage provides 3 days, with a maximum of 5 days allowed to be carried over from one year to the next. Fairbanks provides 4 days, cumulative to 10 days. Mat-Su provides 4 days, cumulative to 7 days. Juneau provides 4 days, cumulative to 10 days.[112] Current language should not be changed.

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[110] District Section 121 Exhibit 38.
[111] District's Section 121 Exhibit 37.
[112] District Personal Leave Exhibits 39-42.

F. KPESA Article 20 Personal Leave

This proposal parallels the request of KPEA by increasing the amount of personal leave as a means to increase income. Income issues are best addressed through the salary schedule. Current language should not be changed.

G. KPESA Article 10 Work Rules

Proposed new language requires the District to pay wages to those employees who start the workday late, or leave their worksites early, due to "inclement weather" or the occurrence of certain "natural or manmade disasters." In such an eventuality, even if the District chose to have the employee make up that lost time, the agreement of the employee is required. Absent that agreement, the employee would still be paid for the lost hours of work.

Current language should not be changed. The proposed language unfairly requires the District to pay for work not performed.

H. Article 21 Association Leave

Current language requires the District to provide unpaid leave to the KPESA President. The Association then pays the President for his/her service to the Association.

The proposed language would drastically alter this provision. First, the District would pay the full salary and benefits of the President and be reimbursed by the Association. However, if the Association demonstrates that its President was actually working 50% of the time "on District committees and/or preparing for or attending labor meetings with the District," only 50% of the salary and benefits would be reimbursed.

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

The 50% provision is nonsensical. The premise is that the President's work or attendance is for the benefit of and under the control and supervision of the District. That is not the case. As an example, the current President heads the HCPC as an Association appointee. As this arbitration has demonstrated, that Committee has failed to exercise any leadership role in reducing health care costs through changes to the current Traditional Health Care plan. The President has certainly not been acting on the District's behalf in that regard.

The President further testified as to her role in employee disciplinary matters, including as the Association representative for employees. That exercise of important

Weingarten rights are for the protection of the employee. The representative's loyalty, authority, and discretion is exercised on behalf of the employee, not the District. In fact, the Alaska Supreme Court recognizes a "union-relations privilege" similar to the attorney-client privilege.[113]

This proposal is essentially an effort to override a binding grievance arbitration decision adverse to the Association. In the decision, Arbitrator Whalen held:

> The contract does not contain any language that requires the District to process payroll or act as a pass-through for the Association's full-time President. It does not mandate a reimbursement process. The Association cannot unilaterally impose such a restriction. The Arbitrator cannot rewrite the contract.[114]

Current language should not be changed.

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

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[113] *See Peterson v. State of Alaska*, 280 P.3d 559 (Alaska 2012).
[114] District KPESA Association Leave Exhibit 44 at p.9.

V. CONCLUSION

On April 1, 2016, there appeared a glimmer of hope that a new agreement could be reached before the start of FY 17. That occurred when each Association notified the District in writing that they had accepted, beginning in FY 17, the "District's health care proposal…that includes a two tier program defined as the current traditional plan and an HDHP." In an effort to capitalize on that glimmer, the District's responses increased its proposed FY 16 one-time off-the-schedule salary payment, and added a one-time 1% off-the-schedule payment in FY 17, 18 and 19.

The District's responses also addressed health care. It recognized that cost savings from the proposed HDHP, and the opt out, would be postponed until well into FY 17 based on the time necessary to educate employees and implement those changes. Accordingly, while the District accepted the Association's proposed delay of the District's initial health care proposal until FY 17, it also added FY 18 and FY 19 to its proposal and capped the District's cost contribution in those years. It took that action to incentivize employees to switch plans or to opt out if eligible, and to incentivize the HCPC to adopt additional cost savings plan changes.

Then, at the arbitration hearing, the Associations denied their acceptance of the District's initial health care proposal. That sad and sudden action was a reminder of the Associations' selfishly conceived initial health care proposals, and manipulations of fact and public opinion occurring during bargaining. The District asks the Arbitrator to recommend the District's last best health care proposal for FY 17, FY 18 and FY 19, in full, as the only affordable and meritorious proposal before him.

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

FY 16 has come and gone. By the time the advisory arbitration report is issued, the FY 17 school year will be in full swing. The FY 15 Negotiated Agreements will have been in force and effect as the status quo for all of FY 16, and continuing into FY 17. FY 16 is no longer relevant to the resolution of this bargaining. Nothing can be done retroactively regarding health care, and nothing should be done retroactively for salary. That year has seen nothing but lost opportunities in this bargaining. Accordingly, no off-the-schedule payment should be recommended retroactively for FY 16, a year in which the status quo provided step movement to the Associations.

Further, with the Governor's vetoes of education funding, and prospects for future increases in education funding speculative at best, the District's proposed one-time off-the schedule payments in FY 17, FY 18 and FY 19 should be recommended. They are fair and reasonable and represent the District's ability to pay.

The Associations' solution to meeting its demands by spending down the general fund balance must be rejected. The general fund balance has been in decline since FY 11. The District has faced budget deficits in each of those fiscal years and use of the fund balance has been required.

The School Board's Fund Balance policy recognizes the criticality and fragility of those funds. It requires the maintenance of a 3% unallocated fund balance, approximately $4 million, solely "to protect against cash flow shortfalls related to the timing of projected revenue receipts and to maintain a budget stabilization commitment." Express Board approval is required to go below that percentage.

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
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The Board's foresight and wisdom recognizes that the use of fund balance may be needed to maintain quality educational programs, and provide fair and reasonable salaries and benefits to its employees. That use has been occurring. However, the Board also recognizes that depletion of the fund balance, especially in these dire fiscal times, would be irresponsible. The Arbitrator should acknowledge that fiscal reality.

The District's last best proposals, through health care plan reforms and one-time off-the-schedule payments, seek a sustainable use of the fund balance in the best interests of the District, its students, its community, and its staff. The Associations' position will render the fund balance unsustainable, and ultimately depleted.

Based upon the Section IV discussion of all other issues, there should be no change to current language with the exception of the District's proposed extracurricular salary schedule, and the parties' T.A.s.

Respectfully submitted this 26th day of July, 2016.

JERMAIN, DUNNAGAN & OWENS
Attorneys for the Kenai Peninsula Borough School District.

By: ______________________
Saul R. Friedman, Esq.

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

CERTIFICATE OF SERVICE

This is to certify that on this 26th day of July, 2016, a true and correct copy of the foregoing was mailed, postage prepaid, to:

Gary Axon, Esq.
P.O. Box 190
Ashland, OR 97520

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