BEFORE ARBITRATOR DOROTHY FALLON

In the Matter of the Arbitration between:	)
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KENAI EDUCATION ASSOCIATION and KENAI EDUCATIONAL SUPPORT ASSOCIATION	)))
	)
-and-	)
	)
KENAI PENINSULA BOROUGH SCHOOL DISTRICT	))

Advisory Arbitration

February 26-27, 2019

JOINT POSTHEARING BRIEF OF KPEA and KPESA

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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, 2015 and ending June 30, 2018. In accordance with Alaska's Public Employment Relations Act, the parties held numerous bargaining sessions beginning in January 2018 but were unable to reach a successor agreement. *See* AS 23.40.070 *et seq.* The parties met with a federal mediator on August 9th, 2018. Settlement was not reached. Advisory arbitration took place February 26 and 27, 2019 pursuant to AS 23.40.200(g).

II. BACKGROUND

For several years, the teachers and support employees of KPBSD have experienced a steadily declining standard of living. Causes for this decline include continual annual inflation without a comparable increase in salary, coupled with an increasing employee contribution amount for health insurance. Employees during the hearing testified to decreasing take home pay each year. KPEA and KPESA's proposed salary increase is a modest attempt to slow that decline. By increasing salary and addressing the increasing employee health insurance premiums the Associations' hope to remedy that lost purchasing power.

KPBSD operates a self-insured health care plan managed by the Health Care Program Committee (HCHP). The HCHP is composed of employees from KPEA, KPESA, the Kenai Peninsula Administrator Association, the representatives of KPBSD. Currently health care costs are divided between the employer and employees according the the language in section 210 of the KPEA negotiated agreement and article 27 of the KPESA negotiated agreement. For the traditional plan, eighty-five percent (85%) of the costs are paid by KPBSD and fifteen percent (15%) of the costs are paid by employees until costs exceed $1731.15 per month. Once costs exceed that cap, costs are divided equally between the employer and employees. For the HDHP, ninety percent (90%) of the costs are paid by KPBSD and ten percent (10%) of costs are paid by employees until costs exceed $1645.61 per month. Once costs exceed that cap, costs are divided equally between the employer and employees. FY18 is the first time costs have exceeded the cap. The employees' contribution amount has steadily increased to the current $682.91 per month for the traditional plan and $451.60 per month HDHP (Ass'n Ex. 6)[1]. Under the current cost division, in FY19 employees pay 21.368% of the health care cost for the traditional plan and 24.759% of the health insurance cost for the HDHP (Association Ex. 7 pg 1). KPEA and KPESA's proposals seek to eliminate the health care cap and reverse that trend by returning to an 85%/15% split for the traditional plan and a 90%/10% split for the HDHP. This proposed contribution rate returns KPBSD to the cost division recommended by Arbitrator Kathryn Whalen in her 2012 decision (Ass'n Ex. 30).

Prior to Arbitrator Whalen's decision, contributions were defined as specific dollar amounts per month contributions and if costs exceeded available reserves those costs were borne equally between the District and employees (Ass'n Ex. 30). When the Associations and KPBSD agreed to implement Arbitrator Whalen's decision, health care costs were divided between employees and the District along a percentage split. This continued until the 2016 series of

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[1] This is the amount paid over nine months, When calculated on a twelve month basis, the amount is $498 per month for the traditional plan and $308.00 per month for the HDHP, Association Ex. 6

negotiations. Following unsuccessful negotiations, KPBSD and the Associations again submitted their interest dispute to advisory arbitration. Arbitrator Gary Axton recommended the percentage split with the cap described above. In FY17 and FY18, costs exceeded that cap and employees saw dramatic increases to their monthly insurance payment.

To address this dramatic increase and remedy the declining standard of living the Associations propose returning to the percentage split contribution rate, a modest salary increase, and other changes to the negotiated agreement which if implemented would allow KPBSD to reclaim its ability to attract and retain quality educators.

III. STANDARDS FOR ADVISORY ARBITRATION

This advisory arbitration is being conducted under AS 23.40.200(g)(1). The statute outlines certain 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 to be used in formulating an advisory arbitration award. The most universally used standards for advisory arbitration are prevailing practice, comparability, ability to pay, and ability to attract and retain (Elkouri and Elkouri, How Arbitrations works (8th ed. 2016)).

A. Prevailing Practice

Prevailing practice is the most extensively used standard in interest arbitration (Elkouri 8th ed. at 22-36). Arbitration of interests is a proximate substitute for successful bargaining. To determine a fair wage adjudication, “one of the compelling considerations must be what has happened in free and successful collective bargaining” (Elkouri 8th ed., at 22-36). Since the parties’ negotiated agreement expired, three education associations and education entities have successfully reached agreement. Those are the Anchorage Education Association and the

Anchorage School District, the Ketchikan Education Association and the Ketchikan Gateway Borough School District, and the Teachers' Education Association - Mount Edgecumbe and the Mount Edgecumbe High School. Mount Edgecumbe High School is a public boarding school operated by the Alaska Department of Education and Early Development. By Alaska Statute, Mt. Edgecumbe High School is a special school established under AS 14.16.010, funded separately from other Alaskan school district whose employees are state employees[2]. As a state entity with highly unique circumstances, Mt. Edgecumbe High School is dissimilar from the KPBSD and other Alaska school districts. The agreements ratified by the other education associations and boards of education are introduced as Association Exhibit 9 and Association Exhibit 10 and demonstrate the agreements reached by free and successful collective bargaining in the education industry in the state of Alaska. These agreements outline the prevailing practice around this dispute.

B. <u>Comparability</u>

Another 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. (Elkouri and Elkouri *How Arbitration Works* 5th ed., at 1109.) In the present dispute, the teacher salaries and benefits in KPBSD may be compared with other comparable large school districts in Alaska. The Associations and the District agree on the comparable school districts. They are the Matanuska Susitna Borough School District (Mat-Su or MSBSD), the Anchorage School District (Anchorage or ASD), the Juneau School District (Juneau or JSD), and the Fairbanks North Star Borough School District (Fairbanks or FNSBSD).

[2] State law on special schools is Alaska Statute 14.16.010 - 14.16.200

The Associations bargaining teams did not include Juneau in their research. The exclusion was unintentional. As Juneau is not on the road system it is different than the other four school districts however the Associations do not contest including it as a comparable school district. Association Exhibit 25 and District Exhibit 47 demonstrate the differences in salary between these comparable districts and KPBSD. District Exhibit 2 through 39 illustrate the differences between the comparable Districts' health insurance benefits and employer cost. Association Exhibit 25 contains the differences in employee costs. The pay and benefits of the Mat-Su, Anchorage, Juneau, and Fairbanks school districts should define the comparability standard for this dispute.

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. (Elkouri 8th ed., at 22-68.) In applying the ability-to-pay standard, arbitrators have asserted an obligation on the public employer to make an added effort to obtain additional funds to finance the proposed improvements. (Elkouri 8th ed., at 22-70.)

During the hearing, the District argued that KPBSD's ability to pay was constrained by the Alaska governor's proposed budget. The Associations aver that political speculation on education funding has not been a reliable predictor of actual funding shown by KPBSD's 2015 News Release on the budget proposed by the Senate Finance Committee and the then governor (Ass'n Ex. 13) which did not accurately predict the increase in actual funding for that year (Ass'n Ex. 14). Standards for the dispute of interests should be based on facts and evidence. In

City of *North Las Vegas,* Nevada, 75 LA 784, 789 Arbitrator James Anderson Sullivan wrote that "anticipated, but not yet appropriated, certain or guaranteed" revenue or cuts to revenue could not be considered in determining the public sector employer's financial ability to pay the full increases demanded by the union[3] (Elkouri 8th ed., at 22-68 footnote 337). Association and District exhibits will demonstrate KPBSD's ability to pay for the Association proposals.

D. Ability to Attract and Retain

The ability to attract and retain is a standard often used in public sector cases. (Elkouri 5th ed., 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. (Elkouri 5th ed., at 1142.)

E. Other Applicable Standards

Alaska statute 23.40.200(g)(1). does not define explicit standards for interest arbitrations. The above standards are outlined as they are particularly relevant to the dispute at hand. This list is not exhaustive. Other conventional standards used by arbitrators adjudicating interest disputes may be discussed as they become relevant. These will be presented for each issue after the four standards above.

IV. ISSUES PRESENTED

The order of the issues presented in this brief begins with the joint issues of health insurance, followed by salary, followed by personal leave and then duration. These issues are presented for both KPEA and KPESA. The remaining KPEA exclusive sections will be

[3] *North Las Vegas, City of, International Brotherhood of Teamsters and Local 14 1980 WL 607120 September 30, 1980*

presented in numerical order. Concluding with the remaining KPESA exclusive articles in numerical order.

<u>A. Standards Applied to Health Insurance</u>

Based on KPEA and KPESA's testimony and exhibits presented at the hearing, the Arbitrator should determine that the standards outlined above support the Associations' health insurance proposal. The Association's proposal eliminates the health care cap and divides health care expenditures with 85% of costs paid by the employer and 15% of costs paid by the employees.

I. Prevailing Practice

The agreements reached by Anchorage School District and Ketchikan Gateway Borough School District show a prevailing practice of education employers increasing the employer health insurance contributions. When this standard is applied to health insurance it supports the Associations' proposal. Successful collective bargaining in this industry in this state reduced the employee health insurance contribution.

What is the prevailing practice on health insurance? The Ketchikan Gateway Borough School District and Anchorage School District agreements are Association Exhibits 9 and 10. The Anchorage School District agreed to increase the monthly contribution amount to $1,695 monthly per eligible member (Ass'n Ex. 9 page 19). ASD contributes this amount regardless of which Public Education Health Trust (PEHT) health plan the employee enrolls in. This contribution is an increase of $50 per month per employee. In the previous agreement, ASD contributed $1,645 per month per eligible employee. In addition to the increased monthly contribution, ASD made a large one time payment towards reducing employee health insurance premiums. The Anchorage Education Association (AEA) manages a reserve account that ASD pays into. This reserve account is used by AEA to reduce employees' insurance costs. In January 2019 ASD deposited $1.9 million to that reserve account (Ass'n Ex. 9 pg. 2 and pg. 19). In the current environment, ASD was able to agree to a large one-time health insurance contribution and increased ongoing contributions.

The Ketchikan Gateway Borough School District's successful negotiations has a similar increase in the employer health insurance contribution. Ketchikan operates a self-insurance health plan and caps employee monthly premiums. Costs beyond the employee cap are paid for by the school district. As a result of successful negotiations, Ketchikan Gateway Borough School District and the Ketchikan Education Association agreed to reduce the employee monthly premiums by nearly half. The monthly premium cap for a single employee was reduced from $235 per month to $110 per month. The monthly premium cap for an employee and spouse was reduced from $377 per month to $181 per month. The monthly premium cap for an employee and family was reduced from $589 per month to $287 per month (Ass'n Ex. 10). The agreement capped employee payments as either 10% of total costs or the premium amounts above, whichever is less (Ass'n Ex. 10, pg 4). The successful agreement takes ambitious measures to contain employee health insurance costs.

The prevailing practice supports the Associations' health insurance proposal. School districts in the state of Alaska are agreeing to increases their employer health insurance contribution. Larger increases than the Kenai Associations' proposal. According to the KPBSD cost estimate in Association Exhibit 11, the health insurance proposal would cost KPBSD $1,513,271 for FY19. Ketchikan reduced their employee contribution by approximately 50%, the

Kenai Associations are proposing reducing the employee contribution by an estimated 36%. The Associations' proposals are consistent with the prevailing practice in the education industry in the state of Alaska.

II. Comparability

KPBSD has higher employee health insurance contributions and greater pricing uncertainty than comparable school districts. The Associations proposals attempt to remedy these issues and makes KPBSD's health insurance more similar to the comparable school districts.

The Associations' health insurance proposal lowers employee costs to a level similar to other comparable school districts. For the traditional health care plan, KPBSD employees pay more than employees in the other districts. KPBSD employees pay $6,146.28 annually for the traditional copay plan while Anchorage school district employees pay $4,256.40 annually for a traditional copay plan, Mat-Su school district employees pay $3,367.00 annually for a traditional copay plan, and Fairbanks school district employees pay $4,365.02 annually for a traditional copay plan (Ass'n exhibit 25). These traditional co-pay plans are substantially similar to one another in terms of benefits (District Exhibits 4-35). They are very different in terms of employee costs. Using the FY18 figures provided by HCPC member Anne McCabe, eliminating the health care cap would reduce total employee contributions from $3,664,430.50 to $2,531,579 (Ass'n Ex. 7) This is approximately a 36% reduction in employee contributions. Applying that 36% reduction to the annual costs above, would lower the annual employee contribution for a traditional copay plan to a value consistent with comparable school districts $3,933.62.

KPBSD health care contributions are less predictable and less stable than comparable school districts. Because KPBSD is a self-insured health plan, monthly health insurance contributions are different than comparable school districts which purchase insurance coverage through a provider. KPEA President David Brighton stated at hearing that the comparable school districts of Anchorage, Mat-su, and Juneau purchase health insurance through the Public Education Health Trust. Matt Fischer explained at hearing that these districts pay a fixed rate for the year. Self-insured health plans do not use an annual rate. Monthly contributions are based on actual health plan costs. The HCPC sets rates based on available claims date predicting actual costs expenditures. The HCPC sets different rates for the traditional plan and the high deductible health plan.

Employees in comparable school districts enjoy more predictable health insurance contributions than employees working in KPBSD. As described above, those districts which purchase health insurance plans from the PEHT have a fixed annual rate for the year. KPBSD's self-insured health plan rates are predictions of actual expenses. If the predicted rate is insufficient to cover actual expenses, the rate is changed midyear. Employees have no way of knowing how rates may be changed. Because employee monthly insurance contributions have reached the cap, unexpected cost increases are divided between employees and the employer equally. So a mid-year adjustment, like the one which occurred after the August 2018 special enrollment period, disrupts employee take home pay. When the August 2018 special enrollment period was announced, employees were told the HDHP would cost $2,736 for the year (Ass'n Ex. 6, pg 1). Employees who chose to enroll in the HDHP made their decision and adjusted their household budget based on this information. Immediately following the special enrollment period the HDHP rate was changed to $3,696 for the year (Ass'n Ex. 6, pg 5). Mid-year adjustments such as this do not occur in the comparable school districts of Anchorage, Mat-Su, or Juneau. The Associations proposals on health insurance would divide costs in a more predictable matter for employees creating stability in the employee health insurance contribution like that in other school districts.

III. Ability to Pay

KPBSD is able to pay for the Associations' health insurance proposal according to KPBSD's cost estimates and supporting health care documents.

Since negotiations began, KPBSD has already realized $1,246,620 in cost reductions related to benefits. In August 2018, prompted by high monthly insurance contributions, KPBSD opened a special enrollment period. KPBSD employees were presented with Association Exhibit 6 explaining the special enrollment period. During this period employees on the traditional plan could enroll in the HDHP. As testified to by Matt Fischer during the hearing, employees were offered a misleadingly low rate for the HDHP. KPBSD did not tell employees that rate was subject to change. 447 employees opted to switch from the traditional plan to the HDHP (A-8 pg 2). This reduced KPBSD's health insurance expenditure by $1,246,620 (Ass'n Ex. 8 pg 4). After the special enrollment period, the monthly rate of the HDHP increased from $2,736 annually to $3,696 annually (Ass'n Ex.6). While KPBSD enjoyed a large $1.2 million cost reduction, employees saw their costs increasing. At the January 14th board of education work session that $1.2 million was moved out of the benefits expenditure rather than apply it towards reducing employee healthcare expenses.

It is important to understand the difference between health care contributions and health care obligations. From Matt Fischer and Elizabeth Hayes testimonies, Contributions are the amount paid into the health care plan to cover actual costs. Health care obligations are the actual costs. Costs are divided by plan. So HDHP contributions pay HDHP obligations and Traditional plan contributions pay traditional plan obligations. KPBSD's budgeted amount to spend on healthcare is the amount the employer contribution (District Exhibit 41). It does not reflect the difference between contributions and obligations. Liz Hayes spoke to this difference using District exhibit 41 the Health Care Program Committee Documents as of January 31, 2019. Pages 4 through 6 of District exhibit 41 cover this difference. In FY19, the employer share of the monthly HDHP contribution is $1770.47. In FY19, the monthly cost per employee on the HDHP to the employer is $949.19. So KPBSD contributes to the plan $1770.47 per month per employee for the HDHP while the plan spends $949.19 per month per employee for the HDHP. The difference is retained by KPBSD. While contributions have increased for both the employer and the employee, the health care plan spends $1054.66 less per employee on the HDHP than what is contributed per employee on the HDHP.

That difference between contributions and obligations creates savings for KPBSD only with employees on the HDHP. KPBSD does not save money if employees enroll in the traditional plan. District exhibit 41 shows that the monthly total contribution, both the employee and employer share for the traditional plan, of $2,421.49 is less than the total monthly obligation for the traditional plan of $2,641.49. KPBSD retains no savings with employees on the traditional plan. The difference can be seen in District Exhibit 41 page 6 as the different *Current Variance* between the two plans. This distinction between contributions and obligations sets apart the traditional plan and HDHP. These savings incentivizes KPBSD to move as many employees as possible from the traditional plan to the HDHP. The special enrollment period and the ongoing savings due to a larger number of employees enrolling in the HDHP gives KPBSD the ability to pay for the associations proposals.

Further health insurance cost savings are available to KPBSD which would bolster their ability to pay for the Associations proposals. Matt Fischer, chair of the HCPC, testified to the potential cost savings available through negotiations with the local Kenai Peninsula Hospital. KPBSD receives a twenty-five percent (25%) discount, equivalent to that of a cash customer, at the Kenai Peninsula Hospital. Despite urging from the Health Care Program Committee, the KPBSD Health Plan Administrator has not taken reasonable steps to renegotiate with the Kenai Peninsula Hospital. Mr. Fischer offered as a comparison the Alaska Regional Hospital in Anchorage. Kenai Peninsula Hospital is a nonprofit organization owned by the Kenai Peninsula Borough which pays no property tax. Unlike Alaska Regional Hospital which is a for profit organization, privately owned, paying the relevant taxes. Alaska Regional Hospital offers the KPBSD health insurance plan a sixty percent (60%) discount. Renegotiations with the Kenai Peninsula Hospital is an example of cost savings KPBSD could pursue to pay for the Associations' proposal.

IV. Ability to Attract and Retain

The high employee health insurance contributions have created serious hardships on employees affecting KPBSD's ability to attract and retain. KPEA President David Brighton and KPESA President Rachel Sinclair testified to the widely felt concerns employees have over the high health insurance premiums. Because of their positions, many employees across KPBSD share their concerns with President Brighton and President Sinclair. The high employee contributions are felt most acutely by support staff as they are the lowest paid employees in

KPBSD. Some employees, such as paraeducator Victoria Blakeslee, are now in a position where because of the high deductible and high monthly contributions they are now unable to afford health care for them and their families. President Sinclair explained that before the special enrollment period, many support staff personnel were considering resigning from KPBSD because they were unable to afford the high monthly premium. There has been no corresponding pay increases to balance increasing health care costs, so employees take home pay has steadily decreased. Employees are unsure if they can afford to work in KPBSD. This is clearly demonstrated by the resignation letter by Darcy Mueller (Ass'n Ex. 24). Ms. Mueller taught in the District for nine years, resigning from her position because health insurance has become unaffordable. Action needs to be taken to address employee health insurance contributions. KPBSD's ability to attract and retain teachers and support staff has been critically affected by the high employee health insurance premium.

The Associations' health insurance proposal should be incorporated into the Arbitrator's award. Eliminating the health care cap lowers the employee contributions. By containing costs for employees, KPBSD will be better able to attract new employees and retain current employees.

If employee health insurance costs are not meaningfully addressed now, the situation may become dire. Health insurance costs increase by an estimated ten percent (10%) each year (M. Fischer testimony). Anne McCabe, health care program committee member, testified to expected changes in the KPBSD self-insured health care plan's stop loss coverage. Ms. McCabe explained how when the stop loss carrier's current contract expires, they would be able to individually exclude particular high cost users. Association Exhibit 7 page 4 is the KPBSD stop loss report.

This shows the expenses the plan pays for its highest cost users and the reimbursement KPBSD receives from the stop loss carrier. If even one of these high cost users is excluded from stop loss coverage then the costs of the plan will significantly increase. Half of that increase will fall on employees. Without immediate action the expected increase in health insurance costs would critically affect KPBSD's ability to attract and retain employees.

B. Standards Applied to Pay Increases

KPEA and KPESA's proposals both include a three year agreement wherein their salary schedule would be increased each year. The 2018-19 school year salary schedule would be increased half of one percent (0.5%) over the 2017-18 salary schedule. The 2019-20 salary schedule would be increased by one percent (1.0%) over the 2018-19 salary schedule. The 2020-2021 salary schedule would be increased by two percent (2.0%) over the 2019-20 salary schedule (Association Ex 2). The Associations' proposals are fair even by the KPBSD cost estimates in exhibit A-11 under the standards for interest arbitration.

I. Prevailing Practice

The Anchorage and Ketchikan agreements are similar to the Associations' proposals with annual pay increases each year. On pay increase, the Anchorage agreement includes an additional step increase retroactive to July 1, 2018, two percent (2.0%) increase to the salary schedule in the 2019-20 school year, and a two percent (2.0%) increase to the salary schedule in the 2020-21 school year (Ass'n Ex. 9 pg 1-2). For employees on the lower end of the salary schedule the additional step is approximately a two and one half percent increase (2.5%) and for employees on the higher end of the salary schedule the additional step is approximately a one and one half percent (1.5%) increase (Ass'n Ex 9 pg 4). Using the Anchorage salary schedule in

Association Exhibit 9 page 4, the additional step calculates to an average pay increase of two percent (2.0%) for employees. The Ketchikan agreement includes pay increases of two percent (2.0%) to the salary schedule for the 2017-18 school year, another two percent (2.0%) increase for the 2018-19 school year, and a two percent (2.0%) increase for the 2019-20 school year (Ass'n Ex. 10 pg. 3). The current prevailing practice on pay increases for educational entities in the state of Alaska is a two percent (2.0%) increase each year.

The Anchorage School District and the Ketchikan Gateway Borough School District face the same fiscal unpredictability as KPBSD. Dave Jones, Assistant Superintendent for Instructional Support, testified to the two primary sources of revenue for school districts in Alaska, state funding and local funding. These districts have the same constraints and revenue sources as KPBSD yet they were able to agree to these pay increases. The Ketchikan Gateway Borough School District board of education unanimously ratified the pay increases understanding it would require additional funding from their local borough (Ass'n Ex 10 pg 1-2).

Successful collective bargains are agreeing to richer pay increases than the Associations' proposals. Cumulatively, the Ketchikan Agreement represents more than a six percent increase over three years. Cumulatively, the Kenai Associations proposals are an increase of three and one half percent (3.5%) over three years. This modest increase is fair under the prevailing practice standard and should be incorporated into the Arbitrator's award.

II. Comparability

Teacher salaries in KPBSD should be commensurate with teacher salaries in comparable districts. As noted previously, for purposes of comparability the appropriate school districts are the four other Alaska large school districts. When considering comparability, the District's argument misses the point. Matching a cell on the Kenai salary schedule with the same cell from any of the four other districts does not accurately capture the lived experiences of employees because it does not represent the actual take home pay of an employee over the course of his/her career in the community where they live.

When including the continually increasing health insurance contribution, Kenai teachers take home pay is far less than the comparable school districts. Teachers in KPBSD on a traditional copay plan pay more for their employee health insurance premium than teachers in comparable school districts (Ass'n Ex. 25 pg 1). KPBSD teachers pay $1781.26 more annually than teachers in FNSBSD, $1889.88 more annually than teachers in ASD, and $2779.28 more annually than teachers in MSBSD (Ass'n Ex.25). This is not included in the District's direct comparisons of cells in the KPBSD salary schedule and cells in the comparable school district salary schedules (District Exhibit 47 pg 1). When including the employee health insurance premium, KPBSD teachers take home less pay than any comparable school district.

The discrepancy is made more evident when comparing a teacher's lifetime earnings. Making the assumption that a teacher will move across columns on a salary schedule every three years, KPEA Bargaining Chair Jesse Bjorkman calculated the lifetime financial loss to a Kenai teacher in comparison to a teacher in the other four comparable districts (Ass'n Ex. 25). Over a 5 year, 10 year, or 20 year career, a KPBSD teacher would earn significantly less in total salary than a teacher at a comparable school district. Comparing KPBSD with the geographically closest comparable school district, ASD, a Kenai teacher with a bachelor's degree would earn $13,784 less over a five year career than a similarly situated Anchorage teacher. Over a ten year career a Kenai teacher would earn $20,091 less in total salary than similarly situated Anchorage teacher. This pattern holds across all of the comparable school districts. Even with the Association's modest salary increases, this difference will not be recouped. The Association's salary increases do more to keep KPBSD comparable to other large school districts than the District's proposed no change to the salary schedule.

Cost of living varies across the comparable large Alaska school districts. This is recognized in the state funding formula. District Exhibit 46.3 page 2 of 4 includes the District Cost Factor. The Alaska Department of Education and Early Development uses this multiplier to adjust education funding based on cost of living differences. More remote and expensive areas have a higher District Cost Factor. Anchorage is used as the baseline cost factor of 1.000. Of the comparable large school districts, KPBSD has the highest District Cost Factor of 1.171. Alaska Department of Education and Early Development recognizes the higher cost of doing business on the Kenai Peninsula. So they increase funding to KPBSD accordingly. No similar adjustment is made for employee salaries recognizing the higher cost of living.

This holistic comparison demonstrates the difference between KPBSD salaries and comparable school districts. The comparison is more than the numbers of the salary schedule. Kenai teachers over the course of their career take home less pay and pay more to live in the district than teachers in comparable school districts. The standard of comparability supports the Associations' proposed salary increase.

III. Ability to Pay

KPBSD has access to a variety of revenue to pay for the Associations' proposals. Dave Jones testified on a rebate KPBSD received from the Public Employee Retirement System (PERS) and the Teacher Retirement System (TRS). This revenue, which according to Mr. Jones exceeded seven hundred thousand dollars ($700,000) was not part of the original budget for FY19. In addition to the PERS and TRS rebate KPBSD received additional funding from the state of Alaska for FY19 and FY20. Slide 10 of District Exhibit 46 shows the $1,398,898 KBPSD received for FY19 and the $2,100,012 KPBSD would receive for FY20. These revenue sources could be applied to the Associations proposals.

Beyond this revenue from state sources, additional funding could be sought from local revenue sources. The Kenai Peninsula Borough funding amounts is limited by Alaska statute, establishing a minimum and maximum local contribution. In FY19 The Kenai Peninsula Borough could increase their contribution by an additional $2,057,761. Some neutrals assert an obligation of public employers to make added efforts to obtain additional funds to finance improved terms of employment (Elkouri and Elkouri, 8th Ed. 22-70). The entire burden of KBPSD's budget deficit cannot be placed on the employees. For the last five years KPBSD has made budget reductions affecting employees. District Exhibit 46 outlines the cuts KPBSD has made in the recent years. These include in FY17 the elimination of 12.15 full time equivalent teaching positions and in FY18 reducing support staff by eliminating English Language Learner tutors and reducing custodial positions and hours.

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." (Elkouri and Elkouri, 5th Ed. at 1143.) When considered with the other standards of interest arbitration, the District has the ability to pay for the Association's proposed salary increases.

IV. Ability to Attract and Retain

While the District claims that it has a world class district and the lowest pupil teacher ratios, it is clear that its employees are not high on the District's priority list. This emerged when KPBSD requested additional funding from the Kenai Peninsula Borough. President Brighton testified to how KPBSD told the Kenai Peninsula Borough that the additional funding would go towards building security vestibules. It would not go toward paying their employees. Midst collective bargaining while employees are struggling to pay their insurance contribution, KPBSD wanted to spend additional funding on construction projects. Increasing salary and wages would communicate employees that they are a priority for KPBSD, improving the District's ability to attract and retain quality educators. Based on the above four factors, the Arbitrator should adopt the Associations' proposals.

C. Standards Applied to Personal Leave

Personal leave is an important benefit as it is how employees attend to issues which they are unable to attend to while working. When understood with pay and health care, the standards of interest arbitration support the Associations proposals to increase the number of personal leave employees accumulate by one day per year

I. Prevailing Practice

The Association's proposed additional personal day fits within the prevailing practice established by the Anchorage School District and the Ketchikan Gateway Borough School District. That prevailing practice is a two percent (2%) increase each year for three years. Considering the personal day as additional compensation for employees, the Associations' proposed salary increase and additional personal day would cost KBPSD less than a two percent (2%) increase each year for three years (Ass'n Ex. 12). Even by the KPBSD cost estimates for

Associations' proposed salary increase and additional personal day, the Associations' proposals are fair and reasonably by the prevailing practice standard.

II. Comparability

Personal leave for the agreed upon comparable school districts from District Exhibit 56 included below. The Anchorage School District and the Fairbanks North Star Borough School District both offer employees five (5) personal days. Among the comparable school districts, KPBSD tied for fewest number of personal leave days with MSBSD and JSD. The Associations' proposal of an additional personal leave day keeps KPBSD competitive with the comparable school districts.

District	Accrual	Cash In	Carry Over	Cash In Value
ASD	5	5	5	Per Diem
MSBSD	4	3	4	Per Diem
FBNSBSD	5	100%	11	Per Diem up to $300
KPBSD*	4	4	8	Per Diem
JSD	4	100%	10	Rate of $150 per day

*No agreement for FY 2019

III. Ability to Pay

This standard is the same as the ability to pay standard applied to salary increases.

IV. Ability to Attract and Retain

At the negotiating table, the Associations explained the value of a fifth personal day on a personal and cultural significance. Five personal days would allow an employee to take leave for one week of the school year. Many employees move to KPBSD from out of state and have obligations and commitments in those states[4]. With four days of personal leave and a weekend, an employee would spend two days traveling out of state then be able to spend two days attending to their affairs before spending two days returning. The additional personal day in this example would allow an employee five days attending to their affairs. Culturally, subsistence is uniquely important in Alaska culture. Gathering berries, harvesting fish, and moose hunting are seasonal activities which can not be postponed until the summer break. The additional personal leave day would allow employees to participate in culturally significant subsistence activities continuously for nine (9) days. Permitting greater flexibility to attend to personal business and subsistence activities benefits KPBSD's ability to attract and retain employees. Based on the above standards, the Arbitrator should adopt the Associations' proposals.

D. Standards Applied to Duration

The Associations' duration proposal should be part of the Arbitrator's award considering the standards used in interest arbitration. Alaska Statute 23.40.210 Agreement allows a public employer to reach a negotiated agreement for a term not to exceed three years. The Associations' proposals for a three year agreement were not disputed during the hearing. The District did not put forward an argument in favor of its duration proposal for a negotiated agreement effective July 1, 2018 expiring June 30, 2019. Based on KPEA and KPESA's testimony, the Arbitrator should determine that the standards outlined above weigh in favor of the Associations' duration proposal.

I. Prevailing Practice

[4] Examples could include, wedding, college visits with a high school age child, a significant birthday, etc.

The successful collective bargains concluded while KPEA/KPESA and KPBSD negotiated reached agreements covering three years (Ass'n Ex. 9, pg 33 and Ass'n Ex 10, pg 3). The Associations' duration proposals in Association Exhibit 27 match this prevailing practices.

II. Comparability

This standard is not relevant to the duration issue.

III. Ability to Pay

This standard is not relevant to the duration issue.

IV. Ability to Attract and Retain

President Brighton and President Sinclair testified to the uncertainty employees feel without a longer lasting negotiated agreement. Employees understand that collective bargaining will impact their pay, health insurance, and other benefits. When an employee decides to either remain in KPBSD or go elsewhere, uncertainty created by frequent or prolonged negotiations impacts his/her decision. Darcy Mueller cited the continual contract negotiations in her resignation as a reason why she decided to leave KPBSD (Ass'n Ex. 24). Ms. Mueller typifies this latent attitude in the District which has impacted KPBSD's ability to attract and retain employees.

Bargaining Unit Specific Issues

The remaining sections and articles that are unresolved will be addressed individually and without reference to the four standards.

KPEA Section 110 National Board Certification

This proposal is introduced as Association Exhibit 15 and was introduced during the hearing by Jesse Bjorkman. The proposal increases the compensation for employees with

National Board of Professional Teaching Standards (NBPTS) certification from two-thousand dollars ($2,000) to five-thousand dollars ($5,000). Incentivizing teachers to become National Board Certified Teachers (NBCT) encourages more KPBSD employees to pursue national certification promoting student learning. Christine Ermold spoke during the hearing about the high level of effectiveness of NBCTs. As Mr. Bjorkman explained The NBPTS certification is considered among the highest level of professional development for the teaching profession. Certification by the NBPTS is correlated with achievement in math and reading in both elementary and middle school (Ass'n Ex. 15 pg. 4). At the high school level, NBCTs were found to be significantly more effective than non-NBCT counterparts for the subjects of Algebra, Biology, Civics and Economics, Chemistry, and Geometry (Ass'n Ex. 15 pg. 4). Over the course of a school years, students of NBCTs gain one to two months of additional learning compared to their peers in other classrooms (Ass'n Ex. 15 pg. 3). To encourage KPBSD employees to pursue NBPTS certification the Association proposes increasing the compensation.

KPEA Section 340 Sick Leave

This proposal is introduced as Association Exhibit 16 and was explained during the hearing by KPEA President David Brighton. The proposal creates a cash payout option for certificated employees upon resignation after ten years of service or or upon retirement (Ass'n Ex. 16). The payout is eighty percent (80%) of the certificated subrate. Currently, teachers in the Teacher Retirement System (TRS) are divided into three tiers. Employees in tiers I and tiers II are part of a defined benefit plan and can use their sick leave to extend their service credit in the retirement system. Employees in tier III are unable to extend their service. As Mr. Brighton explained, for TRS tier III employees there is no value for sick leave upon retirement. A teacher with 15 years of service could have the equivalent of one teaching contract year in accrued sick leave. To encourage TRS tier III teachers to retire with as much sick leave accrued as possible this proposal creates a cash value for accrued sick leave upon resignation after ten years or retirement through TRS. The value is less than the certificated sub rate. This creates a cost savings for KPBSD. If a teacher uses their sick leave, KPBSD must pay for a substitute employee for that day. Should a teacher accrue their sick leave, upon resignation or retirement KPBSD would pay eighty percent (80%) of what they would have paid for a substitute employee had the sick leave day been used.

KPEA Section 475 Teacher Preparation Period

This proposal is introduced as Association Exhibit 17. Currently in KPBSD, junior high and senior high teachers receive five unassigned preparation periods per week[5] and elementary teachers receive thirty minutes of preparation per day. K-Beach Elementary teacher Bill Vedders and Mountain View Elementary teacher Kim Bates spoke to the various responsibilities elementary teachers must address during that preparation time. In addition to the intended preparation of meaningful lesson plans, teachers frequently meet with parents, attend staff meetings, prepare copies, enter grades, and communicate with parents during their preparation periods. Since the implementation of KPBSD's personalized learning initiative there is an even greater amount of work elementary teachers are expected to complete outside of their student contact time. John O'Brien explained the personalized learning initiative, notably that the amount of curriculum provided to teachers is less than before the initiative and teachers are now

[5] The minutes per day figure varies by school but typically this is around sixty minutes per day.

expected to produce more of their own curriculum. The current thirty minutes per day is insufficient for elementary teachers to meet these added duties within their contract day.

Teacher preparation time has clear implications for student learning. Mr. Vedders and Ms. Bates testified to the strong direct relationship between teacher preparation and student learning. Granting additional preparation time to elementary teachers would lead to greater student outcomes.

A disparity exists between elementary teachers in KPBSD and junior high and senior high teachers. Elementary teachers have significantly less preparation time than teachers at other grade levels. Further, elementary teachers instruct on all subject matters.Elementary teachers are expected to prepare meaningful lesson plans on mathematics, science, english, and social studies within their thirty minute preparation period. Junior high and senior high teachers typically instruct specific subject matters and enjoy more time to prepare for that subject matter. To relieve this internal disparity, the arbitrator should incorporate the Association's proposal into the award.

Human Resources Director Dr. Christine Ermold raised the issue that this proposal requires hiring additional personnel specifically at small worksites. The example of K-Beach Elementary contravenes this issue. This year, the building administrator at K-Beach Elementary was able to offer teachers forty (40) minute preparation periods each day without hiring additional personnel. By restructuring duties and special subjects[6] K-Beach Elementary has been able to implement a practice substantially similar to the Association's proposal. Dr. Ermold during the hearing brought up implementation of the Association's preparation period proposal at small worksites with one or two certificated teachers. This issue does not apply and raises doubts

[6] Special subjects include music, art, physical education.

to the KPBSD cost estimate of the proposal. Section 475 of the KPEA Negotiated Agreement already has language addressing this. It reads "Elementary and secondary schools staffed with six (6) or fewer certificated teachers are exempt from the above standards" (Joint Exhibit 1 pg 34).

Because of the increased responsibilities personalized learning has placed on elementary teachers and the internal disparity between elementary teachers and teachers of other grade levels, the Arbitrator should incorporate the Association's proposal into the decision.

KPESA Article 10 Work Rules

This proposal as President Sinclair outlined in her testimony makes three changes to the negotiated agreement. Paragraph (N) <u>Lunch Break</u> is changed to allow employees with approval from their building administrator to elect to take their duty free lunch at the last thirty minutes of their work shift. Paragraph (P) <u>Pay Warrants</u> is changed to so that pay checks are issued twice per month and employees have an option of allowing enrolling in annualized pay.

On Paragraph (N), President Sinclair spoke to the impact this proposal would have on student nutrition personnel. The proposal captures a previous practice in KPBSD. Student nutrition personnel serve students midway through their shift (Ass'n Ex. 28). So they would arrange with their building administrator alternative times to take their meal break. In Fall 2017 the current student nutrition director ended that practice. This has had calamitous consequences for student nutrition. President Sinclair and Kitchen Manager Marilee Johansen testified to how ineffective the kitchens would operate if student nutrition personnel stopped their work midway through their shift to take a duty free lunch. Students would have to wait for service while the employee sat idly. Unsurprisingly this is not acceptable to dedicated student nutrition personnel.

So employees like President Sinclair, Ms. Johansen, and others work through their duty free lunch and serve the students.

Changing the lunch break language has no explicit cost to KPBSD and does not diminish KPBSD's ability to supervise its employees. Employees are entitled to an unpaid duty free lunch under the negotiated agreement (Joint Exhibit 2 page 12). If employees are electing to work through their duty free lunch, KPBSD is enjoying additional work performed with no cost.

This proposal changes Paragraph (P) Pay Warrants to support staff employees are paid twice per month and can enroll in annualized pay as an option. President Sinclair spoke to the difficulties and the unique hardships support staff employees face as the lowest income earners in KPBSD. Many support staff in the district live paycheck to paycheck each month. So in the event of an unexpected expenses, employees do not have income to address that until the beginning of the next month. Pay every two weeks is conventional among other employes and would be a meaningful lifestyle improvement for KPBSD support staff.

Annualized pay is another adjustment in payroll practices which would make a meaningful impact on support staff employees. Annualized pay was a practice in KPBSD until 2003 (Ass'n Ex. 18 pg 8). The practice was ended because Melody Douglas', then Chief Financial Officer of KPBSD, interpretation of Alaska Statute 39.35.160 - 170 and Alaska Statute 39.35.270. The Association disagrees with that interpretation of Alaska Statute and shared that with KPBSD at the time. The relevant statute is included in Association Exhibit 18. The supporting memorandums suggest that KPBSD agreed with the Association's interpretation that the statute does not forbid annualized pay. In 2005 KPBSD and KPESA reached an agreement that annualized pay would return as an option when KPBSD replaced its payroll software (Ass'n

Ex. 18 pg 12). That payroll software has since been changed to more modern technology. Yet this commitment to offer the annualized pay option has not manifested. As Stephanie Bohrnsen testified, the current payroll software would be able to administer annualized pay. The Arbitrator should hold KPBSD to its commitment and include the annualized pay option in the award.

KPBSD has argued that annualized pay and twice monthly pay would require hiring additional payroll personnel and working with the software developers to rebuild the backend of the payroll software. This argument is at best tenuous. Elizabeth Hayes testified that the payroll department had fewer staff while administering the 12 month pay option.

KPESA Article 12 Resignation

This proposal is introduced as Association Exhibit 19 and was explained during the hearing by KPESA President Rachel Sinclair and Head Secretary Stephanie Bohrnsen. The proposal is similar to the KPEA proposal in Section 340 of the KPEA negotiated agreement. Currently support staff employees are paid sixty-seven percent (67%) of his/her normal hourly rate for unused sick leave upon retirement or resignation after twenty years of service. The Association's proposal would reduce this threshold to fifteen years and raise the amount paid after twenty years to seventy-five percent (75%). Increasing the value of accrued sick leave encourages employees to retire with as much accrued sick leave as possible. Ms. Bohrnsen spoke to the difficulties of finding adequate substitutes for specific support staff job classifications. By incentivizing employees to use fewer sick leave days, the Association hopes to alleviate this shortage of substitutes.

KPESA Article 17 Payment Conditions

This proposal is introduced as Association Exhibit 20 and was explained during the hearing by Rachel Sinclair. The proposal has two parts. It increases the shift differential paid to employees creates a new longevity step for employees who have reached the highest step of the salary schedule.

Currently the shift differential paid to employees working the swing shift (3:00 PM -11:30 PM) is twenty-five cents ($0.25) per hour and the shift differential paid to employees working the graveyard shift (11:30 PM - 8:00 AM) is forty cents ($0.40) per hour (Joint Exhibit 2 pg 20). During negotiations, the Association argued that because the shift differential was established in 2002, and since has only been raised by five cents ($0.05) in 2006, it should be increased to fifty cents ($0.50) per hour for the swing and seventy-five cents ($0.75) per hour for the graveyard shift. Annual inflation has decreased the real value of the shift differential diminishing its efficacy. In theory a shift differential compensates employees for the hardships they experience working nonconventional shifts. As President Sinclair spoke to, employees rearrange their entire lives when working graveyard shift. A 2009 paper published by the Italian Department of Occupational Health found that shift work is “not only a risk factor for many health disorders (e.g gastrointestinal,psychoneurotic, cardiovascular, reproductive functions and probably cancer), but it also perturbs psycho-physical homeostasis (e.g. sleep/wake cycle and circadian rhythms) and hampers family and social life.” (Ass’n Ex. 20 pg 14) . To fairly compensate those employees for the health risks and personal hardship, the Associations propose increasing the shift differential.

KPBSD pays a lower shift differential than comparable school districts. The Anchorage School District pays forty cents ($0.40) per hour for swing shift employees and fifty cents

($0.50) per hour for night shift employees. Mat-Su pays an additional seventy-five cents ($0.75) per hour for employees working non-conventional shifts. Fairbanks pays sixty cents ($0.60) per hour to employees whose shifts start after 1:00 PM (Ass'n Ex. 25 pg. 2). The Association's proposal raises the KPBSD shift differential to be closer to comparable school districts. External comparisons supports the Association's proposal.

The proposal introduces a longevity step for employees at the highest step of the salary schedule. This would be a one and one half percent (1.5%) increase to their salary. The proposal addresses two issues: the declining purchasing power of KPBSD's most senior employees and a parity issue between the certificated employees and the classified employees. Employees who reach column H of the KPESA salary schedule do not receive further step increases. Stephanie Bohrnsen, a Head Secretary at Soldotna High School, is emblematic of such an employee. Without step increases, Ms. Bornrsen's purchasing power diminishes each year due to annual inflation and increasing health insurance costs. Association exhibit 26 shows how employee health insurance premiums have increased over the last ten years. The employee monthly premium for the traditional plan increased from $213..89 per month in 2009 to $682.91 per month in 2019. This proposal remedies that decreasing purchasing power. A large number of KPBSD support staff find themselves in Ms. Bohrnsen's situation. Of the 458.02 full time equivalent support staff positions, 168.30 full time equivalent positions are at the final column of the salary schedule (Ass'n Ex. 23 pg 3). The mathematical mode on the 2017-18 classified scattergram is column H with more than one third of support staff in KPBSD have reached the highest step of the certificated salary schedule.

This proposal helps produce parity between certificated and classified staff. Similar language already exists in the KPEA negotiated agreement in Section 110 Salary Condition Paragraph F (Joint Ex. 1, page 4). That language grants employees who have reached the top of the KPEA salary schedule, a payment equal to one and one half percent (1.5%) of their salary. Support staff employees reach that earning ceiling faster than teaching staff as KPESA's salary schedule has 8 steps (Joint Ex. 2), KPEA's salary schedule has 20 steps (Joint Ex. 1). To create parity between the two bargaining units, the arbitrator should incorporate this proposal into the award.

KPESA Article 21 Association Leave

This proposal is introduced as Association Exhibit 21 and was explained during the hearing by President Sinclair. The proposal amends Article 21 of the KPESA negotiated agreement so the KPESA is considered an employee for the administration of benefits. In 2014 KPBSD stopped payment of the wages and benefits to the KPESA President. A grievance was filed and advanced to binding arbitration. The arbitrator's decision is introduced as District Exhibit 55. In that decision, Arbitrator Whalen comments on the language of Article 21 saying "The above language is plain and straightforward in its requirements. It does not, however, specify how this language is to be administered and/or put into effect. Reimbursable release time is a common method for doing so, but the above language -- on its face -- does not require it" (D-55, pg 10) This proposal addresses the insufficient language of Article 21 by explaining how this language is to be administered.

Excluding the KPESA President from KPBSD benefits unfairly jeopardizes the effective representation of the support staff in the district. As KPESA President, Ms. Sinclair represents support staff across the vast geography of KPBSD. She is the support staff voice to the school board and is responsible for processing KPBSD support staff career development applications, timely processing of sick leave bank applications. Excluding specifically the support staff president threatens the representation of the most vulnerable employees in KBPSD. Health insurance is a primary concern for most employees. Should other support staff employees seek the office of KPESA President, they would lose their KPBSD health insurance. This creates a chilling effect hurting support staff representation in KPBSD.

Internal and external comparisons support the Associations proposal. Ms. Sinclair testified on comparable school districts. In both Mat-Su and Fairbanks, two comparable school districts whose support staff association presidents are released full time from their job responsibilities. In both of those comparable school districts, the full time release support staff president is considered an employee and participates in district benefits. External comparisons and internal comparisons support the same conclusion. The only other full time released employee in KPBSD is the KPEA President. The KPEA President is considered an employee of KPBSD, he participates in KPBSD benefits such as health insurance, and the Association reimburses the cost of those benefits. The same treatment is not extended to the support staff association.

The proposal costs nothing to KPBSD. Article 21 of the KPESA negotiated agreement currently states "should the Association choose to have .50 or more release time for the President, the Association will bear 100% of the annual benefit package for the President." KPESA would pay the entire cost of the proposal. There is no economic argument or ability to pay concern with this proposal.

During negotiations, KPBSD argued that the KPESA President is not an employee of the District so KPBSD could not admit her into the health insurance plan. This is not true. School board members are not employees of KPBSD and they are allowed to participate in the health insurance plan. Currently KPBSD pays an employer contribution for four board members participating in the health insurance plan (District Ex. 41 pg 4). According to the KPBSD website, Rachel Sinclair is considered a contract employee (Ass'n Ex 21). She is the only contract employee excluded from participating in KPBSD health insurance.

To clarify the language cited in Arbitrator Whalen's decision, this proposal should be incorporated into the Arbitrator's award. Excluding the KPESA President from health insurance diminishes the effective representation of KPBSD support staff, is inequitable compared to the treatment of the teacher association president, sets KPBSD apart as the only school district in the state of Alaska which excludes full time release support staff presidents from health insurance, and is inconsistent with the treatment of other non-employees in KPBSD. For these reasons this proposal should be part of the Arbitrator's decision.

KPESA Article 37 Extracurricular Programs

This proposal is introduced as Association Exhibit 22. As the language makes clear, this would allow support staff to volunteer for extracurricular programs and receive a nominal fee as compensation. The proposal is modeled off of KPEA Article 120 Extracurricular Programs. Currently in KPBSD, as extracurricular programs become vacant, certificated teachers within their respective building are given first opportunity to sponsor the activities, if no certified teacher within the building is hired, the position is advertised. Support staff employees are forbidden from sponsoring an extracurricular program. At the bargaining table, it was explained that this policy is because KBPSD does not want to accept the potential over time liability under the Fair Labor Standards Act. KPESA presented KPBSD the Department of Labor opinion letter FLSA2005-51 included in Association Exhibit 22 and wrote the proposal to comply with the Fair Labor Standards Act. The Fair Labor Standards Act recognizes the public benefit of volunteering and does not seek to create unnecessary obstacles to volunteer efforts for public purposes (Ass'n Ex. 22 pg 2). In the 1985 Amendments to the FLSA Congress explicitly wrote that a volunteer may receive no compensation but may be paid expenses, reasonable benefits, or a nominal fee. Sponsoring extracurriculars is not a condition of employment for support staff in KPBSD. For all job categories represented by KPESA, their services volunteering to sponsor extracurricular activities would be different from the services for which the school district employs them. So following the guidance of FLSA2005-51, the proposal explicitly establishes that sponsoring extracurricular activities are separate volunteer positions outside of the employment relationship for which the volunteer is paid a nominal fee.

KPESA wrote the proposal with KPEA. To avoid impinging on building teachers' first opportunity to sponsor extracurricular programs, KPESA wrote the proposal so that support staff in the building would receive the second opportunity to sponsor extracurricular programs.

Support staff across the District want to support students extracurricular programs. Jeff Kuk testified to the challenges he has faced as a paraeducator who wants to coach his daughters softball team. Despite an absence of policy on the subject, Mr. Kuk was forbade from coaching his daughter's team because he worked for KPBSD as support personnel. President Sinclair spoke to the benefit students would experience having coaches who work in their schools and have preexisting relationships with those students compared to hiring coaches from outside of the educational community. She also shared her knowledge of coaching practices in comparable school districts. Both the Fairbanks school district and the Mat-Su school district allow their support staff to coach without issue.

For these reasons and KPBSD's unexpected agreement at the hearing, the Associations proposal on extracurricular programs should be incorporated as part of the arbitrator's award.

V. CONCLUSION

The District has lost its competitive footing among the five large school districts. KPBSD will not attract and retain employees unless it decides its employees are an important priority. The Associations' proposals go a long way in making Kenai an attractive place to teach and work with a competitive wage. The Associations' proposals are within the District's ability to pay and the prevailing practice. For all the above reasons, the Associations respectfully request that its proposals be the recommended settlement.

DATED at Anchorage, Alaska this 1st day of April 2019.

By: ______________________

Joshua Yeh

NEA-Alaska UniServ Director