

## In the Matter of the Advisory Interest Arbitration

between Anchorage Teachers' Association, NEA-Alaska  
("Association),

and

the Anchorage School District ("District")

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Findings,  
Discussion and  
Award.

Case Numbers:	Arbitrator's case No. HA3
Representing the Association:	Debbie Omstead, UniServ Director, NEA-Alaska, 4100 Spenard Road, Anchorage, AK 99517-2901.
Representing the District:	Howard S. Trickey, Esq. And Andrena L. Stone, Esq., and Jermain, Dunnagan & Owens, P.C., 3000 A Street, Suite 300, Anchorage, AK.
Arbitrator:	Howell L. Lankford, P.O. Box 22331, Milwaukie, OR 97269-0331.
Hearing held:	In the District's offices in Anchorage, Alaska, on December 20, 21, and 22, 2006.
Witnesses for the District:	Alden Thern, Scott Goldsmith, Janet Stokesberry, Eric Tollefsen, Todd Hess, Mary Lou Boughton, Rick Volk, and Robb Boyer.
Witness for the Association:	Andrea Hardy, Michael Graham, Lou Pondolfino, Bernadette Helms, John Alcantra, Brian Shackelford, Dorena Bingham, Marian Taylor, Jim Lepley, Robert Hartley, Scott L. Shumway, Ron Zandman-Zeman, Paulette Missal, Ilona Barber, Ron Fuhrer, Sandra Graham, Paulette Hostetler, and Christine Scott.
Post-hearing argument received:	From both parties on January 26, 2007.
Date of this award:	March 5, 2007.

This is an advisory interest arbitration for a successor collective bargaining agreement beginning with the 2006-2007 contract year. This interest arbitration proceeding comes at the end of an extremely long period of unsuccessful two-party bargaining and mediation, including two Tentative Agreements (TA) which were rejected by the membership of the Association. The hearing was orderly. Each party had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case. The parties filed timely post-hearing briefs.

The District serves about 49,000 students in the greater Anchorage area. This is not a typical interest dispute. Interest disputes are usually driven by disagreement about the employer's ability to afford the compensation at issue or by disagreement about the selection and analysis of comparable employers. Although those traditional issues are certainly present in this case, they may take second place to the importance of the bargaining history between these parties, both recent and not so recent. In a nutshell, Association negotiating teams have twice tentatively agreed to a new contract at the bargaining table, and the Executive Board or membership have twice rejected those tentative agreements.

***Bargaining History.*** The recent bargaining history in this case begins in January, 2005, when the parties began negotiating a successor to the agreement which was due to expire at the end of June of that year. Those negotiations began with an extended series of two-party meetings. When those meetings failed to reach agreement, the bargainers brought in a mediator; and when he, too, failed, they went to advisory interest arbitration with Arbitrator George Lehleitner.

The Association's Board rejected the Award; and the parties exchanged last best offers. (At that point, they had technically exhausted the bargaining process and opened up the prospect of unilateral action, unilateral implementation by the District or strike by the Association.) The District's LBO was Arbitrator Lehleitner's advisory interest arbitration proposal; and the Association's was its own proposal which had been offered to and rejected by Arbitrator Lehleitner.

By this time, the existing contract had expired and the parties were operating on status quo. On June 21, 2005, the Association dismissed its bargaining team without explanation; and the new team met with District negotiators to choose a different mediator (the Association team having rejected the prior mediator). The new mediator met with the parties; and the parties then met together without the mediator; and the mediator met with the parties again and agreed on a one-year agreement for 2005-2006. That TA was accepted by both parties.

Negotiations continued, starting late in January, 2006, for the successor to that one-year agreement. After sixteen two-party sessions, the parties again tried mediation (with a different mediator); and they finally reached a new TA on May 18, 2006. The mediator called the District team the next day to inform them that the Association's Board would not accept that TA. The teams then held another bargaining session—this time with the Superintendent in attendance—and reached another TA, with terms slightly more favorable to the Association.<sup>1</sup> The School Board's condition on that offer was that the Association Board agree to submit it for vote by the membership, although the Association Board was not obliged to recommend the new TA for adoption. The membership rejected it on June 5, 2006; and the Association again dismissed its bargaining team.

It happened that the School Board and the Association Board had scheduled their annual joint dinner for the day after the June 5 vote rejecting the new TA. At that dinner, the Association's President offered a new conceptual proposal for a two-year contract which would cost the District about \$5 million more than the TA which the teachers had just rejected. The Association's new bargaining team and the District's bargaining team began with that conceptual proposal in five two-party negotiating sessions and worked out yet another TA providing for across-the-board schedule increases of 3% in each of the first two years and at least 2.75% in the third year, with monthly insurance payments of \$790 (beginning in September), \$890, and \$975. This time, the Association's Board agreed to actively support the new TA to the Association membership. Despite the Association's Board's sincere attempt, however, the teachers again rejected the TA, tried to begin a recall of the Association President, and again changed the bargaining team. And so the parties once again find themselves in advisory interest arbitration.

In addition to the *recent* bargaining history, the *extended* history of the parties' relationship haunts these negotiations. In brief, during the period from 1997 through 2000 the District fell on economic hard times, based largely on the State's penurious funding of K-12 education over that period. During that entire period, there was no increase in the teacher salary schedule at all; steps were allowed in only a single year; and even educational lane movement was sometimes prohibited. On top of that, the teachers were required to bear substantially greater out of pocket costs for health insurance. Hard times indeed. But, as the District points out, about 58% of the current members of the bargaining unit have been hired since 2000.

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1. The revision cost about \$2 million more, mostly for increases in planning time.

There is no dispute that the parties then agreed that the salary schedule was too expensive to operate dependably year in and year out. The index—the top divided by the bottom—of the schedule is still very large; but after their late 90's experience, the parties agreed to address the problem of schedule movement cost by adding steps to the schedule (although maintaining its unusually large overall index), so that step movement became less expensive for the District. The flip side of that coin, of course, was that the value of each step was reduced for the teachers. In 1999, a step brought the teacher at least \$1,446 (and as much as \$1,735); and the new schedule reduced that amount to \$1,059. As the District is quick to point out, the new schedule has proven affordable, just as the parties hoped; and there has been step movement, lane movement, and a general schedule increase every year since its adoption, with a double step in 2002 in partial recognition of the impact of the past freezes.<sup>2</sup>

***General positions of the parties.*** This case includes a whole list of disputes; but the District's overall proposal is the three-year TA which the Association's bargaining team and Board tentatively approved and the Association membership rejected. The economic core of that proposal is a 3% across-the-board increase in the salary schedule in each of the first two years of the new contract with at least a 2.75% increase in the third year. The economic core of the Association's proposal would limit the new contract to two years (in the interest of economic uncertainty), would eliminate the bottom step from the schedule each year, and would accelerate teachers up the schedule by giving them a second step each year. (There would be "in-lieu-of" bonuses for teachers ineligible for further steps or lane changes; the District proposes somewhat less extensive in-lieu-of step bonuses.) Turning to the other part of the economic core, the parties agree on flat-dollar insurance benefits from the District in each year of the contract—\$790 per month in the first year and \$890 per month in the second—but the Association would hasten the increase to that \$790 figure in the first year, making it effective in July, rather than in September. Together with several other proposed additions, the additional first-year cost of the Association's proposal seems to be around \$6 million, with additional, and somewhat greater, second-year increases.<sup>3</sup> The

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2. Entry salary was \$30,079 in 1997 and is \$36,342 in 2005, a 21% increase over those eight years, or about 2.6% increase per year on average. At the top, the entry salary in 1997 was \$59,255, and that top increased to \$68,774 in 2005, an average increase of about 16%, or about 2% per year.

3. There is a joker in the deck with respect to second year cost estimates due to the Association's proposed "windfall" language for the second year of the contract and the  
(continued...)

District estimates the total *three year* cost of its own proposal at about \$48 million and argues that the total *two year* cost of the Association's proposal would be about \$44.7 million.

***Factors in Interest Arbitration.*** The parties here agree that the appropriate factors to be considered are comparability, changes in the cost of living, recruitment and retention, and the District's ability to pay (or to afford) the additional costs of the Association's proposal. I will begin with a consideration of each of those factors applied to the economic core issues, will then turn to a brief consideration of each of the subsidiary issues in turn, and will end with the overall conclusions and recommendations for the resolution of this dispute.

***Comparability.*** The parties agree that the appropriate comparables are Alaska's four other largest school districts, Mat-Su, Kenai, Juneau and Fairbanks. But I must agree with the Association's claim that Mat-Su deserves special attention among that group of four. Palmer, Alaska, the heart of the Mat-Su School District, is not much more than an hour's drive away from Anchorage, even in moderately nasty weather. The Mat-Su district covers Alaska's fastest growing residential area; and that district necessarily exhibits a proportional appetite for teachers out of the same extended labor market. As the Association points out, the salary schedule shortfall since 2000, compared to Mat-Su, ranges from \$1,300 to \$3,300 (at various points on those respective schedules).

Here are the overall rankings of comparable school districts. At the base of the schedule, Anchorage is not quite 0.3% behind the average of the other four districts and about 3.33% behind Mat-Su. At the top, Anchorage is 3% behind compared either to the other four districts or to Mat-Su. And in terms of "average" teacher salary, according to the AASB annual survey, Anchorage is about 2.7% behind the average and about 3% behind Mat-Su.<sup>4</sup> In fact, on the basis of the District's own numbers, it now trails the entire pack in average teacher salary. The Association summarizes its comparability argument, as compared to Mat-Su, this way:

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3. (...continued)  
uncertainty about just how the State will cover school district TRS/PERS increases.

4. "Average" is a pretty slippery term here, and the exhibit in the record does not explain exactly how that term is used. In particular, is it simply a number halfway between the bottom of the schedule and the top? Or is the "average" salary calculated by multiplying each step and lane by the number of teachers found there and dividing the total by the total number of teachers (a far more informative sense of the term). Or something else?

With Mat-Su only an hour away, with Mat-Su's recent growth trends, with Mat-Su's lower housing costs, and with their much more attractive salary and benefits package, the ASD should be concerned about being competitive. Why? Both Mat-Su and the ASD have a 10% turnover rate. The question one needs to ask is which district is able to hire the best and brightest candidate? (Post-Hearing Brief at 14.)

Turning to comparability of insurance benefits, as far as this record shows, health care insurance costs more in Anchorage—and Palmer—than in Alaska's other urban areas. Against that general background, Anchorage teachers' out of pocket health insurance costs have been substantially higher than the costs borne by teachers in any other urban district in recent years. From at least 1999 to 2005, the District's teachers substantially led the pack in out of pocket insurance costs. (Juneau caught up in 2005.) Throughout most of that same period, the District's monthly contribution trailed that of every urban district except Kenai. The 2006-2007 contribution—which both parties agree on—will bring the District into the middle of the pack.

***Cost of Living:*** The best evidence in the record projects a 2007 CPI increase of 2.6%. According to the District's own figures, both entry level and top level teachers' salary rates have lost ground to inflation in five of the last seven years. While the overall purchasing power represented by the base of the salary schedule is pretty much unchanged from 1997-99 to 2005-06, the overall purchasing power at the top of the schedule has declined substantially over that same period.<sup>5</sup>

***Recruitment and Retention:*** The record on recruitment is somewhat conflicted. On the one hand, the overall *turnover* for the District is among the lowest—if not *the* lowest—in the State at just about 10% over the past five years. (This puts the overall personnel change in the bargaining unit since the 1990s hard freeze period at about 58%.)

On the other hand, as the Association points out, *turnover* is not the whole picture. The District's "10% turnover" statistic is calculated by dividing the number of new teachers hired in year two by the total number of teachers in year one. Of course, in that sense of "turnover," if a district started the year 10%, 15%, or even 25% short of needed compliment and did not improve on that dismal

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5. The picture is only slightly improved (one less year of loss to inflation) if medical premium benefits are considered along with the top and bottom of the salary schedule.

recruitment record year after year, its *turnover* could still be quite modest. The *recruitment* issue is quite separate, i.e. can the District provide a professionally competent workforce under its own proposal?

There are three complications in trying to get a grip on the issue of recruitment here. First, it is notorious that every school district throughout the Northwest—if not all across the country—is constantly short of Special Education teachers. The twin engines of mainstreaming and No Child Left Behind have created a national demand for Special Education teachers which our university education programs have yet to catch up to. Second, Anchorage is an isolated labor market. This makes it particularly difficult to fill *mid-year* openings in any certification area. Not every applicant who was willing to move to Anchorage for the beginning of the school year in September is willing to drop everything and move up in the middle of the winter.

Finally, school districts have to staff classes somehow, even when they cannot get teachers with the certifications that are required for those classes. This leads many districts to practice what might best be called “creativity” in the use of temporary appointments, long-term substitutes, etc. It also means that no school district is likely to compile data showing exactly how many classes are currently staffed creatively, rather than having them taught by a full-time, permanent teacher with the appropriate education and certification. That data is not easy to get.

The data in the record before me consists largely of the testimony of a small parade of building administrators and teachers who recounted their building’s delays in filling—or outright inability to fill—teaching positions not just in Special Education but in core subject areas such as English and Social Studies. As far as this record shows, at the time of hearing the District had about 30 unfilled openings while Kenai had only one and Fairbanks, Juneau and Mat-Su had none. Moreover, as far as this record shows, about 45% of last year’s new teacher hire offers were rejected in the Special Education area and about 40% of all regular education offers were rejected. In short, this record shows a reasonable rate of retention but a distinct problem in recruitment.<sup>6</sup>

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6. The parties’ current, 2005-2006 contract provides that “Effective July 1, 2005, the District shall provide up to five years of prior experience credit for placement on the salary schedule at time of hire.” The record does not specifically show whether that new flexibility has eased the District’s recruitment problems; but the hearing was held in December, 2006, some time after July, 2005, and the District had a substantial number of unfilled positions.

***Ability to Pay:*** We must begin with a general note about the factor traditionally captioned “ability to pay.” It is the rare employer—particularly in the public sector—that literally *cannot* pay a higher rate of employee compensation. Any police department, for example, could choose to have five extremely well-paid officers rather than six or seven somewhat underpaid officers. But there would be some obvious consequences to the level of police presence provided by that department. That systematic fact about public sector finance is part of the general background of the interest arbitration process: the more usual “ability to pay” issue in public sector interest arbitrations is whether or not shouldering the additional cost of the union’s proposal would be fiscally responsible for the employer involved.<sup>7</sup> It is in that sense that the District claims its inability to pay for the additions proposed by the Association here.

The District gets about 63% of its income from the State. Most of the rest—about 33% of the total—comes through the Municipality.<sup>8</sup> In the long term—and probably in the intermediate term, too—Alaska’s state financial future is checkered, at best. The State’s own income picture depends on the price of oil (and gas) and on the producers’ ability to extract those assets and send them to processors outside the state. There is no dispute that the State has been running on a deficit basis for some years now, borrowing money from its own Constitutional Budget Reserves in order to meet each year’s operational needs, including its school finance obligations. Maximum production from North Slope, Prudhoe Bay and Cook Inlet fields came and went sometime in the late 1980s; and 2005 total was less than half of that maximum. Taking a reasonable 3.5% assumption about the State’s maintenance level future spending requirements, general fund

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7. Of course, that is a decision about allocation of resources, exactly the sort of decision that any public sector governing body is elected to make. Real, authoritative interest arbitration always functions in derogation of political responsibility. Advisory interest arbitration—aka “factfinding”—on the other hand, ultimately leaves that responsibility in the hands of those who have been elected to carry it but provides an opportunity for some public involvement in the decision.

8. This somewhat oversimplifies the picture, since some part of local government income in Alaska has generally come from the State in one form or another of revenue sharing. The Municipality has a local tax cap; and there is a legal limitation on the Municipality’s financial support of the District. For the 2006-2007 fiscal year, at least, the Municipality’s contribution to the District’s income is at the maximum amount allowed. The continuation of the Municipality’s level of support is contingent on local political support and, to some extent, on the continuation of revenue sharing programs at the State level.

expenditures will certainly outstrip general fund revenues by FY 2009, and that deficit will grow worse each year thereafter.

There is no dispute that the State has frequently failed to increase its rate of financial support for K-12 education over the recent past, despite continuing increases in utility, transportation and personnel costs. On the other hand, there is no dispute that the State has quite substantially increased its basic support for K-12 education in the very recent past; and that recent increase may well be the source of the Association membership's disenchantment with the District's final TA.

The monkey in the fiscal works in this case is the District's potential TRS/PERS liability. Alaska has been slightly behind Washington and Oregon in beginning to address the cost and unfunded liability of its public employee retirement programs. The Teachers' Retirement System and Public Employee Retirement System have announced rate increases for the next fiscal year which are obviously crushing for the State's K-12 school systems.<sup>9</sup> The District projects its overall fiscal condition next year as about a \$20 million general fund shortfall *if* the State pitches in to fund the entire announced TRS/PERS increases; and it estimates about a \$80 million shortfall if the State does not rescue the school districts.<sup>10</sup> But the Association points out, and the District does not seriously disagree, that the political consequences of crushing every K-12 school district in the state are probably enough to assure some sort of remedial action. (The exact *form* of that remedial action is quite unclear at this time, and that presents a problem for a proposed "windfall" in the contract, which will be addressed below.)

The District argues persuasively that its short-term fiscal outlook includes a net shortfall of about \$18 million for this fiscal year. That number is achieved only by shifting about \$3.25 million out of last year's undesignated ending fund balance; and it does not include the approximately \$68.5 million additional cost of the announced TRS/PERS rate increases.

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9. The last Legislative session created a combined Board for the TRS and PERS programs; and that Board announced a TRS rate increase from about 26% up to 54% and PERS rates increased from 24.25% to almost 41%.

10. The \$20+ million figure is mostly attributable to increases in utility costs and in personnel costs under the District's various collective bargaining agreements. It assumes no substantial change in the District's existing personnel profile. The District had to make some educated guesses, for budgeting purposes, of net TRS/PERS cost increases to school districts. It assumed a 5 percentile cap on net increases, moving TRS rates from 21% to 26% and PERS rates from 19.25% to 24.25%.

One of the first places that unions usually look for spare money in a school district budget is in the undesignated fund balance, which is, roughly, the money left over at the end of the year. Running any enterprise the size of the Anchorage School District obviously presents many potentials for unanticipated expenses. (Weather damage, tort liability, suddenly skyrocketing fuel costs are a few of the more obvious possibilities.) The whole point of the budgeting process is to minimize such surprises; but a prudent district—just like a prudent family—does not budget to spend its last penny. The Anchorage School District has maintained a healthy and responsible undesignated fund balance over the recent past, running from about 5.4% of general fund expenditures in 2002 to 4.5% in 2006. The 2007 estimate is problematic due to the pending TRS/PRS funding issue, but the District projects diverting \$3.25 million to that cost, and that would reduce the UFB to about 3.5% of general fund expenditures.<sup>11</sup>

**Other issues:** The following issues are important. They are “other” only in the sense that the fundamental difference between the parties in this case is over the District’s ability to afford the additions proposed by the Association; and the most expensive part of the Association’s proposal—its “economic core”—consists of the additional steps, elimination of the base step each year, hastening of the new insurance premiums by two months, and a second-year “windfall” trigger. Before addressing those core issues, then, we turn to the other issues, and I will include my recommendations with respect to each issue at this point, rather than going back through them a second time.

**110 G (Masters Bonus):** The salary schedule includes a Masters bonus. As that bonus is currently set out, it does not count toward retirement benefit calculation. The Association proposes to change the characterization of that bonus to “salary supplement,” a change which will make it count for TRS purposes. The cost of that change to the District would be the cost of the additional TRS liability, or about \$160,000. That expenditure is not justifiable in the face of the District’s current financial condition.

**110 I (Wage Supplements):** The last TA included language giving the District the option of offering incentive pay in areas that present recruitment or retention problems. The Association sharply opposes that language.

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11. The Municipality has its own financial interest in the solvency of the District. The bond rating of the Municipality depends on it. And those parties therefore have an agreement that the District’s undesignated ending fund balance will include 8.25% of the local support side of the District’s income.

The Association agrees, and I agree, that there is a recruitment problem in the District. And the District also points to at least a limited retention problem, that being in the Title I schools, which continue to show too many requests to transfer out. But the Association is certainly correct in pointing out that the TA language here would bargain away an important part of the legal core right and responsibility of an exclusive bargaining representative.

Historically, the difference between the AF of L and the CIO was that the Federation represented workers whose skills were in short supply, giving them great “craft” bargaining power, and the CIO represented less skilled workers whose bargaining power depended on presenting a unified front of the entire “shop.” Apart from modern “craft” unions, such as IBEW or the Teamsters, it is almost unheard of for a union to allow an employer to unilaterally set compensation rates within the group of represented employees. The Association argues that such a waiver of a union’s statutory right and responsibility is not even legal; and I must respectfully disagree with that position. A union legally can do it, but it simply is not done, ever. On the other hand, it is not unknown for teacher contracts to include specific premiums for specific duties, just as contracts in other industries may include shift differentials, hazardous duty pay, etc. If a teachers’ union were flatly to refuse to bargain toward such differentials for its district’s specific needs, that recalcitrance would be lamentable. But in good conscience I cannot recommend a sweeping, pig in a poke, permission for the District to offer incentive pay without the agreement of the Association.

**125 A (Salary Payment):** There seems to be no dispute that teachers have recently been paid on or before the 15<sup>th</sup> of the month. Of course, in these days of automatic bank deposits and automatic debits for various recurring monthly expenses, teachers have come to rely on their accounts being enriched every month by the 15<sup>th</sup>. But in October, 2006, the 15<sup>th</sup> fell on a Sunday and the District did not pay the teachers until the following Monday. The Association proposes to make it clear that teachers will be paid on or before the 15<sup>th</sup>; and that seems a reasonable and cost free proposal which I recommend.

**125 C (Final Checks):** Teachers may choose between being paid in ten installments or in twelve. The vast majority choose twelve. For those teachers, the final three checks of the year have traditionally all been issued on or before the last day of school in June. That requires the District to process three months of checks during the final month of the school year. That is, of course, a substantial administrative burden; and the final TA provided for the last payment on the weekday nearest to the next 15<sup>th</sup> of the month after the teachers’ final workday.

The Association now objects to holding three months of pay over such an extended period. And the District points out that this was an operational efficiency which it purchased for the various benefits it agreed to in the final TA.

There seems to be a “half a loaf” approach to this issue. The District points out that adjustments for leave, etc. all have to be processed before the final checks can issue, and it seeks to have reasonable time to do that so that it does not have to rush that reporting at the school level and can avoid overpayments which are sometimes difficult to recover (when, e.g., the teacher leaves just before the end of the year). But the record does not really show just why those interests require a substantial delay in issuing all three of the final checks. I therefore propose that the new contract allow the District to issue a teacher’s twelfth check on or before the 15<sup>th</sup> of the month following the last day of school and allowing the District to make any required adjustments for that teacher’s annual pay to that twelfth check. The tenth and eleventh checks would continue to be issued on the final workday. It seems to me that that approach would serve the District’s interest without allowing it to hold onto three months of the teachers’ compensation over a substantial period; and that is what I recommend.

**125 E (Pay Period):** The Association proposes that the District change from a monthly to a semi-monthly payroll. The District estimates the annual administrative cost of that proposal at about \$375,000.

The District’s payroll department pays approximately 6,500 regular employees and 4,000 substitute or temporary employees every month. Accurate payment requires that department to track rate changes and leave entitlements. In December, 2006, alone, there were about 7,000 leave days . The Association points out that IRS regulations allow an employer to accomplish a bi-monthly payroll by treating the first payment as a draw against the total and making all corrections and contributions (TRS, etc.) at the time of the final monthly payment. On the record before me, however, there is no doubt that there would be quite substantial additional administrative costs to the changeover, and I cannot recommend it.

**135 (Contract Extensions):** At special needs and charter schools the District sometimes finds it necessary to extend the teachers’ workyear for additional training. The contract provides a compensation rate for those extensions and currently requires the District to give the teachers six weeks notice. The Association proposes to increase that notice period to twelve weeks. There is no dispute that this proposal was added by the Association at the very last minute and

was never really addressed in bargaining, and I therefore cannot recommend it here.<sup>12</sup>

**150 (Added Duty):** There are two issues here. First, the 2005 contract added 10% to the added duty schedule; and the Association proposes an additional 3% in each year of this contract (and a change in how AD pay is stated in the contract). This is a very important issue. There is no room for doubt that the District's coaches fall far short of a fair rate of pay or that they will again slip behind the pay of comparable districts if there is not an additional increase in this contract. The trouble is that the two-year cost of the proposed additions would not fall far short of \$300,000 (in round numbers); and I cannot recommend that additional expenditure.

Second, the Association proposes a series of language additions to the contract detailing the selection process for AD positions and providing more extensive procedural safeguards for the loss of an AD position. The current contract already contains some procedural safeguards, including the *possibility* of probation. But the use of probation is entirely optional. I therefore recommend this change in Subsection J:

\* \* \* when performance problems arise with a Head Coach/Publications Advisor who has served for three (3) or more years, principals shall ordinarily place the coach /Advisor on probation for one season prior to deciding whether or not to non-retain; but probation status will be limited to circumstances and problems which could reasonably be overcome. The District retains its right to non-retain without a probation if it reasonably believes the interests of the school and/or program will be better served. \* \* \*

The Association also claimed at hearing that some Principals had made it a practice to announce sweeping doubts, at the end of each year, about which programs, if any, would be continued the next year, to give notice to all coaches, and then to bring back most, but not all, of the coaches and thereby avoid the existing contract language's notice requirements (in Subsection J). I recommend

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12. On the other hand, there seems to be no dispute that these are the schools that experience high turnover. The Association points out that summer schedules are very hard to make with no more than six weeks of certainty before the beginning of the summer break. If I were such a teacher, it is pretty easy to imagine that a single such schedule change, with only six weeks notice, would be a strong encouragement to seek some other assignment with less uncertainty attached to it.

that the parties recognize that such a practice violates the covenant of good faith and fair dealing under the existing contract and needs no specific new language.

**155 (Additional Duties):** The Association proposes to change the calculation of the extra pay for split department chair duties. There is a schedule of compensation based on size of the department. For example, the chair of a department with 15 members would be paid \$3,000, and the chair of a department with 30 members would be paid \$4,500 in the current agreement. But, the Association points out, if two teachers were to agree to split the chair duties in that larger department—each being responsible for 15 of the 30 members—they would also split the \$4,500 payment, rather than being paid \$3,000 each. The Association proposes to change that.

But nothing in the record here supports the claim that the work of a department chair is so directly proportional to the size of the department. Some duties certainly become more time consuming as the department grows, but some duties have to be performed by the chair regardless of the size of the department, and the overall duties do not necessarily double as the size doubles. I cannot recommend the Association's proposal.

**160 (Automobile Allowance):** Some of the District's itinerant teachers put a lot of mileage on their personal vehicles getting from school to school. The current contract provides for payment of "the equivalent of two month's mileage reimbursement in a lump sum at the end of the school year" if the teacher drove over 475 miles per month. The District proposes to end that additional payment. The Association's witnesses argued eloquently that their actual total expenses of auto maintenance and operation far exceed the usual reimbursement rate and that that excess is at least somewhat defrayed by this contract provision.<sup>13</sup> I agree with the Association and cannot recommend this elimination.

**215 (Worker's Compensation):** The contract contains a sick leave bank provision (authorized by AS 14 14 105). But that provision is not available to teachers who are injured on the job and who use their personal leave and sick leave to "supplement their income" from workers compensation. The Association therefore proposes to incorporate language now found in the Principals' contract,

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13. The contract calls for reimbursement at "the approved federal rate" per mile. But federal rates assume fleet efficiencies and usually fall substantially short of actual total costs per mile if one keeps track of total expenses and depreciation of a personal automobile. The additional payment is far from a windfall to these teachers.

which requires the District to continue making medical insurance payments for such an employee for twelve months. With all due respect to the Association, there seems to be something of a disconnect between the problem and the solution. Subsection A of the Workers' Compensation Section now ends with the provision that "Teachers with compensable injuries, on leave under provisions of this Article, are ineligible for Sick Leave Bank withdrawals." That does potentially put employees injured on the job at a disadvantage compared to employees sick or injured off the job, but the remedy for that inequity seems to be to eliminate that final sentence, rather than the addition of another potential expense for the District; and that is my recommendation for this Section.

**330 (Personal Leave):** There is no dispute that the District currently provides only 2.5 days of personal leave. And there is no dispute that all other comparable districts provide more. The original TA increased the personal leave to 3 days, but when that fell through the District agreed to put the money into salary schedule increase rather instead. The cost of the additional half day would be almost \$330,000, so this is a quite significant cost item.

The District argues that, in addition to personal leave, the contract now provides civic leave, emergency leave, legal leave, religious observance leave, professional leave, sick leave, and military leave. But none of those other leaves can be used by a teacher for his or her own business or family matters. There is really no good argument against the Association's proposed increase except this one: it would cost almost \$330,000. That is a good part of the financing for the District's increase of its second-year offer from 2.5% in the first TA—with an additional day of personal leave—up to 3% in the second TA. I regret the necessity, but I must recommend the District's proposal on this issue.

**350 (Sick Leave Bank):** Part of the final TA was the elimination of the current requirement that a teacher "who has utilized the bank will restore up to three days of sick leave per year until ½ of the days borrowed are replaced." There is no dispute that the problem with that language is its administrative cost. This is a large workforce, and the tracking system for sick leave bank usage and repayment is time consuming and expensive. The Bank is governed by a Board composed of five Association appointees and one District representative; and the District has offered to turn the tracking over to that Board or to the Association, but neither is interested in taking on the burden. On that basis, the record supports the District's proposal to eliminate the partial repayment requirement.

**403 (Services for Students with Disabilities):** This is a dispute about how much teachers are to be paid when an IEP meeting extends more than 45 minutes after the end of the workday. The current rate is \$24 per hour; and the Association proposes to increase it by half (\$36 per hour being the average teacher's hourly rate). The Association does not allege that this is a common or growing problem and agrees that the "District attempts to schedule IDP meetings during the day and to keep them from running more than an hour after the duty day..." (Post-hearing Brief at 37.) The cost is modest, but the District's financial condition simply does not allow it to take on additional expenses that are not pressing.

**407 (Parent-Teacher Conferences):** Teachers are currently released after a half day on Fridays when there has been an evening of parent-teacher conferences. The Association notes that some schools have recently extended the conferences to two evenings. There is no dispute that the Association's proposed language would bring current practice into the language of the contract; and I recommend it.

**413 (Assignment and Transfer):** The contract currently provides for a meeting of itinerant specialists at the beginning of the year. That meeting provides them a formal opportunity to address issues of scheduling and workload with the District. The District proposes to end it, arguing that it is redundant. The specialists consider it an important avenue of communication. There is no substantial cost; and I recommend the Association's proposed continuation of the current language and practice.<sup>14</sup>

**440 (Assault of a Teacher by an Adult):** The Association proposes to add a sentence making it clear that the existing article does not restrict a teacher's right to file a police report. With all due respect to the Association, that addition would be silly. Instead, I offer this declaratory relief: The current language of the Article does not contain or imply such a restriction. I do not recommend the addition.

**452 (Instructional Planning Time):** There are three issues under this section and the first two are quite specific. First, an elementary teacher cannot get IPT unless someone else has charge of the class. That "someone else" is usually a

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14. The District argues that "Because staffing assignments have already been determined, the meeting that occurs after the start of the school does not serve the stated purpose of discussing 'assignment options' nor of addressing program needs in the most effective and efficient way possible." (Post-hearing Brief at 58.) In the face of the existing contract language, it is not quite clear that the District has the right to make final staffing assignment determinations by subcommittee before input from the specialists.

specialist, usually a librarian or a music, PE, or art teacher. On the very first and very last day of the school year, the current contract provides such specialists a day of set-up or cleanup time. That means that elementary teachers have no IPT on those days. The Association proposes to change that.

The Association finds itself in the middle on this issue, between two groups of its members, each with a competing interest. It frankly admits that the specialists will be as unhappy with the proposed change as the elementary teachers are with no IPT on the first and last days of the school year. The Association attempted to show that IPT could be covered by other sorts of employees on the first and last days of the school year; but the District's argument to the contrary was convincing. There are not dependably enough aides and administrators to do that job, not to mention the loss of potential educational value attending such a simple babysitting approach. I cannot recommend the proposed change.

The second issue here appears to be truly a matter of clerical correction. There seems to be no dispute that nurses currently get the same amount of planning time as other specialists; and the Association proposes to add that classification to the contract's list. I recommend that change.

The final issue is exactly when the elementary teachers will get the same 4 hours per week of prep time that the District's other teachers get. The Association proposes that change—from the current 3.5 hours—in the first year of the new contract; and the District proposes it in the second year. The District argues convincingly, first, that the Association's proposal has substantial additional cost—something like \$4 million to add the specialists necessary to cover the additional half-hour of IPT for every elementary teacher in the District—and, second, that the hiring and organization required for the change cannot be accomplished in time for the first year of the new contract. I must reluctantly agree with the District on this issue and cannot recommend the Association's proposal.

**470 (Emergency Coverage):** Again the Association proposes a rate increase, and I must again recommend against it, for the same reasons set out above. The Association also proposes new language offered to catch the contract up to current practice in which there are periods of various lengths. I strongly suggest that the District consider that change—which was not ever discussed across the bargaining table—but the record is not adequate for me to recommend it.

***The Economic Core:*** It appears that the dispute in this case has always focused on the District's ability to afford a more substantial increase for the members of this bargaining unit.<sup>15</sup>

The main answer to the question, Why are we here? may lie in the press releases that accompanied this year's substantial increase to the base student allocation. That increase was all the more spectacular because of its historical context. The foundation formula—the basic mechanism for State support of K-12 public education in Alaska—had not changed substantially since 1987, almost 20 years. The District's general fund revenues from the State increased by only about 6.4% in the last five years of that period; and that modest increase was driven by increased enrollment. Worse, the rate of basic State support for the District was actually reduced over that period because of the increases in the assessed valuation of the Municipality's tax base.<sup>16</sup>

Against this background, the 2006-2007 increase of over \$96 million in basic State support appears spectacular. Governor Murkowski's spin on that increase characterized it as the biggest in the State's history. But the press release that accompanied the Governor's proposal detailed just what the new money was designed to cover:

The proposal would increase per-student funding from \$4,919 to \$5,347. The funding increase will provide \$40 million to pay increased costs of the Public Employees' retirement and the Teachers' Retirement systems, \$30 million in increased fuel and other expenses and \$20 million to help districts meet state targets in making adequate yearly progress under the federal No Child Left Behind Act.

It is not much of a surprise that the spin in the press release did not read, "Legislature begins to deal with oncoming train wreck of TRS/PERS financing, admits that fuel costs more now than it did twenty years ago, and recognizes that No Child Left Behind is pretty darned expensive." What is spectacularly absent

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15. One of the difficulties is that hastening teachers through the schedule with additional steps does nothing to fix the comparability— and therefore the perceived inequity—of the schedule itself.

16. Ironically, the District is twice the victim of Anchorage's commercial success. First, because the resulting increase in assessed value reduced the rate of basic State support; and, second, because Anchorage's higher residential property costs make the Mat-Su area more attractive to teachers and make the District less competitive in that marketplace.

from this list, of course, is any funding for increasing teacher pay, either throughout the State in general or in the Anchorage School District in particular.

Nevertheless, it is easy to understand how the spectacular apparent increase in basic State funding for K-12 education could lead teachers to believe that better days have come at last for teacher pay. That conclusion would be particularly attractive if the school district in question had gone through some very rough times and its teachers had borne much of the burden of those difficult years. And, of course, that describes the Anchorage teachers “to a T.” The list of factors traditionally considered by interest arbitrators include three factors that usually push compensation up—comparability, increases in the cost of living, and problems of recruitment and retention—and one factor that traditionally keeps compensation down, the employer’s ability to pay (or afford) a proposed increase. This may be an instance in which that fourth factor has become twisted around. At the end of the day, perhaps these parties find themselves in interest arbitration because of the teachers’ conviction that the District must finally have ample ability to pay, after those long ago years of freezes.

Is there more money? I must join a choir of voices saying that there is not. That choir includes Arbitrator Lehlitner (from the most recent interest arbitration), a succession of Association bargaining teams who have considered the numbers in detail and have been forced to accept the District’s conclusions, and the members of the Association’s Board who concluded that an “arbitrator would review agreements in other urban locals and determine that our 8.7% [over three years] guaranteed increase is higher than any other Alaska district. Arbitrator’s recommended award would more than likely be LESS THAN the TA ...” (The District did not retreat from that TA in this interest arbitration; so the “less than” option is not presented here.) Finally (perhaps with a bit of discord) that choir includes the Association’s own expert witness, the school budget analyst brought up from the Washington Education Association. I assume that she correctly captured the position of the bargaining unit as, “If not now, when?” But after careful analysis she characterized the District as “financially healthy,” “very responsible,” and “well-run.”

She was clearly correct in pointing out that the “needs of the staff are not being met” as shown by their repeated rejections of the District’s contract proposals. But I must conclude that she did not find a plausible source of funding in the District’s budget for the additional costs of the Association’s proposal.

In particular, the Association's analysis of the District's end of the year unrestricted fund balance (UFB) is not persuasive.<sup>17</sup> The first problem with that proposal is that it somewhat confuses just what a UFB is. Suppose that I am meeting my personal budget pretty closely every month: the income and the expenditures just about even out. And suppose that my bank charges a hefty fee if I let the balance drop below, say, \$2,000, so I consistently have a UFB of \$2,000+ at the end of every month. Does that tell me that I can prudently afford to take on a new cable service, a faster internet connection, and time payments on new furniture? Of course not. I have the money to pay those additional costs this month, in my UFB; but the costs are recurring, and without a recurring income increase to balance those recurring expenses I would very soon be in serious financial trouble. If my budget history showed me that my UFB had been growing, month by month, with reasonable consistency, that would be a good indicator that I could afford to increase my recurring expenses. But the bare fact that I do not spend down to the very last penny every month—i.e., that I end up with a UFB—is not a sign that I can responsibly afford to take on additional recurring monthly expenses.

Next, the Association points to recent declines in average teacher salary and in the percentage of the District's budget spent on teacher salaries.<sup>18</sup> The Association notes that the teachers' antipathy toward the District's proposal rests largely on the fact that teacher pay increased only slightly while the District's overall budget increased substantially. But the District points out that the Association, to some extent, is complaining about the parties' prior successes. First, the parties agreed to two steps designed to reduce average teacher costs. They agreed to limit the experience credit allowed to incoming teachers, thus requiring incoming teachers to start closer to the absolute bottom of the schedule. And they agreed on two "Service Recognition Programs" in 2000<sup>19</sup> and in 2001, which encouraged the retirement of some 400 teachers from the top of the salary schedule. Both of those steps had an obvious tendency to reduce the average teacher salary quite substantially.

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17. I do not mean to ascribe this particular misdirection to the WEA budgetary expert. In fact, she quite correctly pointed out that the size of a school district's reserve is not determinative.

18. The decrease was from just over 71% of all employee salaries in 2001-2002 down to almost 69% in 2005-2006.

19. There is some dispute about this date.

Second, Anchorage is far from the only area in which the national educational policies of mainstreaming and No Child Left Behind have had the somewhat perverse consequences of focusing resources on teacher support personnel rather than on teachers themselves.<sup>20</sup> In recent years, the Association has successfully pressed for the addition of more aides—particularly Special Education Aids and Bilingual Aids—and the addition of more clerical employees in response to mainstreaming, No Child Left Behind, and the clerical work required by the explosive growth in the number of IEPs that teachers are required to deal with.<sup>21</sup>

The money is just not there. I agree with the Association that there are some scary parts to the District's current financial picture. In particular, the District's recruitment picture is not reassuring, and it may well be that too many core classes are not being taught by steady, properly certificated teachers. On the other hand, however, the District's most recent, one-year contract already caused some slight deterioration in the student/teacher ratio; and the interest of the public would not be served by accelerating that slide by shouldering the costs of the Association's additional proposals here. I cannot recommend the additional

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20. This same period has also seen the continuing growth of the charter and home schooling movements. States have differed in their response to that trend. In Alaska, schools continue to supply the services of counselors and librarians—but not, obviously, teachers—for charter and home-schooled students.

21. Over the same period, the District has opened some additional schools (including, e.g., Eagle River High School and the Vocational School at King Center, etc.). Existing teachers have transferred into those schools; but new facilities and programs have required additional administrators and custodial and maintenance employees. This is the flip side of a recent and much lamented trend in public education, i.e. the consolidation of physical plants into mega-schools, particularly mega-high schools. That trend has been driven largely by the promise of economies of scale: less administrative staff, fewer maintenance and custodial employees, less need for inter-district transportation costs, etc. That move toward consolidation has produced a backlash in recent years, led, in part, by the Bill and Melinda Gates Foundation's drive to encourage smaller schools—and even to create small “schools” within the large mega-schools—based on data showing the educational downside of such consolidations. But the fans of consolidation were not wrong about the numbers, and there is a cost to resisting consolidation: the more-and-smaller approach has substantial support in the data measuring quality of educational product, but it does require more administrators, more custodians, etc.

steps,<sup>22</sup> the additional in-lieu-of-step payments, the elimination of the base steps, or the hastening of the new insurance contributions.<sup>23</sup> (The Association has estimated that the District’s insurance contributions in the first two years will cover the likely cost of any premium increase. At the end of the third year—the contract period proposed by the District—the Association President predicted less total out of pocket costs for the teachers than they have today.)

That leaves two issues. The Association proposes a second year “windfall” trigger—somewhat similar to part of the District’s proposal for the third year—to automatically increase the salary schedule if basic state funding exceeds a stated figure. But, while both parties agree that the State is extremely likely to cover the increased TRS/PERS costs in the second year of this contract, no one knows the exact the form of that coverage. It may be in the form of increased formula funding—as part of the most recent increase was to begin to cover the increased TRS/PERS costs—or it may be in an entirely separate appropriation. That makes it extremely difficult to draft a true “windfall” provision which avoids the possibility of being tripped by the State’s attempt to remedy the potentially crushing results of TRS/PERS rate increases. I cannot recommend this part of the Association’s proposal.

Finally, the Association proposes a two-year contract rather than the District’s three year contract. I must agree with the Association that it appears that bargaining unit members have quite lost faith with the District’s economic projections and that they absolutely demand an opportunity to reopen negotiations

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22. It should be noted that most of the Association’s comparability case is based on comparing this schedule with the schedule of other districts. And the flaws and shortcomings that become apparent from that sort of analysis are never going to be fixed by using extra steps to hasten teachers through a fundamentally unsatisfactory schedule.

23. There is a background dispute here. The District makes payments each month both for over 2,800 members who participate in health insurance coverage and for about 550 members who do not. Those latter payments enrich the NEA Trust, and the teachers, at the District’s expense. (They allowed the Trust to cover out of pocket costs for the teachers for the months of July, August and September.) Inexplicably, the Association does not count those payments as part of overall teacher compensation, although the money was paid by the District and ended up in the pockets of the teachers. The District makes no formal proposal about the net surplus held by the Trust, which now amounts to about \$16.5 million; and the Association is quite defensive about that surplus. But the practice of substantial premium payments going off into the dark, without being credited by the teachers as part of compensation received, is fraught with political hazard and might be difficult for the Association to defend in interest arbitration.

after two years. The District, understandably, is not anxious to resume negotiations so soon after such a marathon of frustration; but I must recommend the two-year contract period proposed by the Association.

**Conclusion:** I therefore recommend a two-year contract; but I do not recommend the additional steps proposed by the Association, the elimination of the base step each year, the additional in-lieu-of-step payments, the hastening of insurance contribution increases, or the second-year “windfall” trigger. I also make the various recommendations set out on pages 10-17, above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Howell L. Lankford', written in a cursive style.

Howell L. Lankford,  
Arbitrator