ALASKA LABOR RELATIONS AGENCY
3301 EAGLE STREET, SUITE 208
P.O. BOX 107026
ANCHORAGE, ALASKA 99510-7026
(907) 269-4895
Fax (907) 269-4898

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1547, AFL-CIO,

Complainant,

vs.

CITY OF SELDOVIA,

Respondent.

CASE NO. 96-498-ULP

DECISION AND ORDER NO. 208

Digest:

(1) The City violated AS 23.40.110(a)(5) when it unilaterally changed terms and conditions of employment during bargaining.

(2) The doctrine of res judicata bars consideration of unfair labor practices that could have been raised in an earlier unfair labor practice complaint that was dismissed with prejudice.

DECISION

Statement of the Case

On January 19, 1996, the International Brotherhood of Electrical Workers Local Union 1547, AFL-CIO, filed this unfair labor practice charge against the City of Seldovia concerning negotiations. The IBEW amended its charge on February 20, 1996, to add a charge of direct dealing. The Agency concluded its investigation and issued a notice of accusation against the City on April 17, 1996. The City filed its notice of defense denying the charges on April 29, 1996. The Agency conducted a prehearing conference on May 20, 1996, and the matter was set for hearing.

On May 20, 1996, the IBEW filed a motion for summary judgment and the City filed a motion to dismiss. Each party filed its opposition on May 30, 1996. On July 2, 1996, the City filed a motion for this Agency to produce prehearing witness statements. On July 3, 1996, the hearing examiner denied the motions for summary judgment, to dismiss, and for production of agency investigative materials. On July 10, 1996, the City moved to preclude the introduction of exhibits, and on July 11, 1996, the City moved to dismiss. Both motions were based on the failure of the IBEW to provide the City copies of the exhibits with its exhibit list, as required in the prehearing order. The hearing examiner required the IBEW to provide the exhibits, and denied the City's motions on July 11, 1996.

The case was heard on July 17 and 18, 1996. The record closed on July 18, 1996.

Panel: Chair Alfred L. Tamagni, Sr., and Board Members James W. Elliott and Raymond P. Smith.

Appearances: William F. Morse, associate general counsel, and Daniel Repasky, business representative, for complainant International Brotherhood of Electrical Workers Local Union 1547, AFL-CIO; Paul S. Wilcox, Hughes,

Thorsness, Powell, Huddleston & Bauman LLC, for respondent City of Seldovia.

Procedure in this case is governed by AS 44.63.330--44.62.630. Hearing examiner Jan Hart DeYoung presided.

Issues

1. Whether the City failed to meet to negotiate at reasonable intervals in violation of AS 23.40.110;

2. Whether the City delayed presenting proposals in negotiations in violation of AS 23.40.110;

3. Whether the City engaged in direct dealing with bargaining unit members in violation of AS 23.40.110;

4. Whether the City conditioned promotion on nonunion membership in violation of AS 23.40.110;

5. Whether the City unilaterally changed terms and conditions of employment during bargaining in violation of AS 23.40.110; and

6. Whether res judicata bars the issues set forth in (1)--(5).

Summary of the Evidence

A. Exhibits

IBEW offered the following exhibits, which were admitted into the record:

1. Certificate of election (Feb. 6, 1995);

2. D. Repasky, letter to E. Renz (Mar. 1, 1995);

3. D. Repasky, letter to E. Renz (Mar. 17, 1995);

4. D. Repasky, letter to E. Renz (Mar. 27, 1995);

5. E. Renz, letter to D. Repasky (April 12, 1995);

6. E. Renz, letter to D. Repasky (Mar. 7, 1995);

7. D. Repasky, letter to F. Eckoldt (June 16, 1995);

8. Agenda, City of Seldovia City Council (April 26, 1995);

9. Agenda, City of Seldovia City Council (May 24, 1995);

10. D. Repasky, memorandum to E. Renz (undated);

11. D. Repasky, notes (June 5, 1995);

12. D. Repasky, letter to E. Renz (June 15, 1995);

13. D. Repasky, memorandum to E. Renz (July 10, 1995);

14. D. Repasky, letter to E. Renz (July 21, 1995);

15. Notice of Preliminary Finding of Probable Cause, case no. 95-419-ULP (Aug. 15, 1995);

16. P. Wilcox, letter to D. Repasky (Aug. 30, 1995);

17. P. Wilcox, letter to D. Repasky (Sept. 12, 1995);

18. D. Repasky, letter to P. Wilcox (Sept. 25, 1995);

19. P. Wilcox, letter to D. Repasky (Sept. 25, 1995);

20. D. Repasky, letter to P. Wilcox (Oct. 2, 1995);

21. P. Wilcox, letter to D. Repasky (Oct. 6, 1995);

22. D. Repasky, letter to T. Volstad (Jan. 9, 1996);

23. P. Wilcox, letter to D. Repasky (Jan. 19, 1996);

24. D. Repasky, letter to P. Wilcox (Jan. 23, 1996);

25. D. Repasky, letter to P. Wilcox (Feb. 5, 1996);

26. N. Resnick, letter to D. Repasky (Feb. 15, 1996) (and enclosures);

27. N. Resnick, letter to D. Repasky (Feb. 21, 1996);

28. D. Repasky, fax cover sheet to P. Wilcox (Mar. 7, 1996) (and attached two-page bargaining proposal);

29. D. Repasky, letter to P. Wilcox (April 1, 1996);

30. P. Wilcox, letter to D. Repasky (April 11, 1996);

31. D. Repasky, letter to P. Wilcox (April 16, 1996);

32. P. Wilcox, letter to D. Repasky (April 22, 1996);

33. D. Repasky, letter to P. Wilcox (April 24, 1995);

34. P. Wilcox, letter to D. Repasky (April 26, 1996);

35. P. Wilcox, letter to D. Repasky (April 26, 1996);

36. D. Repasky, letter to P. Wilcox (April 29, 1996);

37. D. Repasky, letter to P. Wilcox (May 13, 1996);

38. P. Wilcox, letter to D. Repasky (May 14, 1996);

39. P. Wilcox, letter to D. Repasky (May 16, 1996);

40.1 D. Repasky, letter to P. Wilcox (June 17, 1996);

40.2 Seldovia negotiations ground rules;

40.3 D. Repasky, letter to P. Wilcox (June 17, 1996);

41. L. Lamb, letter to D. Repasky (June 21, 1996);

42. Seldovia Police Department Work Schedules;

43. Chief A. W. Anderson, memorandum to City Manager D. Wyland (Nov. 3, 1995) (30-hour work week);

44.1--44.3 Andy's work journal;

44.4--44.10 Chief A. W. Anderson, memorandum to City Manager D. Wyland (Nov. 3, 1995) (30-hour work week);

45. Employee wages as of (Oct. 24, 1995);

46. D. Gruber, letter to D. Repasky (Jan. 25, 1996);

47. Withdrawn;

48. Meetings summary; and

49. A. W. Anderson work records.

The City of Seldovia offered the following exhibits that were admitted into the record:

A. IBEW, Labor Organization Representation Petition (Oct. 20, 1994);

B. Notice of Petition (undated), case no. 95-342-RC;

E. Stipulation for dismissal with prejudice, case no. 95-419-ULP (Sept. 1, 1995);

F. Dismissal with prejudice, case no. 95-419-ULP (Sept. 1, 1995);

P. N. Resnick, letter to D. Repasky (Feb. 21, 1996); and

Q. D. Repasky, fax cover sheet to P. Wilcox (Mar. 7, 1996).

The City offered the following exhibits that were not admitted because they were duplicates of exhibits offered by IBEW and admitted into the record: Exhibits C, D, G through O, R through V.

B. Testimony

The IBEW presented the testimony of 1) Daniel J. Repasky, business representative; 2) A. W. Anderson, chief of police.

The City presented the testimony of Richard H. Wyland, former acting city manager; 2) Ray W. Springer, city council member and negotiator; 3) David Martin, city manager.

C. Agency case file. 8 AAC 97.410.

Findings of Fact

The panel, by a preponderance of the evidence, finds the facts as follows:

1. The City of Seldovia is a city of about 300 inhabitants. Its population has dropped from the 1000 inhabitants it had 20 years ago.

2. The International Brotherhood of Electrical Workers Local Union 1547, AFL-CIO (IBEW) was certified the bargaining representative of a wall-to-wall unit of City of Seldovia employees on February 7, 1995. The only City employees excluded from the bargaining unit were the city manager and the city clerk-treasurer. Exh. 1.

3. After certification IBEW business representative Dan Repasky asked in writing on March 1, 1995, to begin negotiations. Exh. 2. Repasky was the chief spokesperson for the IBEW negotiating team and is experienced in labor relations. He has been an IBEW business agent since 1991. In 1988 and 1989 he worked as a union business agent for the Alaska Public Employees Association. Repasky has a degree in labor studies from the George Meany Center, which

he obtained in 1983.

4. The City did not respond to Repasky's request to his satisfaction, and he initiated a meeting with the Seldovia City Council. At an April City Council meeting Repasky made a presentation about collective bargaining and the aims of the union. Exhs. 4 & 5.

5. The City appointed its negotiating team at its May 24, 1995, council meeting. Appointed were council member Ray Springer and city manager Elizabeth Renz. Exh. 9, at 2.

6. The IBEW and the City finally began negotiations on June 5, 1995, in Seldovia. IBEW made a complete contract proposal, which it presented to the City negotiating team along with proposed ground rules. The parties did reach agreement on the ground rules, Exh. 40, at 2, and tentatively agreed to a number of the IBEW's noneconomic proposals. Exh. 11.

7. The ground rules included an agreement to proceed to binding interest arbitration if the parties failed to agree after impasse and mediation. Repasky considered this agreement "a coup." Exh. 40, at 2.

8. The parties agreed to meet next on June 19 and 20, 1995, but city manager Renz cancelled the meetings. Exh. 12.

9. On June 23, 1995, the IBEW filed an unfair labor practice complaint against the City, charging that the City refused to bargain in good faith by delaying the appointment of a negotiating team, failing to prepare for bargaining meetings, and cancelling meetings. Exhs. 15 & 19.

10. While the complaint was pending, the IBEW and the City met to bargain on July 11 and 12, 1995. The City did not present any written proposals, but the parties did make some progress and tentatively agreed to a number of noneconomic items. Exh. 14.

11. The parties agreed to meet on August 18, 1995, but city manager Renz cancelled the meeting because she was preparing to submit her resignation as city manager. The August 25 meeting was cancelled because Renz had resigned.

12. Before Renz left her position as city manager, she offered Dianne Gruber the position of city clerk. The position became open after the excluded position of clerk/treasurer was split into two positions. Exh. 46, at 1. The position would have been a pay increase to Gruber. In a letter to Repasky, Gruber wrote that Renz stated that, to take the position, Gruber would need to pull her "card of intent with the union as there would be a conflict of interest in regard to confidentiality with this position." Id.

13. After the IBEW's demand to negotiate, Renz made changes in the rates of pay to two public works positions. Renz increased the rate of pay for the public works positions after eliminating the position of director of public works. The pay rate was changed when two employees were hired -- Stephen Pollack in May of 1995 and Rance Zeien in July of 1995.

14. The City retained attorney Paul Wilcox to represent it in the unfair labor practice proceedings and in negotiations. Exhs. 15, 16 & 17.

15. The IBEW and the City settled the unfair labor practice with prejudice on September 1, 1995. Exhs. E & F.

16. The next negotiating sessions were set for September 14 and 15, 1995, but IBEW representative Repasky cancelled for personal reasons. Exhs. 18, 19, 20, & 21.

17. The parties were next both available on October 25. They met that day in Seldovia. The City produced its first written proposals for this meeting, including a proposal to maintain wages at the same rate.

18. On October 30 and 31, the parties met in Wilcox's office in Anchorage. The City raised in discussion the issue of a 30-hour work week for the police department employees. The proposal was for police officers to be paid for 40 hours of work but to be scheduled only for 30 hours. Ten hours each week would be reserved for "call-outs." Time worked in

addition to 40 hours would not be compensated or banked as sick leave. The City did not make this proposal in writing.

19. This proposal was the result of concern about employees' accrual of compensatory time. When director of public works John Michaelson left the City, the City cashed out his leave, which was an expense that had not been budgeted. Police chief Andy Anderson had asserted that he was owed for time worked over 40 hours per week and that he had accrued approximately 1200 hours over five

years.[1] When officer Kevin Stephenson left City employment, the City paid him for 500 or 600 hours of leave.

20. Repasky gave his consent for the City to talk to the affected employees, stating to the City negotiating team that the union would not object if the employees did not object.

21. Chief Anderson discussed the City's schedule and payment proposal with acting city manager Dick Wyland. Anderson vigorously objected to the flex-time proposal and never agreed to it. Anderson communicated his objections to Repasky.

22. The testimony conflicted over the implementation of the police schedules. The City's acting city manager Dick Wyland, an IBEW member, took the position that Repasky in a telephone conversation with Wyland agreed to the schedule change before its implementation. Repasky was adamant that he had not agreed to the change but communicated Anderson's displeasure with the flex-time proposal to Wyland. We find that Repasky telephoned Wyland, who was not a member of the negotiating team, to complain about the change and that Repasky did not consent to it. This fact is consistent with Repasky's filing of this unfair labor practice charge and the parties' continued discussion, in at least one negotiating session, of police work schedules. It is also more consistent with Repasky's statement to City negotiators to talk to police department employees for their agreement to the proposal and with the undisputed intensity of Anderson's feelings on the subject.

23. The parties met on November 28 and 29, 1995, and the City presented proposals, including economic proposals. The parties did not discuss the flex-time proposal for the police officers.

24. On or about December 1, 1995, the City implemented its police officer flex-time proposal. Exh. 26, at 3; Exh. 44, at 8.

25. The parties agreed to take December off for the holiday and meet next in January. The parties could not agree to a location and never did meet in January. Exhs. 22 & 24.

26. On January 19, 1996, IBEW filed this unfair labor practice complaint. Included in the complaint were charges of a unilateral change in the work schedule of police department employees.

27. The parties last met in face-to-face negotiations on March 5, 1996. At this last meeting the parties did discuss a union proposal about a split shift for police department employees and payment of salary to police officers rather than an hourly rate of pay.

28. The IBEW made its final written proposal on March 7, 1996, which incorporated all IBEW proposals as of March 5, 1996. Exh. 28. Included was a provision addressing call-outs for police department employees. Exh. 28, at 2 (section 9.5.1).

29. The City made its final written offer on April 11, 1996. Included was the proposal that all differences be resolved including any grievances, any unfair labor practice charges, and the claim of entitlement to compensatory time. Exh. 30. The offer addressed the work schedule for the police department. Id., at (section 9.5.1).

30. The IBEW has declared impasse and sought mediation. Exh. 37. The parties did mediate on June 11, 1996, but failed to reach agreement.

Discussion

The IBEW was certified the bargaining representative of a unit of about six employees of the City of Seldovia. The IBEW has filed this and a previous unfair labor practice charge in response to its perception of dilatory tactics by the City. It has also alleged various instances of bad faith and other unfair labor practices during bargaining. The City, on the other hand, argues that the parties made a fresh start in bargaining after the settlement of the first unfair labor practice complaint in September of 1995, and the charges are barred under the doctrine of res judicata.

1. Whether the City failed to meet to negotiate at reasonable intervals in violation of AS 23.40.110.

This charge raises the employer's duty to bargain in AS 23.40.110(a)(5), which prohibits an employer from refusing to bargain collectively in good faith with a certified bargaining representative. This duty includes a duty to meet at "reasonable times." 1 Patrick Hardin, The Developing Labor Law 603 (3d ed. 1992).

The employer in this case did not refuse to meet in bargaining but was slow to respond to the demand to bargain, delaying almost two months after the demand to bargain to select a bargaining team. While such delays can be an unfair labor practice, Carbonex Coal Co., 248 N.L.R.B. No. 107, 104 L.R.R.M.(BNA) 1009 (1980), enforced 679 F.2d 200, 110 L.R.R.M.(BNA) 2566 (10th Cir. 1982), we do not find an unfair labor practice here. The City of Seldovia is a small community and the record suggests that City officials were unsure of their obligations initially. As the City gained negotiating experience, we would expect to see improvement, and the City's responsiveness does improve after the settlement of the first unfair labor practice complaint in September of 1995.

In this second complaint, we consider events that were raised or could have been raised in the earlier, June 1995, complaint only as they are necessary to understand matters at issue here. See discussion, infra, section 6.

The record of the parties' negotiating meetings after the September settlement does not support the charge that the City failed to meet at reasonable intervals. The parties met less frequently than this Agency would endorse, but the City was not wholly responsible for the delays. The parties met in two sessions in October and in one session in November. Repasky cancelled the September session. The parties mutually agreed to forego meeting in December. In January, the parties did not meet because both parties were setting conditions on the location of the meeting. The parties share responsibility for the infrequency of the meetings. We cannot conclude that the City failed its obligation under AS 23.40.110(a)(5) to meet at regular intervals.

2. Whether the City delayed presenting proposals in negotiations in violation of AS 23.40.110.

Refusal to submit proposals can be a dilatory tactic that violates the duty to bargain in good faith under AS 23.40.110(a)(5). United Technologies Corp., 296 N.L.R.B. No. 79, 132 L.R.R.M.(BNA) 1240 (1989). After initial delay in starting negotiations, the City participated in good faith in negotiations. After the settlement of the first ULP complaint, the City made proposals at the negotiating table and in writing. The City made its first written proposal at the first session after the September settlement.

The City's conduct in negotiations, while not always efficient, appears calculated to make progress toward a collective bargaining agreement. We cannot conclude that the City violated its duty to bargain in good faith by failing to make proposals.

3. Whether the City engaged in direct dealing with bargaining unit members in violation of AS 23.40.110.

Direct dealing with employees of the bargaining unit is a per se violation of the duty to bargain in good faith in AS 23.40.110(a)(5). Alaska Community Colleges' Federation of Teachers, Local 2404, AFT, AFL-CIO v. University of Alaska, Decision & Order No. 204 (Aug. 20, 1996).

The IBEW amended its charge on February 20, 1996, to add a charge of direct dealing. The incident described in the amendment was direct negotiating between city manager Renz and bargaining unit member Gruber about a promotion to the city clerk position. These facts do not constitute direct dealing. The prohibition against direct dealing requires the

City to observe the union's status as the exclusive bargaining representative for the employees. The City is not required to address with the bargaining representative a promotion to a position that is excluded from the unit. Thus, the City did not violate the prohibition against direct dealing when it offered a nonbargaining unit position to an employee in the bargaining unit.

The facts do include an instance of permissible direct dealing. The City discussed its flex-time work schedule directly with the affected employees. However, it first obtained the consent of the bargaining representative before initiating these discussions, and the union has not objected to direct dealing on this subject.

4. Whether the City conditioned promotion on nonunion membership in violation of AS 23.40.110.

An employer may not discriminate in hiring to encourage or discourage membership in an organization. AS 23.40.110(a)(3). Conditioning promotion on dropping union membership could be illegal discrimination. Alaska State Employees Association/AFSCME Local 52, AFL-CIO v. State of Alaska, Decision & Order No. 193 (Sept. 26, 1995). It could also interfere with rights protected under AS 23.40.080 in violation of AS 23.40.110(a)(1). Id., at 15; Alaska Community Colleges' Federation of Teachers, Local No. 2404 v. University of Alaska, 669 P.2d 1299, 1307 (Alaska 1983).

Dianne Gruber, who was employed in the bargaining unit position of deputy clerk, in a letter to Repasky dated January 25, 1996, claimed that city manager Renz offered her a promotion and told her she would need to retract her interest card to take it. Exh. 46. Gruber declined the position. A temporary employee outside of the bargaining unit, Suzie Elzig, was next offered the job at a lower rate of pay.

The IBEW claims these facts support the conclusion that the City induced Gruber to drop her support for the union in exchange for a promotion to a higher paid position. The allegation that Renz offered the position conditional on the retraction of a union interest card is troubling. If the statement was intended as an inducement to Gruber to leave the union, we believe the City would have committed an unfair labor practice.

However, we cannot make such a conclusion on the basis of the record in this case. The only evidence of Renz's statement to Gruber in the record is a letter to Repasky from Gruber that was written five or six months after the statement was made. The letter is hearsay and does not fall within any of the exceptions to the hearsay rule. Rule 803, Alaska R. Evid. The Administrative Procedure Act provides:

> Hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action.

Without direct evidence of the statement by the city manager, we cannot conclude the City violated AS 23.40.110(a)(1) and (3). Whaley v. Alaska Workers Compensation Bd., 648 P.2d 955, 960 (Alaska 1982).

5. Whether the City unilaterally changed terms and conditions of employment during bargaining in violation of AS 23.40.110.

An employer's unilateral changes to terms of employment that are mandatory subjects of bargaining during the course of negotiations is a per se violation of the duty to bargain in good faith. University of Alaska Classified Employees Ass'n, APEA/AFT, AFT-CIO v. University of Alaska, Decision & Order No. 185, at 8 (April 13, 1995), reversed on other grounds, no. 3AN-95-3909CI (super. ct., July 19, 1996); see generally 1 Patrick Hardin, The Developing Labor Law 596 (3d ed. 1992).

In this case the change was to the work day of the police officers. The change in work schedule affected compensation. The City's flex-time schedule resulted in the loss of compensation for overtime to the employees. The parties do not dispute that the changes were made. The City argues that the subject was off the negotiating table and that the IBEW waived bargaining.

The facts were disputed and we have found that IBEW allowed the City to negotiate directly with the affected employees but did not waive negotiations. Since both parties' final offers addressed police department call-outs and

compensation, we conclude the subject remained "in negotiations."

Work schedules and eligibility for overtime are mandatory subjects of bargaining. AS 23.40.070(2) requires negotiations "on matters of wages, hours, and other terms and conditions of employment." The phrase "terms and conditions of employment" is defined to mean "the hours of employment, the compensation and fringe benefits" among other things. AS 23.40.250(a). Thus, the City's unilateral change of the police department work schedule was a unilateral change of a mandatory subject of bargaining and a violation of the duty to bargain in good faith under AS 23.40.110(a)(5).

The IBEW also offered evidence of changes to the rates of pay for two public works positions. The timing of these changes raises the issue of res judicata. The changes were made at the time of hire of the two positions and after the elimination of the position of director of public works, after the initial demand to bargain and before city manager Renz left the City in August of 1995. The Union did not provide evidence of the timing of its discovery of these changes. However, a charge related to unilateral changes in employment terms probably should not be barred by an earlier charge related to delaying tactics. See discussion, infra, section 6. Because the City's changes affected rates of pay and were made without discussion with the bargaining representative, we conclude they were in violation of AS 23.40.110(a)(5).

6. Whether res judicata bars the issues set forth in (1)--(5).

The City raises in defense of the charges the doctrine of res judicata. It argues that the settlement with prejudice of the first charge in 1995 bars consideration of the charges in this charge filed in January of 1996. The IBEW argues that the settlement of the first complaint should be considered a withdrawal, which would not bar reconsideration of the issues. The IBEW's argument is not supported by the facts. The first complaint was dismissed with prejudice after the parties stipulated to its dismissal with prejudice.

Under the doctrine of res judicata, a stipulation to dismiss a lawsuit with prejudice operates as an adjudication on the merits of all issues that were raised or could have been raised in the pleadings. Tolstrup v. Miller, 726 P.2d 1304, 1306 (Alaska 1986); see also Gilmartin v. Abastillas, 869 P.2d 1346, 1349 (Haw. Ct. App. 1994). The principles of res judicata have been extended to administrative adjudication. Calhoun v. State of Alaska, 857 P.2d 1191 (1993); II Kenneth Culp Davis & Richard J. Pierce, Jr., Administrative Law Treatise 251 (3d ed. 1994). The Alaska Supreme Court has held res judicata bars all relevant claims that could have been raised in the action dismissed. DeNardo v. State, 740 P.2d 453, 456 (Alaska 1987); Tolstrup v. Miller, 726 P.2d at 1307. The Alaska Supreme Court stated in Calhoun v. State of Alaska, 857 P.2d at 1195:

> Thus if a claim could have been raised before an agency in a prior administrative hearing, res judicata precludes subsequent litigation of the same claim. Colville Envtl. Servs. v. North Slope Borough, 31 P.2d 341, 345 (Alaska 1992).

See also Luedtke v. Nabors Alaska Drilling, Inc., 768 P.2d 1123, 1130, n. 5 (Alaska 1989).

The charges in IBEW's first complaint related to dilatory tactics, such as failing to meet at reasonable intervals and failing to make proposals, and the Agency is barred from considering those charges in this case, at least as they pertain to conduct arising before the settlement in September of 1995. Equally clear is the conclusion that consideration of the charges relating to unilateral changes to the police department schedule and compensation are not barred. The conduct charged occurred after the first complaint was filed and settled, and this charge could not have been raised in the first complaint.

More difficult is the question whether this Agency is barred from considering charges that Renz unilaterally changed compensation for two positions, which occurred between the filing and settling of the first charge. The first charge was about delaying tactics in negotiations. The IBEW would have had to amend the complaint to add a charge of unilateral action for it to be considered under the first complaint. Because the charge could not have been raised without an amendment, we conclude that the claim could not have been raised in the prior administrative proceeding. We therefore conclude the charges relating to unilateral action are not barred.

Conclusions of Law

1. The City did not fail to meet at reasonable times and thereby violate AS 23.40.110(a)(1) and (5).

2. The City did not unreasonably delay presenting proposals in negotiations in violation of AS 23.40.110(a)(1) and (5).

3. The City did not violate the prohibition against direct dealing with bargaining unit members in AS 23.40.110(a)(1) and (5).

4. The record is not sufficient to support the conclusion that an agent of the City conditioned promotion on nonunion membership in violation of AS 23.40.110(a)(1) and (3).

5. By changing the work schedule and compensation in the police department and by changing the rate of pay in the public works department, the City unilaterally changed terms and conditions of employment during bargaining in violation of AS 23.40.110(a)(5).

6. Res judicata barred consideration in this case of claims that the IBEW could have raised in its first complaint, which was dismissed with prejudice on September 1, 1995.

ORDER

1. The City of Seldovia is ordered to cease and desist those unilateral changes to terms and conditions of employment during bargaining that violated AS 23.40.110(a)(5) and to restore the status quo ante, including making any affected employees whole by restoring wages and benefits, as appropriate;

2. All other charges in the complaint are dismissed; and

3. The City of Seldovia is ordered to post a notice of this decision and order at all work sites where members of the bargaining unit affected by the decision and order are employed or, alternatively, serve each employee affected personally. 8 AAC 97.460.

Alfred L. Tamagni, Sr., Chair

James W. Elliott, Board Member

Raymond P. Smith, Board Member

APPEAL PROCEDURES

An Agency decision and order may be appealed through proceedings in superior court as provided in the Alaska Rules of Appellate Procedure and the Administrative Procedures Act.

The decision and order becomes effective when filed in the office of the Agency, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1547, AFL-CIO v. CITY OF SELDOVIA, CASE NO. 96-498-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 23rd day of September, 1996.

Margie Yadlosky

Administrative Assistant

This is to certify that on the 23rd day of September, 1996, a true and correct copy of the foregoing was mailed, postage prepaid to

William F. Morse, IBEW

Paul S. Wilcox, City of Seldovia

Signature

1The City appears to dispute whether chief Anderson has accrued compensatory time for time worked over 40 hours per week. Acting city manager Dick Wyland could find no record of an overtime or compensatory time agreement with Anderson, and stated he thought the position of police chief was exempt from overtime under state law. There was also a suggestion that a City ordinance governed. We do not decide the issue whether Anderson accrued compensatory time; this fact is not material to the legal issues.