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ALASKA PUBLIC EMPLOYEES ASSOCIATION/AFT, AFL-CIO,
Complainant,

vs.

CITY OF FAIRBANKS,
Respondent.

Case No. 99-1023-ULP

DECISION AND ORDER NO. 251

Digest: (1) The totality of the City's conduct regarding its negotiations with APEA and its actions, did not show bad faith bargaining in violation of AS 23.40.110(a)(1), (2) and (5).

(2) There is no causal relationship between statements or actions by officials from the City of Fairbanks and the decertification process initiated by members of the APEA. The City did not unlawfully encourage or assist APEA members in their decertification efforts.

This matter was heard on May 30-31, and June 1, 2000, in Fairbanks, Alaska, before the Alaska Labor Relations Board panel consisting of Acting Chair Blair Marcotte,[1] and member Dick Brickley. Member Karen Mahurin was unable to attend but listened to the hearing tapes and reviewed the record. Hearing Examiner Mark Torgerson presided. The record closed on August 11, 2000, after member Mahurin had the opportunity to complete her review of the record.

Appearances:

William Jermain, attorney, for complainant Alaska Public Employees Association (APEA); and John Eberhart, attorney for the City of Fairbanks (City).

DECISION

Statement of the Case

APEA filed this complaint alleging the City of Fairbanks (City) committed an unfair labor practice (ULP) by bad faith bargaining, and by encouraging city employees to decertify from membership in APEA. The City denies both allegations. Hearing Officer Jean Ward investigated the charge and found probable cause that the City committed a violation. The City filed its notice of defense and requested a hearing. This hearing followed.

Issues

1. Did the City of Fairbanks violate AS 23.40.110(a)(5) and (a)(1) by engaging in numerous actions that violated the duty to bargain in good faith with APEA? By its refusal to bargain in good faith, did the City unlawfully assist or encourage APEA members to support decertification from APEA?

2. Did the City violate AS 23.40.110(a)(2) and commit an unfair labor practice by its refusal to negotiate? Did the City appropriately cease negotiations because it doubted APEA possessed majority status?

Findings of Fact

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

1. The Alaska Public Employees Association (APEA) is recognized as the exclusive collective bargaining representative of the general government unit (GGU) at the City of Fairbanks (City). The GGU consists of engineers, secretaries, finance department employees, and other rank and file employees, totaling 23 members. (Exhibit 28). APEA has represented this unit since 1983 or 1984. (Bob Watts testimony). APEA also represents two other bargaining units in the City: the Fairbanks Police Department Employees Association (FPDEA), consisting of 47 rank and file employees in the police department, and 7 employees in the Fairbanks police supervisors, Class I employees.

2. The City is the employer for employees in the general government unit that APEA represents.

3. APEA and the City entered into a collective bargaining agreement (CBA), effective January 1, 1994 -- December 31, 1997. Article 30, section 1 of the CBA provides in relevant part:

> [E]ither party may give the other party written notice of its desire to terminate the Agreement or to effect changes therein during the period January 1, 1997 to June 15, 1997. If notice is given, the parties will exchange proposals no later than August 1, 1997 and formal negotiations shall commence no later than August 15, 1997 unless otherwise mutually agreed upon by the parties.

(Exhibit 3, page 56).

4. On June 4, 1997, City Mayor James Hayes sent a letter to APEA Northern Regional Manager Bob Watts inquiring whether APEA would agree to "roll over" the contract for another year. In his June 4, 1997 proposal, Mayor Hayes noted that the collective bargaining agreement (CBA) between APEA and the City was due to expire on December 31, 1997. Hayes noted that the parties' CBA states that notice of intent to renegotiate may be given by June 15, 1997, proposals may be exchanged by August 1, with negotiations to commence on August 15. Hayes asked, in light of uncertainty created by a pending sale of the Fairbanks Municipal Utilities System, if APEA would be willing to "enter into an agreement extending the above referenced CBA through December 31, 1998." Hayes stated that if APEA did not agree to this one-year extension, the City "reserves the right to submit proposals . . . ." Hayes added: "Please let me know if you are in agreement and, if so, whether you wish to present me with a draft or whether you would like the City to present a draft. Please contact me if you have any questions or if you are in need of any further information." (Exhibit 8).

5. On July 29, 1997, Watts wrote Mayor Hayes regarding a "comprehensive wage survey" that the parties included in the then current collective bargaining agreement. Watts noted that APEA had asked the City twice previously to conduct the survey as required, but it had not occurred. Watts also wrote: "Because of our upcoming negotiations this fall with the two bargaining units (three different contracts) represented by APEA, it is critical that the wage survey be started as soon as possible." (Exhibit 9 at 2). Watts did not mention the Mayor's June 4, 1997 letter that offered to extend the contract. On August 26, 1997, Mayor Hayes wrote Watts and referenced his June 4 letter. He then said: "Although you did not directly respond to the proposal raised in my letter, your letter dated July 29, 1997 . . . may be interpreted as an implied rejection of my proposal to extend the CBA . . . . Please advise me if my assumption is incorrect." (Exhibit 10).

6. On October 9, 1997, Watts wrote John Eberhart, then Deputy City Attorney. (Exhibit 11). Noting that the CBA for the general government unit (GGU) would expire on December 31, 1997, Watts requested "that we commence negotiations as soon as possible for a successor bargaining agreement . . . ." Watts asked Eberhart to provide available dates for negotiations. On November 24, Mayor Hayes wrote Watts stating the City was prepared to negotiate "all parts" of a successor agreement. Hayes noted that Article 30.1 of the then current CBA "requires that proposals be exchanged before formal negotiations commence. This issue will be discussed at the preliminary meeting." (Exhibit 12).

7. On December 16, 1997, Watts wrote Hayes and requested that the parties resume negotiations on a successor CBA for the Fairbanks Police Department Employees Association (FPDEA). Watts noted the parties had previously tentatively agreed, or TA'd, on all articles except wages. They had agreed to arbitrate a dispute that had arisen during negotiations for the FPDEA contract, but Watts wrote that the City refused to abide by the award. Watts indicated in the letter that the City was now refusing to acknowledge the articles previously agreed on, and wanted to start all over. Watts wrote that it was "reprehensible" for the City to do this, and asked that they acknowledge the previously agreed-on TA's and essentially pick up where they left off. Watts also asserted the City had refused to abide by salary survey ordinances. (Exhibit 13).

8. Also on December 16, 1997, Watts also responded to Hayes, June 4, 1997 letter that proposed to roll over the 1994-97 contract until December 31, 1998. Watts wrote that

> [T]he City of Fairbanks (City) specifically stated its desire to allow the CBA to continue in effect until December 31, 1998 (one additional year) and asked APEA if it had any objections. APEA agreed and had no objections, therefore, did not respond. Effective July 1, 1997, the CBA is in effect until December 31, 1998.
>
> By mistake or oversight of your June 4, 1997 letter, I sent a letter to John Eberhart on October 9, 1997 asking to start negotiations as soon as possible. That letter was either extremely premature or extremely late, whichever way you look at it and ineffectual. In any event, that letter was sent out by mistake and is hereby withdrawn.

(Exhibit 14).

9. On December 23, 1997, Watts wrote John Eberhart confirming a conversation they had 5 days earlier. Watts wrote that the parties discussed their positions on proceeding with the FPDEA negotiations. Watts wrote that the City stated its readiness to proceed with negotiations on the Department of Public Safety Class I CBA. However, Watts noted that he explained negotiations would be a "waste of valuable employees' time until we conclude the wage negotiations for the FPDEA employees." (Exhibit 15).

10. On December 29, 1997, Mayor Hayes wrote Watts that the City remains ready to negotiate "all parts" of a successor CBA for the GGU employees. Referring to Watts' December 16 and 23 letters, Hayes asserted that the "City does not accept the position taken by you." (Exhibit 16).

11. Negotiations for a new GGU contract did start at some point in early 1998, according to Watts. However, he said bargaining was suspended by mutual agreement in order to form a health care committee, sanctioned by the Fairbanks City Council and all city unions (APEA, the International Brotherhood of Electrical Workers (IBEW), the AFL-CIO Joint Crafts Council, and the Fairbanks Fire Fighters Association).[2] The committee's goal was to discuss health care costs and develop a plan to reduce those costs. Watts said the intent was to draft language that would be inserted in each union's contract. City Council Resolution 3755 established the health care committee on April 20, 1998. The resolution indicates the committee was supposed to provide the council with a plan by September 30, 1998. Otherwise, the council would adopt "the plan design structure." Watts said the committee had a rough start,

but commenced discussions in April or May of 1998, and met approximately every other week for a year. In addition to the 6 or 7 union representatives, other health care committee members included Mayor Hayes, the City's risk manager, Bev Shuttleworth, Phil Yonker from the City, and 2 city council members. After more than a year of work, the committee reached consensus on contract language and submitted the proposal to the Fairbanks City Council for approval. The City Council rejected the committee's recommendations in approximately May 1999.

12. Toward the end of the health care committee meetings, John Giuchici, a committee member who was assistant business manager for the IBEW, Local 1547, told the committee it needed to "hurry up" or the IBEW would make its own separate proposal to the City. Watts said he became aware of negotiations between IBEW and the City in April or May 1999. This was contrary to what he thought the City and the unions agreed to; he thought all unions put negotiations on hold during the health care committee discussions. Giuchici testified his bargaining unit's negotiations with the City were completed, except for the health care issue.

13. During the time negotiations between APEA and the City were suspended for health care committee discussions, a group of employees in APEA's general government unit (GGU) began their own discussions on pension and health care plans. This group, which came to be known as the "Survey Group," began discussions in December 1998 or January 1999.[3] Those in the initial four-member group included Patrick Smith, James Griffin, Bill Scouten, and Dave McNary. Later, McNary's boss, Bob Weaver, joined the group.[4]

14. Patrick Smith has worked for the City since October 1988. He is currently a right-of-way agent. He testified that he has been dissatisfied with the APEA almost since he started work for the City 12 years ago. He said he has had 12 years to see "what APEA has not done" for him. He said in a 15-year period, APEA has obtained contracts for GGU employees for only 6 of those years. He asserted that the Public Employees Retirement System (PERS) pension program, which APEA has for its employees, is "so modest and cheap" that employees could work for 30 years and still have to get another job when they retire from employment with the City.

15. Lisa Newby is a deputy city clerk and friend of Smith. Rufus Bunch was Smith's boss at the City, for a period. Both of these employees are in a city bargaining unit affiliated with the IBEW, Local 1547, Unit 102. Smith testified he was "flabbergasted" to learn, during discussions with these IBEW members, the retirement accrual rates they receive through membership in the IBEW. He asserted they accrue triple what he accrues under the PERS. Smith said it bothers him that his boss accrues three times the retirement that he himself accrues.

16. Griffin has worked as a right-of-way engineer for the City for more than 20 years. He is a GGU member. He said he has no disenchantment with APEA other than the current dispute. He said he has been 15 years in the same pay status. He testified he now has to work two jobs because he cannot "keep up" with what APEA and the City are "willing to pay." Scouten has worked as an engineer since 1974. He is a GGU member and employee representative who helps arbitrate grievances at the lowest level. He had calculated his PERS retirement and found it inadequate. Weaver has been senior right-of-way agent for the City since 1974. He is also the network manager for City Hall. He is a GGU member. He said discussions about benefits started in conversations among the right-of-way agents. Weaver said the survey group was concerned about the level of representation it was getting from APEA, and about the amount of benefits they were receiving. He said it is common knowledge around City Hall that other unions' retirement benefits are superior to those provided under contracts negotiated by APEA.

17. The survey group began researching and comparing benefits they were accruing under the PERS system, offered by APEA, with benefits available from other programs sponsored by other unions. The group obtained information from other unions, including the Teamsters, Laborers, International Brotherhood of Electrical Workers (IBEW), and Operating Engineers Local 302. (Testimony of Patrick Smith). Smith said he was responsible for getting a copy of the IBEW's plan. However, IBEW's assistant business agent, John Giuchici, would not share a current plan. Smith said Giuchici was "pretty tight lipped," and said his union does not go after other unions' employees. Smith said they somehow obtained an old copy of IBEW's plan. Then Scouten did a spreadsheet analysis comparing all of the unions' benefit plans. Smith said, "it was an eye popper." The group discussed the various plans and compared levels of benefits. Smith felt the Operating Engineers 302 plan was best for him, but the group decided to pursue the IBEW's plan.

18. The survey group discussed with Watts the possibility of forming their own bargaining unit. According to Smith, Watts said the "board" might let them go if they kept the group small. Watts said he would arrange a meeting with IBEW representative John Giuchici. According to Giuchici, he and Watts discussed the benefits in various retirement plans, and Watts told him the IBEW plan was better than the PERS plan.

19. Watts, Giuchici, and the five members of the survey group had lunch on March 1, 1999. Smith testified that Watts led the discussion. Giuchici, the assistant business manager of Local 1547, answered questions asked by those present. He testified he communicated "extremely clearly" that although IBEW would represent units currently under APEA, APEA would have to first relinquish representation of the employees, and the City would also have to agree to it. Giuchici testified that in light of the "no-raid" prohibition under the AFL-CIO, he "sure as heck" wasn't going to fight to take the APEA members away. However, if the group of employees decertified from APEA, he would go after them like anyone else. Still, he testified he is not encouraging that to happen.

20. On April 9, 1999, William Scouten of the survey group sent Giuchici a letter thanking him for the March 1 lunch and asking him to respond to some follow-up questions. Guichici responded the same day.

21. On April 20, 1999, the survey group sent a letter to the APEA state Board of Directors requesting that the five group members be allowed to leave membership in APEA and join IBEW. In their letter, the group expressed concern over the "limitations" of the Public Employees Retirement System (PERS) and its ability to meet their retirement needs. They stated that other unions' retirement systems would provide double or triple the benefits accumulated under the individuals' PERS accounts. The group asked the Board to consider allowing the five-member group to "move" to the IBEW. (Exhibit 24).

22. The APEA Board rejected the survey group's request at its meeting on May 3, 1999 . The survey group sent another letter on May 13, 1999, asking the APEA Board to reconsider its decision.

23. On May 3, 1999, the City Council reviewed and rejected the health care committee's proposal and adopted its own (Exhibit 26). On May 27, 1999, City Mayor James Hayes sent a letter to representatives of four unions, including Bob Watts, John Giuchici, Joe Thomas of the AFL-CIO Joint Crafts Council, and Mark Drygas from the Fairbanks Fire Fighters Association. (Exhibit Q). Hayes wrote: "[D]ramatic changes at the City over the past decade require a serious examination of some consolidation of the six bargaining units that represent City employees." Hayes proposed that the current 6 bargaining units, representing 166 permanent employees, be reduced to 3 units. APEA rejected the Mayor's proposal.

24. APEA and the City revived the negotiating process for the GGU in June 1999. APEA sent the City a list of negotiators that comprised the APEA team. Bob Watts testified that he and Patrick Cole, a deputy city attorney who is also the City's negotiator of union contracts, agreed the parties would meet Wednesday afternoons. Exhibit 6 was created by Watts, who said it shows the dates the parties met or did not meet-- and if not-- who cancelled the meeting, and the number of tentative agreements reached. Watts testified APEA was fairly flexible in getting together with the City, but getting Cole to sit down "was another thing." The negotiations restarted on Wednesday, July 7, 1999. Between that date and through October 27, 1999, Watts said Cole cancelled 12 of the scheduled 17 sessions. Watts does not remember specifically why Cole cancelled several of the sessions. Watts said there were no meetings between July 21, 1999 and September 22, 1999. However, he did state he and Cole had other meetings regarding grievances and petitions to enforce contracts, and meetings and negotiations on the police rank and file unit. Watts said that he cancelled his annual moose-hunting trip the first week of September so the parties could continue to negotiate. Even so, he said he received a letter from Cole in which Cole said, in so many words, that Cole knew Watts was moose hunting, and suggested the parties postpone negotiations until October. Watts admitted he did not contact Cole ahead of time and tell Cole he was not going moose hunting.

25. In his Tuesday, August 31, 1999 letter to Bob Watts (Exhibit AG), Cole essentially asked for time off from negotiations until "early October" 1999, when he was willing to set aside "a couple of full days." He indicated his recent vacation and "a number of work pressures" made it difficult to make headway on the APEA and FPDEA contracts. His letter indicated that until October, he would have scheduling problems in negotiations for the APEA and FPDEA contracts. He asked Watts if they could speak about this after they finished their prehearing conference scheduled for September 21. Despite this letter and request, APEA apparently continued to show up for negotiations each Wednesday without responding to Cole regarding his request. Cole's log of actions (Exhibit N) shows he had an FPDEA "meeting" on September 2, APEA "meetings" on September 8 and 22, and FPDEA negotiations on September 9. There is no record indicating a prehearing conference was held on September 21.

26. Cole has worked three separate stints for the City, with the first stint beginning in the 1970's. He has known Bob Watts for many years and feels they get along pretty well. In his view, the APEA negotiations were going in "fits and spurts." They started again in mid-summer 1999 when the parties signed ground rules. Cole recalled that he and Watts knew their time would be limited due to other work duties each has; so they tried to set aside a time each week when they would be tentatively available for contract negotiations. That time was on Wednesdays. However, Cole said they did not meet on some of the Wednesdays due to other work tasks he had, or the fact he was on leave or out of town. He said it was not a matter of canceling Wednesday meetings. Rather, it was just that due to other activities, those dates just didn't work out. He asserted he did not refuse to meet with Watts. He said that the two of them met on other dates not shown on Watts' log (Exhibit 6). For example, he met with Watts many times on the salary survey issue. He asserted that solving the salary survey issue was a major economic issue that he felt needed to be resolved before they could negotiate a new contract. He testified this issue was "greatly" discussed with APEA at negotiations. In addition, Cole said that among his various work tasks, requests by the Mayor are his first priority. Cole testified that he works on a project for the Mayor at least weekly, if not more often. Cole pointed to Exhibit N, which is his log of actions in 1999 and 2000. It contains dates, nature of contacts, and notes of the contacts. It shows that in 1999, Cole had 5 contacts with APEA regarding GGU contract negotiations. We find there was no specific weekly schedule of meetings regarding negotiations that the parties had scheduled ahead of time.

27. Cole said he first became aware of a splinter group (the survey group) sometime in the summer of 1999. He was unaware of the survey group's activity until he received a copy of the group's request to "be let out" of APEA. He said Pat Smith told him that all or virtually all of the GGU members wanted to leave APEA. Cole later received a copy of the Petition for Voluntary Election for Representation. (Exhibit T). He noted some negotiators,

including Dave McNary, had signed it.

28. Cole denied he tried to encourage employees to decertify from APEA, or get out of APEA and join IBEW. He admitted he responded to employees' questions about benefits provided by the IBEW. According to Watts, a GGU member told him Cole spoke about the IBEW trust. Subsequently, the APEA negotiating team discussed the IBEW benefits and decided to ask if they could get the IBEW benefits under a "special agreement" provision. Under this provision, non-collectively bargained employees could participate in IBEW's defined benefit and health plans. However, there must be a collective bargaining agreement in place with an employer before this special agreement can apply. In the City's case, the City's supervisory unit has been in the IBEW since 1991. From this agreement, City administration officials negotiated a special agreement with IBEW for themselves. (Giuchici testimony). Pat Cole became familiar with the special agreement provision while working in previous jobs.

29. The negotiating team was told they could not participate in a special agreement because the provision was an organizing tool. However, Watts said Cole later discussed the merits of the IBEW pension during a negotiating meeting on either July 21 or July 28. Watts asserted Cole said something like "why don't you get into the IBEW because it has better benefits than PERS." Cole said he did not in any way suggest a change of union affiliation. He said that during a negotiating session in City Hall, he closed the door to the hall because there were people in the hall. He said he told the negotiators that the new PERS III plan was awful, and if the parties did not find a health care solution, the City was probably going to end up making a unilateral offer of health care and end up implementing it, which wasn't positive. He said they should look at all the alternatives that are out there. Cole was pretty sure Watts was there when he said this.

30. Several APEA members testified, including some members of the negotiating team. Billie Mitchell was a GGU member and negotiating team member. She worked for the City for 23 years. She was on the APEA negotiating team from the spring of 1999 until her retirement in August 1999.[5] In addition to her, she said the negotiating team consisted of Chris Haigh, Charlie Jennett, and Dave McNary.[6] Mary Gatzkiewicz joined the team when Mitchell retired. Mitchell described negotiations as pretty drawn out, particularly with trying to get people together all at once for sessions. She said there was progress in the beginning, but with long breaks. She said they had meetings scheduled, but not on a weekly basis. They met every two or three weeks. She said Cole forgot meetings or didn't write them down. Thinking it had a meeting scheduled, the APEA team would show up, but Cole would be either late of absent. She felt Pat Cole was honest and straightforward. In her opinion, Cole never supported decertification or the idea of getting rid of APEA. She testified Cole did mention the IBEW plan and compared it to PERS. Then, Mitchell said the negotiating team asked Bob Watts to look into other health and pension plans, and Watts said he was looking into it. She said Bill Scouten gave her a breakdown comparing the various pension plans. She was against decertification because she didn't think APEA was doing "that bad of a job." She felt an employee election would be better than a decertification petition.

31. Mary Gatzkiewicz is a programmer analyst for the City, and is a member of the GGU. She replaced Billie Mitchell in August 1999 after Mitchell retired. She said she went to negotiations in June and July and took over on the team in August. On direct examination, she said the pace of negotiations seemed "rather slow." On cross-examination, she said they were progressing pretty well. She said Cole always seemed to be late, or they'd have to hunt him down. She recalls one incident in which she saw Cole in the hall talking to someone. She said to Cole: "Don't you know you are supposed to be in negotiations?" Cole replied that 'it's not on my schedule.'

32. Gatzkiewicz testified that APEA looked into whether IBEW would let them into their health and pension plans. She said that in one meeting with Cole, they were discussing the City getting out of the health care business, and Cole said something to the effect: "I'm not saying this, but why don't you get into the IBEW." In her

view, he was not telling them they should do this, but just brought up the idea. However, she said that the City made it clear they wanted to get out of the health care business.

33. Gatzkiewicz said that later in the process, things moved fast on non-economic issues. Her notes indicate the last negotiating session was October 13. She felt that up until that last session, the parties had made progress. She said they were not addressing economic issues, but "you usually save the hardest issues, like money issues, to the end."

34. Gatzkiewicz said she signed the voluntary election petition (Exhibit T). It was her understanding the petition was meant to give employees the opportunity to choose among a number of unions. She said Bob Weaver or Bill Scouten distributed the petition. Regarding the petition to suspend negotiations (Exhibit AC), she was not aware of it but would not have signed it because she was a negotiator. She knew about the meeting to organize the General Government Employees Association in October 1999. She donated $50 to the organization.

35. Chris Haigh has been an engineer for the City for 15 or 16 years. He has been on the APEA negotiating team for some time. He said negotiations were "proceeding along" like any other negotiations. A few months before the end of negotiations, Pat Cole questioned whether APEA represented the members. Cole asked them whether they were aware that people were trying to get the City to stop negotiations.

36. At one negotiating session, Haigh asked Pat Cole if he was giving people information about IBEW. According to Haigh, Cole said he was just answering their questions. Regarding IBEW, Haigh said he saw Scouten's spreadsheet comparing the various pension programs available from other unions. APEA negotiators discussed these plans and told Watts to research them and determine if any would be available for APEA members.

37. Haigh considers Pat Cole honest. He considers Cole a friend and they just played basketball the day Haigh testified. Haigh said he and Cole did talk about bargaining units, but the conversation occurred in 1997. Cole said it would be better if everyone was in one bargaining unit, but he did not express a preference for any particular unit. Haigh said this was a personal conversation outside of work hours.

38. Haigh signed the Petition for Voluntary Election. He said he signed it after 50 percent of the people signed it. He indicated it would be okay if APEA was willing to let people go because it wasn't a very good union anyway.

39. James Welch is Deputy Chief of Police for Fairbanks. He reports directly to the mayor. He is a member of APEA, Police and Fire Supervisor's unit.[7] He has worked on contract negotiations. He became aware of a movement to look into other benefit packages, and he tried to keep informed of the information. He testified he wanted to make sure Bob Watts knew they were doing this on their own initiative, and there was no "raiding" by other unions. He said he shared with Watts, Bruce Ludwig (APEA Business Manager) and Cole that they were looking into other benefit plans. He said neither Cole nor any other city administration person tried to influence them. He said he did not hear Pat Cole promote IBEW. He said there is a lot of displeasure with APEA.

40. Charles Jeannet has worked as a structural inspector for the City for more than 16 years. He is a GGU member. He has been a negotiator and employee representative for APEA. He was a negotiator and signer of the 1994-97 contract, and he was on the negotiating team in 1999. He dealt with Pat Cole in contract negotiations and felt Cole was fair and "very candid." He said negotiations appeared to go well with non-monetary issues. According to Jeannet, Pat Cole said, in a closed-door discussion with the negotiating team, that "you guys ought to consider what benefits IBEW has going in their trust." However, Cole did not give Jeannet the impression he was advocating changing unions.

41. Mark Neidhold has been a project engineer for 12 years at the City. He is a GGU member. He said he joined the group desiring to leave APEA because he was frustrated about not having a collective bargaining agreement for many of the years he was there. The pace of negotiations for a new contract further frustrated him. He also said the pension benefits available from other unions provided a 3-to-1 improvement over what they were getting with PERS. He said he did not hear Pat Cole or any other city administration officials extol the virtues of another union.

42. Raymond Miller has worked for the Fairbanks Police Bureau for 26 years. He is a lieutenant, and is a member of the APEA, Police and Fire Supervisor's Unit. When he first started working for the City, the police union (the Fairbanks Police Department Employees) was not affiliated with any other union, such as a state or national union. He felt the police were better off on their own than with APEA. In his view, there was very little negotiating initiative on APEA's part unless APEA was spurred on by initiatives of the member employees. He said he was frustrated by the fact that there was no contract since it expired in 1997. He was particularly frustrated by an absence of effort on the part of APEA to obtain a contract for the members. He did not speak with Pat Cole or other city administration officials about health and pension plan alternatives. He said his friend, Bill Scouten, showed him the pension plan comparisons.

43. In the late summer of 1999, Cole had lunch with APEA Business Manager Bruce Ludwig, Bob Watts, and Dave McNary. They discussed, in Cole's words, the employee revolt, and what could be done about employees' unhappiness. They discussed that the employees felt other unions could provide better benefits. Cole said that basically, Bob Watts was briefing Cole on what had transpired and what APEA was trying to do about the problem. Watts said they were discussing with other unions the possibility of enrolling APEA members in their health care and pension plans, and APEA might start its own plan as well.

44. During the negotiating sessions, the parties produced 89 tentative agreements (TAs). These included 15 TAs on July 7, 5 on July 21, 62 on October 7, and 7 on October 13.[8]

45. On July 30, 1999, the survey group sent the APEA Board a "Petition for Voluntary Election for Representation." (Exhibit AB, Exhibit T). The accompanying letter asserts that the petition is signed by 90 percent of the "current GGS[9] Unit membership, far exceeding the simple majority required for de-certification pursuant to 8 AAC 97.030." The petition, signed by 26 employees between June 30 and July 22, 1999, asked that the general government unit have the opportunity to vote in order to freely choose union representation.

46. Between August 3 and August 5, 1999, 14 employees of the GGU signed a "Petition to Suspend Negotiations." The petition indicates the APEA Board postponed its August 3 meeting. It also states that the Petition for Voluntary Election may result in representation by a union other than APEA. Therefore, the petitioners requested that their APEA negotiators "cease and desist" negotiations with the City until the APEA Board acts on the Voluntary Petition for Election. The petition also states that "the City administration has agreed that a temporary suspension of negotiations for the purpose of resolving the issue of representation will not be viewed adversely." (Exhibit AC).

47. On October 19, 1999, a group of 9 employees published a newsletter titled "City General Government Unit and Class I Employee Newsletter." (Exhibit AK). The newsletter discusses the survey group's activities, its concern for a better retirement, the requests to be let out of APEA, and alleged lack of cooperation by APEA in the process. The newsletter advocates an independent employee association. It scheduled a meeting to form an association as a start to a decertification process. (Exhibit AK at 2-3).

48. On October 26, 1999, the City received a petition for decertification of APEA as representative of the General Government Unit and certification of the City of Fairbanks General Government Employees Association (GGEA). GGEA President Patrick Smith, a member of the survey group, signed the petition.

49. On November 3, 1999, APEA filed an unfair labor practice charge against the City, alleging Pat Cole, the city negotiator, circumvented APEA, the exclusive bargaining representative by speaking directly with GGU employees about the benefits of participating in IBEW trusts. The petition also alleges that by his actions, Cole has encouraged employees to support a decertification effort in the GGU. The petition and amended petition further allege the City committed an unfair labor practice through "sham bargaining" and by unlawfully refusing to bargain "upon its contention that APEA no longer enjoys majority support of unit employees." (December 3, 1999, Amended Charge Against Employer).

50. On November 9, 1999, APEA filed a "Notice of Blocking Charge," requesting that the unfair labor practice charge in Case No. 99-1023-ULP "block further proceedings in the case of *Fairbanks GGU Employees and the City of Fairbanks*, Case No. 99-1020-RD/RC, as amended (11/1/99)."

51. The City denies that it assisted the new union in any way. The City denies it encouraged employees to decertify from APEA. The City also contends it bargained in good faith until it concluded there was doubt about majority support for APEA as the representative.

DISCUSSION

1. Did the City of Fairbanks violate AS 23.40.110(a)(5) and (a)(1), by engaging in numerous actions that violated the duty to bargain in good faith with APEA? By its refusal to bargain in good faith, did the City unlawfully

assist or encourage APEA members to support decertification from APEA?

AS 23.40.110 states in pertinent part:

(a) A public employer or an agent of a public employer may not

(1) interfere with, restrain, or coerce an employee in the exercise of the employee's rights guaranteed in AS 23.40.080;
(2) dominate or interfere with the formation, existence, or administration of an organization;
. . . .
(5) refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

The bargaining process between APEA and the City.

We must first decide whether the City violated AS 23.40.110 and therefore committed an unfair labor practice by engaging in numerous actions that violate the duty to bargain in good faith. APEA alleges these actions include sham bargaining (or bargaining without an intention of reaching an agreement); direct dealing by Pat Cole with GGU members, thus circumventing APEA's representation of that unit's employees; failing to bargain at reasonable times; and finally, wrongly refusing to continue negotiations due to the filing of the decertification petition.

APEA asserts the City did not bargain in good faith in negotiations for a new GGU contract. APEA argues that the City's negotiating representative, Pat Cole, refused or failed to attend scheduled bargaining sessions, and he did not submit meaningful proposals. APEA contends that by failing to bargain in good faith, the City engendered dissatisfaction among GGU members, and consequently brought about the decertification petition.

Bargaining sessions.

APEA alleges Pat Cole delayed the negotiating process by not showing up for meetings, or by showing up late.[10] APEA's primary supporting evidence is Exhibit 6, the log created by Business Manager Bob Watts that shows the number of negotiating sessions scheduled and held, tentative agreements reached, and the party who canceled any sessions. APEA contends this exhibit shows the City, via Pat Cole, was responsible for canceling most meetings, and the City therefore did not meet at reasonable times.

Refusal to meet at reasonable times, or refusal to confer, is a *per se* refusal to bargain and violates AS 23.40.110(a)(5) without consideration of good or bad faith. 1 Patrick Hardin, *The Developing Labor Law* at 596 (3d ed. 1992).

However, we find that testimony of Pat Cole and APEA's own negotiators contradicts the allegation that Cole did not show up for scheduled meetings or to meet at reasonable times, to a large degree. APEA negotiators indicated in their testimony that although negotiations were rather slow and frustrating, and with some long breaks, there was progress. Billie Mitchell testified that there were meetings scheduled, but not on a weekly basis. Mary Gatzkiewicz described the process as "rather slow" but "progressing pretty well." Chris Haigh said negotiations were "proceeding along" like any other negotiations. Charles Jennet and Gatzkiewicz said negotiations appeared to proceed well with non-monetary issues. Gatzkiewicz also noted that "you usually save the hardest issues, like money issues, to the end." Finally, Cole testified that the dates the parties set were more in the nature of blocked out time that they hoped to--but would not necessarily--meet.

The negotiators also pointed out that Cole did show up late, and sometimes he did not show up at all for what they thought were scheduled dates. Cole testified he either had higher priority matters to take care of for Mayor Hayes, or he did not have the negotiating sessions scheduled on his calendar. We are surprised that APEA negotiators would not sit down with Cole and get something in writing, regarding the scheduling of negotiating sessions, after he stood them up a couple of times. We find this is indicative of the parties' lack of communication on meeting times.

We do not find Cole's scheduling priorities appropriate for the parties' collective bargaining process. A party's refusal to meet and negotiate due to a "busy schedule is not a defense to a continued failure to meet or schedule meetings." 1 Patrick Hardin, *The Developing Labor Law* at 604 (3d ed. 1992). The City must provide a negotiator who is available at times and places specified and agreed to by the parties. If Cole has too much work to do for the Mayor or other officials, the City needs to provide another person to be available for scheduled negotiations.[11] Nonetheless, the preponderance of testimony does not weigh in favor of APEA on the alleged refusal to negotiate at reasonable times. We find Cole is a credible witness. We find that although there were weekly sessions scheduled, the meetings were more in the nature of a goal, and the parties' agreement did not require attendance. We find the parties lacked communication on this point. There is nothing in writing to indicate weekly meetings would occur.

Moreover, in his Tuesday, August 31, 1999 letter to Bob Watts (Exhibit AG), Cole essentially asked for time off from negotiations until "early October" 1999, when he was willing to set aside "a couple of full days." His letter indicates that until then, he would have scheduling problems in negotiations for the APEA and FPDEA contracts. He asked Watts if they could speak about this after they finished their prehearing conference on September 21. Despite this letter and request, APEA apparently continued to show up for negotiations each Wednesday without responding to Cole's request. We find Cole was unaware of a set weekly schedule. We also find the APEA's GGU negotiators seemed unaware of a set weekly schedule. Accordingly, we find his failure to attend meetings on Wednesdays does not rise to the level of a *per se* refusal to bargain. In addition, we find APEA failed to prove that the City participated in sham bargaining, or used dilatory tactics. This finding is supported by the testimony of Cole, and of the APEA negotiators themselves.

We want to make it clear that we normally would not condone the delay in bargaining that occurred in this case. Under the terms of the parties' agreement, bargaining should have commenced in August 1997. By October 1999 there was still no agreement on any of the major economic issues. However, under the facts in this case, including APEA's acquiescence in many of the delays that occurred, we find the City did not violate the duty to bargain in good faith.

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Assisting another labor organization and encouraging decertification.

APEA contends that Cole, the City's negotiator, encouraged or assisted city employees to decertify from APEA. It argues that by doing so, Cole increased employee dissatisfaction that led to the decertification petition. They point to evidence that Cole had discussions with employees about the benefits of the pension offered by IBEW as opposed to that offered by PERS. In addition, APEA points to the incident when Cole took the negotiators aside and made a statement regarding the benefits provided by IBEW.

AS 23.40.110(a)(2) ensures that employees exercise a free choice in designating a collective bargaining representative. Nonetheless, "in the absence of unlawful interference, the Act does not prohibit an employer from expressing a preference for a particular union over its rival." 1 Patrick Hardin, *The Developing Labor Law* at 309 (3d ed. 1992). [12]

What exactly Cole said cannot be discerned from the various statements. We find Cole mentioned the benefits provided by IBEW. We find Cole--as he himself stated--told the negotiators how "awful" the most recent tier of PERS was. But based on the testimony of witnesses, we find APEA has failed to prove by a preponderance of the evidence that Cole encouraged employees to leave or decertify from APEA and to join IBEW.[13] Clearly, Cole must be careful in his statements to City employees. He works directly with them on projects, and is a personal friend with several of them. On the other hand, he is also the City's negotiator on contracts, including three such contracts with APEA.

However, we find here that Cole was merely touting the benefits he was receiving through the so-called "special agreement" provision with IBEW. We find Cole was providing information to employees when they asked for it. He was not assisting them in breaking away from APEA. The testimony of APEA witnesses supports this finding that Cole was merely providing information when asked. Even the negotiating team members said he was not trying to persuade them to join IBEW.

Moreover, APEA's business agent, Bob Watts, actually looked into the possibility of getting his GGU members into the pension plan offered by IBEW. In this sense, Watts was encouraging a move away from the benefits provided by APEA via the PERS. It is a tacit admission that IBEW may offer better benefits than those provided under the PERS.

Finally, we find that the survey group started the process of researching and comparing benefits on its own, and it independently concluded--without assistance or encouragement from Cole or other city administration officials--that it wanted to pursue other representation. The testimony of several non-survey group witnesses indicates many APEA employees received their information and encouragement from the survey group, not from Pat Cole. We find no causal relationship between Pat Cole's discussing of IBEW benefits, and APEA members' efforts to decertify. For these and the above reasons, we conclude APEA has failed to prove by a preponderance of the evidence that the City committed an unfair labor practice by encouraging or assisting employees in their attempts to decertify APEA as their bargaining representative.

2. Did the City violate AS 23.40.110(a)(2) and commit an unfair labor practice by its refusal to

negotiate? Did the City appropriately cease negotiations because it doubted APEA possessed majority status?

APEA argues that the City did not have justification to cease bargaining and withdraw recognition from APEA after the General Government Employees Association (GGEA) filed its decertification petition.

The City, on the other hand, denies that it violated PERA. The City asserts that it had valid reasons for stopping contract negotiations with APEA. The City argues that it negotiated in good faith and did not unreasonably delay or refuse to participate in the bargaining process. The City contends the employees who sought decertification from APEA took steps to do so on their own, without any encouragement from the City. Further, the City argues that APEA itself caused employees' dissatisfaction because APEA was not proactive in looking out for its members' interests, particularly on the retirement and pension trusts.

"Where an employer engages in conduct that causes employee disaffection from their bargaining representative, decertification petitions will be found to have been tainted by the employer's unfair labor practices and the latter, consequently, will be precluded from relying on the tainted petition as a basis for questioning the union's continued majority status and withdrawing recognition from that labor organization." *NLRB v. KEZI, Inc.*, 300 NLRB 594, 599, 1990 WL 181646 (N.L.R.B.) 135 L.R.R.M. (BNA) 1267 (1990); *Hearst Corp.*, 281 NLRB 764, 764 (1986).

In *Alaska Public Employees Association v. City of Bethel*, Decision and Order No. 152 (December 30, 1992), this Agency discussed loss of majority status, and the parties' respective burdens:

> Generally, after a bargaining representative is certified, it has one year when its support by the workers cannot be challenged. Brooks v. NLRB, 348 U.S. 96, 98, 35 L.R.R.M.(BNA) 2158, 2160 (1954). After the certification year ends, majority support is presumed to continue but this presumption may be rebutted. If the employer has evidence that the union has lost majority support, the employer may withdraw recognition. Terrall Machine Co., 173 N.L.R.B. 1480, 70 L.R.R.M.(BNA) 1049 (1969), enforced 427 F.2d 1088, 73 L.R.R.M.(BNA) 2381 (4th Cir. 1970); Bartenders Employer's Bargaining Ass'n of Pocatello, Idaho, 213 N.L.R.B. No. 74, 87 L.R.R.M.(BNA) 1194 (1974).[14]
>
> One treatise states the rule as follows:
>
> > An employer may withdraw recognition from an incumbent union at any time when such withdrawal is not precluded by law, if it can affirmatively establish either (1) that the union no longer enjoyed majority status when recognition was withdrawn, or (2) that the withdrawal was predicated on a reasonably grounded doubt as to the union's continued majority status, which doubt was asserted in good faith, based upon objective considerations, and raised in a context free of employer unfair labor practices. Furthermore the employer must be aware of the objective facts upon which its doubt is based at the time it withdraws recognition. 1 Patrick Hardin, The Developing Labor Law 571 (footnotes omitted) (3d ed. 1992).

(D&O 152 at 6).

The panel in D&O 152 went on to state:

> If the employer attempts to justify withdrawal of support by demonstrating a reasonable doubt of continuing majority status, it must establish that it was aware of the facts at the time it withdrew its support. Orion Corp., 515 F.2d 81, 89 L.R.R.M.(BNA) 2135 (7th Cir. 1975) (per curiam). The alternative is to establish that the union in fact lacked majority support at the time of the withdrawal. In either case, the employer has the burden of proof to justify withdrawal of recognition. Id.; Bartenders Employer's Bargaining Ass'n of Pocatello, Idaho, 213 N.L.R.B. No. 74, 87 L.R.R.M.(BNA) 1194.

(D&O 152 at 7).

The United States Supreme Court recently discussed the NLRB's "reasonable doubt" standard for determining whether an employer was justified in polling its employees (in accord with NLRB procedures) regarding support for the union. In *Allentown Mack Sales and Service, Inc v. National Labor Relations Board*, 522 U.S. 359 (1997), the court reversed the NLRB's conclusion that the evidence did not support the employer's justification for a good faith reasonable doubt, in the employer's justification for taking a poll of employees. The Court held that the same standard for polling also applies to withdrawal of recognition cases.[15]

The Court then discussed the reasonable doubt standard applied by the NLRB when the employer questions whether the union continues to enjoy majority support of the bargaining unit's employees. The Court first analyzed the "semantic confusion" regarding the meaning of the word "doubt":

> The Board [General Counsel] asserted at argument that the word "doubt" may mean either "uncertainty" or "disbelief," and that its polling standard uses the word only in the latter sense. We cannot accept that linguistic revisionism. "Doubt" is precisely that sort of "disbelief" (failure to believe) which consists of an uncertainty rather than a belief in the opposite. If the subject at issue were the existence of God, for example, "doubt" would be the disbelief of the agnostic, not of the atheist. A doubt is an uncertain, tentative, or provisional disbelief. (*citations omitted*).

(*Id.* at 367).

After clearing up the meaning of "doubt," the Court then framed the issue and applied this meaning to the facts in the case. The Court framed the issue as "whether, on the evidence presented to the Board, a reasonable jury could have found that Allentown lacked a genuine, reasonable uncertainty about whether Local 724 enjoyed the continuing support of a majority of unit employees." The Court said the answer in this case was "no" because the NLRB refused to credit probative circumstantial evidence, "and on evidentiary demands that go beyond the substantive standard the Board purports to apply." *Id.* at 367. The Court then held that the Board's conclusion that the employer committed an unfair labor practice (ULP) was not supported by substantial evidence. In its discussion, the court pointed out that the NLRB, and the administrative law judge who made the initial decision, "irrationally" disregarded or discredited testimony that contributed to the employer Allentown's "reasonable uncertainty" about majority status of the union.

Specifically, the ALJ and NLRB disregarded the testimony of "two employees regarding not merely their own support of the union, but support among the work force in general." *Id*. at 369. One of these employees, Ron Mohr, had told Allentown managers that "if a vote was taken, the Union would lose" and that "it was his feeling that the employees did not want a union." *Id*. at 370. The Court said "that the issue here is not whether Mohr's statement clearly establishes a majority in opposition to the union, but where it contributes to a reasonable uncertainty whether a majority in favor of the union existed." *Id*. at 371. The Court then stated:

> Allentown would reasonably have given great credence to Mohr's assertion of lack of union support, since he was not hostile to the union, and was in a good position to assess antiunion sentiment. Mohr was a union shop steward for the service department, and a member of the union's bargaining committee; according to the ALJ, he 'did not indicate personal dissatisfaction with the Union.' It seems to us that Mohr's statement has undeniable and substantial probative value on the issue of "reasonable doubt."

Id.

The bargaining unit in *Allentown Mack* consisted of 32 employees. In applying the facts, the Court stated:

> Accepting the Board's apparent . . . .concession that Allentown received reliable information that 7 of the bargaining-unit employees did not support the union, the remaining 25 would have had to support the union by a margin of 17 to 8--a ration of more than 2 to 1--if the union commanded majority support. The statements of Block and Mohr would cause anyone to doubt that degree of support, and neither the Board nor the ALJ discussed any evidence that Allentown should have weighed on the other side. . . The Board cannot covertly transform its presumption of continuing majority support into a working assumption that all of a successor's employees support the union until proved otherwise.[16] Giving fair weight to Allentown's circumstantial evidence, we think it quite impossible for a rational factfinder to avoid the conclusion that Allentown had reasonable, good-faith grounds to doubt--to be uncertain about--the union's retention of majority support.

Thus, the question is, under the *Allentown Mack* criteria, whether the City lacked a genuine, reasonable uncertainty about whether APEA enjoyed the continuing support of a majority of unit employees. Based on our review of all the evidence, and giving fair weight to circumstantial evidence, we conclude the City had reasonable, good faith grounds to doubt APEA's retention of majority support. This conclusion is based on the testimony of witnesses who testified for both the City and APEA, and on documents in the record.

The NLRB has held that "an employer cannot rely on a decertification petition as evidence of a loss of majority support, where the employer's unfair labor practices have tainted that petition." 1 Patrick Hardin, *The Developing Labor Law*, cumulative supplement at 260 (1999), citing to *Wire Prods. Mfg. Corp*., 326 NLRB No. 62, 163 L.R.R.M. (BNA) 1261, 1998 WL 614890 (1998). In *Wire Products*, the NLRB stated, at footnote 14: "In light of the Supreme Court's recent decision in *Allentown Mack Sales & Service, Inc. v. NLRB*, 118 S.Ct. 818 (1998), we do not pass on the judge's analysis concerning the numerical sufficiency of the signatures on the decertification petition and we rely solely on the petition taint in finding that the Respondents failed to establish a good-faith reasonable doubt of the Union's majority status prior to withdrawing union recognition."

We find that in addition to the decertification petition, the City could rely on the statements APEA employees made to Pat Cole, and on the petitions Cole or other city officials were aware of. We find Pat Smith and other employees told Cole in July 1999 that APEA members were "trying to leave APEA." We do not give full weight to Patrick Smith's statement to Cole that 90 percent of the employees wanted to leave APEA. Although Smith is a credible witness, he has a clear bias against APEA. However, Cole heard this from other employees as well. In addition, he noted that at least one APEA negotiator, Dave McNary, had signed Exhibit T, the "Petition for Voluntary Elections for Representation." McNary, also an APEA state Board member, would seemingly not have a bias. Further, this petition was signed by 26 employees from the General Government and Police and Fire Supervisor units, at least 2/3 of the employees in the two units, by any estimate. We conclude that the City had probative circumstantial evidence to support its contention that it doubted APEA's majority status.

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CONCLUSIONS OF LAW

1. The Alaska Public Employees Association is an organization under AS 23.40.250(5).

2. The City of Fairbanks is a public employer under AS 23.40.250(7).

3. This Agency has jurisdiction to consider unfair labor practice complaints under AS.23.40.110.

4. Under the totality of the circumstances, the Alaska Public Employees Association failed to prove by a preponderance of the evidence that the City of Fairbanks engaged in conduct violative of AS 23.30.110(a)(1), (a)(2), or (a)(5).

5. APEA has failed to prove by a preponderance of the evidence that the City committed an unfair labor practice by encouraging or assisting employees in their attempts to decertify APEA as their bargaining representative.

6. The complaint by the Alaska Public Employees Association against the City of Fairbanks in this matter is denied and dismissed.

ORDER

1. The unfair labor practice complaint filed by the Alaska Public Employees Association in this matter is denied and dismissed.

2. The City of Fairbanks 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.

3. The election in case number 99-1020-RD/RC was put in abeyance pending resolution of the issues in this case. Unless APEA notifies this Agency and the parties in the above case, within two weeks of the service date of this order that it will proceed on any objections to the appropriateness of the proposed bargaining unit, Agency staff are ordered to proceed with the election process in case number 99-1020-RD/RC.

ALASKA LABOR RELATIONS AGENCY

_____

Karen Mahurin, Board Member

_____

Dick Brickley, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of filing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order No. 251, in the matter of ALASKA PUBLIC EMPLOYEES ASSOCIATION/AFT, AFL-CIO, vs. CITY OF FAIRBANKS, Case No. 99-1023-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 4th day of December, 2000.

_____

Margie Yadlosky

Personnel Specialist I

This is to certify that on the 5th day of December, 2000, a true and correct copy of the foregoing was mailed, postage prepaid to

William Jermain, APEA

Pat Cole, City of Fairbanks

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Signature

[1] Board member Marcotte participated in deliberations and concurred in the result, but resigned before the decision was rendered.

[2] Although Watts said negotiations were suspended, Mayor Hayes sent APEA notice of desire to negotiate a new contract on June 1, 1998. Hayes cited the same deadline language cited above; that is, notice of intent to negotiate may be given by June 15, proposals will be exchanged by August 1, and negotiations shall commence by August 15. We assume the City was applying the contract language in Article 29, Section 3. (See Finding of Fact No.3). In fact, the City sent Watts (APEA) an outline of proposals on July 24, 1998, again pursuant to Article 31, Section 1 of the 1994-97 CBA. Eberhart also requested that the parties have a meeting to discuss ground rules. Eberhart asked Watts to contact him. There is no evidence any negotiations occurred at this time. The first negotiations between APEA and the City, after the health committee started discussions, occurred in June 1999.

[3] Patrick Smith estimated January 1999 was the approximate beginning of this group's discussions. James Griffin estimated that the so-called "survey group" formed "two winters ago."

[4] Dave McNary was the only member of this group who did not testify.

[5] Mitchell had been a negotiating team member on prior contracts, too.

[6] Along with Watts, McNary, Haigh, Jennet and Mitchell negotiated and signed the GGU/City collective bargaining agreement for the 1994-97 period.

[7] Members of the General Government Unit, also known as the Class II unit, and members of the Police and Fire Supervisor's Unit , or the Class I unit, have petitioned for decertification from APEA. (See Affidavit of Patrick Cole; Exhibit AB; and Petition for Decertification).

[8] All of these tentative agreements were reached in 1999. We could find no record of any formal negotiating sessions prior to 1999.

[9] GGS is General Government Support Unit. We assume this refers to the new proposed unit combining the current general government and Police and Fire Supervisors units.

[10] At the outset, we find the testimony of all witnesses credible.

[11] Future negotiations should be scheduled in writing, with specific dates and commitments from the parties to meet those dates, within reasonable limits.

[12] Although this discussion in the treatise is discussing the National Labor Relations Act, we find it applicable to the Public Employment Relations Act.

[13] Nor do we find any credible evidence that IBEW assistant business manager John Giuchici was in cahoots with the City, or that Giuchici attempted to corral APEA employees into IBEW membership.

[14]Decertification is also barred during the term of a contract except during a window period before the contract's expiration. AS 23.40.100(e). The presumption cannot be rebutted during the life of the contract. NLRB v. Marine Optical Inc., 671 F.2d 11, 16, 109 L.R.R.M.(BNA) 2593, 2596 (1st Cir. 1982); Bartenders Employer's Bargaining Ass'n of Pocatello, Idaho, 213 N.L.R.B. No. 74, 87 L.R.R.M.(BNA) 1194 (1974).

[15] The Court held that while the NLRB's "adoption of a unitary standard for polling, RM elections, and withdrawals of recognition is in some respects a puzzling policy, we do not find it so irrational as to be 'arbitrary [or] capricious." *Allentown Mack Sales and Service, Inc., v. National Labor Relations Board*, 522 U.S. 359, 364.

[16] Although the case before us does not deal with a successor employer, we believe the analysis of the Court in *Allentown Mack* also applies under the facts of this case.