



Procedure in this case is governed by 8 AAC 97.340. Hearing examiner Mark Torgerson presided.

### Issues

1. Whether the City of Fairbanks violated the duty to bargain in good faith under AS 23.40.110(a)(5) and whether it violated AS 23.40.110(a)(1) by threatening not to fund an interest arbitration award;
2. Whether the City violated the Alaska Labor Relations Agency's cease and desist order issued in *Fairbanks Fire Fighters Association, Local 1324, IAFF v. City of Fairbanks*, Decision and Order No. 221 (June 25, 1997).

### Findings of Fact

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

1. The Fairbanks Fire Fighters Association Local 1324, IAFF (Fire Fighters), is recognized as the exclusive collective bargaining representative of certain fire fighting employees of the City of Fairbanks (City).
2. The Fire Fighters and the City entered into a collective bargaining agreement (CBA), effective January 1, 1993 -- December 31, 1995. Article 1.3 of the CBA provides that the CBA shall remain in effect until a renewal is executed.
3. The Fire Fighters and the City entered negotiations for a new contract in 1995. They have not reached agreement on a new collective bargaining agreement as of the date of this hearing. They met 108 times in negotiating sessions during the more than five years of bargaining. (Mark Drygas testimony.)
4. The Fire Fighters declared an impasse in contract negotiations. The parties began to consider the next step in the process, arbitration.<sup>[3]</sup> Fairbanks City Mayor James Hayes called Administrative Services Director Patrick Cole into his office and asked him to set up a meeting with the Fire Fighters so they could try one more time to settle the contract. Subsequently, Cole, who is the City's lead negotiator, contacted the Fire Fighters business agent and lead negotiator, Mark Drygas, and requested that the parties meet. Cole told Drygas that Hayes would like to try to resolve the matter and avoid arbitration.
5. The Fire Fighters told the City they would have nothing new to offer but they were willing to listen to what Hayes had to say. (Scott Learned testimony)
6. From the City's point of view, it had made its last and best offer. It would not improve its offer. (Cole testimony.)
7. The parties met in the Fairbanks City Council chambers on April 20, 2000. Attending for the Fire Fighters were Drygas, Captain Scott Learned, and Fire Fighters Scott Raygor and Brian Davis. The City negotiating team included Hayes, Cole, and Fire Fighter Chief Warren B. Cummings, who supervises all the fire fighters.<sup>[4]</sup>
8. Hayes has been mayor of the City of Fairbanks since 1992. He has been actively involved in negotiations since 1995, when the City changed its form of government to that of "strong mayor." He works mainly with Cole, who is the City's lead negotiator. He has attended "quite a few" negotiating sessions, but not many of the recent Fire Fighters' sessions. Hayes believes that he goes into each session with a positive, open state of mind, with a desire to reach an agreement. (Hayes testimony.)
9. Cole has held a variety of positions with the City for the past 19 or 20 years. He has negotiated several collective bargaining agreements while employed by the City.

10. Drygas is a captain, and he has been a fire fighter for a little over 10 years. He has been either secretary or business agent for the Fire Fighters for the past 9 years.
11. Learned started working as a fire fighter on March 23, 1993. He is now a captain, and is president of the Fire Fighters Association. He is on the Association's bargaining team.
12. Raygor has been a member of the Fire Fighters Association for approximately six years. He is treasurer of the Association. He has been on the negotiating team for 3 years.
13. Davis has been a member of the Fire Fighters Association for three years. He is union secretary and is on the bargaining team.
14. During the April 20, 2000, meeting, the parties sat at a table on the opposite end of the room from where the City Council meets. Drygas sat at the head of the table, with the Chambers located behind him in the room. His three other bargaining team members sat to his left. Hayes sat to his immediate right, and Cole and Cummings sat on the same side as Hayes. (Drygas and Learned testimony.)<sup>[5]</sup>
15. Cole could not recall anyone sitting at the head of the table during the April 20, 2000, meeting. He recalled he and Drygas sit across from each other. (Cole testimony.) He thought Drygas would usually sit on the left side of the table, with the sun at his back. Cole could not specifically recall how many negotiators attended for the Fire Fighters.<sup>[6]</sup>
16. Hayes normally sits at the same place every meeting, at the right side seat next to the head of the table. (Hayes testimony.)
17. There is a dispute over what Hayes said at the outset of the April 20 meeting. Drygas testified that Hayes entered the negotiating room and, while still standing, said something to the effect that "I want you to know that I will not fund an arbitrator's award . . ." Learned said Hayes walked in and said he did not understand why the Fire Fighters wanted to go to arbitration when he would not fund the arbitration award anyway. Learned said Hayes used the pronoun "I" when making this statement. Davis said Hayes told them he was not afraid to go to arbitration because they would not fund an award. Drygas and Learned testified that Hayes made this statement in a threatening tone of voice. Raygor described Hayes' statement as serious and "saber rattling." Davis said Hayes' comment was very direct and clear; there was not a lot left to understand.
18. Hayes and Cole deny that Hayes made the statement the way the Fire Fighters' witnesses contend. Hayes thinks he was sitting during the meeting. He does not recall if comments about non-funding an arbitrator's award came up at the April 20, 2000, meeting. He said that in some of the negotiating meetings, people have made comments about non-funding, or that the council may not fund an agreement, "stuff like that." He said that he has told the Fire Fighters, "you need my vote, so let's make a deal." Hayes has a good working relationship with Drygas, and he believes Drygas would have called him at home if he had made a threatening statement. Hayes said that the only thing he remembers is the numbers. "I had said, look, I've got \$150,000 to work with. If we are coming anywhere near, I can take it to [the City] Council." Hayes does not recall being agitated during this meeting. However, Hayes does not recall the details of the meeting. He said that normally Cole will tell him what happened at a meeting, and what they agreed to. (Hayes testimony.)
19. Cole does not recall exactly what Hayes said at the beginning of the meeting. However, he believes Hayes said something to the effect that this has been going on for years, he [the mayor] and the City Council want to settle the contract, what he signs he will vote for, the Fire Fighters need his support, what we have now—your last and final offer—the City Council would not vote for, and he would not vote for or sign it either.
20. Drygas took written notes of the meeting on behalf of the Fire Fighters. None of the City's negotiators took notes.

21. Drygas's notes state: "Mayor threatened nonfunding of arbitration agreement." (Exh. 6.)
22. After Hayes' statement, Raygor leaned over to Learned and said: "We've just been threatened." (Raygor testimony.)
23. Cole admitted Hayes sometimes uses his "preacher" voice, but in his recollection about this meeting, he believes Hayes was not angry, loud, or threatening. Cole has seen Hayes loud and contentious on occasion. (Cole testimony.)
24. After Hayes made his statement, the Fire Fighters caucused. They considered walking out of the meeting at that point. They were shocked by Hayes' comments. However, they wanted a contract for their members, so they decided to move off of their last, best offer because it would save everyone money if they could avoid arbitration. Further, Hayes' comments indicated to them that they would just be spinning their wheels if they went to arbitration. (Learned testimony.)
25. Hayes' statement influenced the Fire Fighters to reduce their last, best offer. They made another proposal that was less than the last, best offer they had made prior to impasse and the April 20 meeting. (Drygas and Learned testimony.)
26. After discussing the Fire Fighters' proposal, Hayes indicated he had something he could take to the City Council. The Fire Fighters had a good feeling about the meeting. (Drygas testimony.)
27. The City left the meeting thinking the Fire Fighters' proposal was a big step forward, a breakthrough in negotiations. (Cole testimony.)
28. The Fire Fighters had not heard from the City since the April 20, 2000, meeting. During the second week of June 2000, Drygas saw Cole while they and many others were on the Riverboat Discovery for the 50<sup>th</sup> anniversary celebration of the riverboat. Drygas asked Cole about the status of their proposal, and Cole said the offer had not gone to the City Council. (Drygas testimony.)
29. It had taken longer than Cole had planned to get the offer to the City Council. Cole had been out of town for a meeting and he had a personal obligation that required him to be out of town. (Cole testimony.)
30. Cole was "a little fuzzy on what exactly the proposal was." He had not taken notes of the meeting. The City needed to cost out the offer. Cole called Drygas and told him they were getting ready to go to the City Council. Cole asked Drygas what the proposal was because he wanted to confirm that he had understood it correctly. (Cole testimony.)
31. Drygas told Cole he had notes of the meeting and the proposal. Cole asked him if he could review the notes. Drygas had Learned review the notes, and he then faxed the notes to Cole on or about June 19, 2000. (Drygas and Learned testimony.)
32. Cole was shocked to read the statements in the notes about the funding issue. On June 19, 2000, he drafted a letter to Drygas for the Mayor. In it, Mayor Hayes denied that he made the statement Drygas alleged in the meeting notes. (Exh A.) Hayes stated in part: "However, I must take strong exception to your written statement that the 'Mayor threatened non-funding of arbitrated agreement.' This is a complete mis-statement. At our meeting, I expressed the desire to reach an agreement without arbitration, an agreement which would be agreeable [to] the City Council and the Association membership. I did not 'threaten' non-funding." (Exh A.) The Mayor testified that if he had made the statement as alleged by Drygas's notes, he thinks Drygas would have contacted him right away and told him so.
33. In his June 19, 2000, letter, the Mayor told Drygas he was either "horribly mistaken about the meeting, or

you are intentionally planting incorrect statements in your notes for later use. I do not want to believe the latter possibility.” (Exh A.)

34. Cole thought the statement about the funding question was planted or was an attempt to create a false account about what happened. Neither Drygas nor anyone else had previously mentioned this statement. (Cole testimony.)

35. Cole described Drygas as a “warm person” but one who has been dishonest in some cases. Cole said he once had a belief that Drygas was honest, and he believes Drygas works hard and does not seek personal gain in his dealings. Cole suspects Drygas planted the comments about Hayes saying he would not fund an arbitrator’s award. (Cole testimony).

36. Hayes does not believe Drygas is dishonest. However, he believes Drygas “is just pushin’ the button here, just pushin’ it.” (Hayes testimony.)

37. Drygas adamantly denies that he planted the statement in his notes. He said he would never plant statements in his notes. (Drygas testimony.) He responded, by letter, immediately to Hayes’ June 19, 2000, letter. In it, he stated in part: “Let me be perfectly clear about our April 20 meeting. I am not mistaken about your statement to not fund an arbitrator’s award! I did not “plant” incorrect statements in my notes!”<sup>[7]</sup> He went on: “You have attacked my integrity and the integrity of the other members of our negotiating team and it will not be tolerated! At the April 20 meeting you ‘advised’ our Association to not let the CBA be decided by an arbitrator because ‘I will not fund an arbitrator’s award.’ You said this in a threatening tone . . . . If you are calling me a liar then you are calling [Learned, Raygor and Davis liars].”

38. Learned, Raygor and Davis testified Drygas did not plant Hayes’ comments about the non-funding issue. Learned has never known Drygas to plant anything. Learned testified that, in any event, he was at the meeting and heard what Hayes said. (Learned, Raygor and Davis testimony.)

39. The same day Hayes sent Drygas the letter denying he made the non-funding statement, Hayes sent the City Council members a memorandum updating them with a summary of the “issues in dispute, along with an estimate of the costs” in the negotiations with the Fire Fighters. (Exh 7.) Hayes’ memorandum concluded: “Although the April 20<sup>th</sup> package offer was somewhat more favorable to the City than the Association’s ‘final’ offer (mainly by elimination of longevity and the retroactive CPI payments), it was not accepted because of the cost (3% in each year of the three years of the contract) and the fact that it did not meet the City’s labor goals.” (*Id.*, at 2). Hayes informed the Council that the City’s negotiating team requested the services of a federal mediator. Hayes determined that the Fire Fighters’ reduced offer was unacceptable even though Hayes and Cole had felt it was a big step forward when they left the April 20, 2000, meeting.

40. The parties met in mediation for two days in October, 2000. City negotiators were Cole, Hayes, Cummings and Antonio Shumate, personnel director for the City. Shumate asserted the City bargained in good faith during the mediation and made many offers, including a “3-3-3” offer. Shumate was at the mediation for the first day and a portion of the second day.

41. Cole was not hopeful going into the mediation, but he felt that the Federal mediator was “very effective.” Cole said the City offered more than the City Council had authorized them to offer. The mediator pushed them down the road so far, Cole was scared their offer would be accepted. The second day of the mediation, Cole said the City tried to find a way of “retracing” once they realized how far out they were in their offer. (Cole testimony.)

42. The City accused Drygas of being untruthful during his testimony in an unrelated arbitration dispute involving a bargaining unit member, Chuck Manley. We find that Drygas’ testimony on this issue adequately explained his testimony in the Manley dispute, and we do not give any weight to the accusation.<sup>[8]</sup>

43. Neither Antonio Schumate nor John Eberhart were present at the April 20 meeting.

44. The Firefighters' witnesses testified they believe that the Mayor can influence the Fairbanks City Council members. Hayes and Cole testified they do not believe that Hayes has influence over the City Council. Hayes believes that because the Fire Fighters can talk to City Council members individually, they can influence the council members.<sup>[10]</sup> We find that whether the Mayor has influence, or not, is immaterial to the issue of whether his statement violated AS 23.40.110(a)(5) and (a)(1).

45. On December 5, 2000, Hearing Officer Jean Ward issued a Notice of Preliminary Finding of Probable Cause. Although the Fire Fighters filed their charge under AS 23.40.110(a)(5) only, Ward recommended that the Board "consider whether the City's alleged conduct could violate" AS 23.40.110(a)(1) as well. Ward said that in addition to the allegations by the Fire Fighters, the board should consider whether the conduct at issue could violate the Board's cease and desist order in *Fairbanks Fire Fighters Association, Local 1324, IAFF v. City of Fairbanks*, Decision and Order No. 221 at 19 (June 25, 1997), which states in part:

2. The City of Fairbanks is ordered to cease and desist from infringing in any manner upon the rights guaranteed under AS 23.40.070 – 23.40.260;
3. The City of Fairbanks is ordered to cease and desist from obstructing the grievance procedures in the collective bargaining agreement, and more specifically, to cease and desist from the routine, strategic use of the arbitrability defense and from the use of the statement reserving the right not to fund arbitration awards in correspondence pertaining to grievances[.]

46. We find all witnesses credible. However, we give less weight to the testimony of Hayes and Cole regarding the April 20, 2000, meeting because they could not remember the details of the meeting. They took no notes of the meeting. Moreover, Cole was fuzzy on the terms of the reduced offer that the Fire Fighters made during that meeting in an effort to move bargaining forward. We find Drygas's notes were taken during the April 20, 2000, meeting, and he did not plant or otherwise falsify the notes of the meeting. The Fire Fighters were consistent in their testimony, and we give their testimony full weight.

47. We find that, at the April 20, 2000, meeting, Hayes said something to the effect that he would not fund an arbitrator's award, and he would not vote for an award that contained the Fire Fighters' last, best offer<sup>[11]</sup>. He made this statement at the beginning of the meeting in a threatening tone.

## DISCUSSION

1. Whether the City of Fairbanks violated the duty to bargain in good faith under AS 23.40.110(a)(5) and whether it violated AS 23.40.110(a)(1) by threatening not to fund an interest arbitration award.

### Arguments of the parties.

The Fire Fighters argue that credibility is a significant issue in this case. They assert that throughout negotiations, the parties knew that the City Council had the power to fund or not to fund any contract agreement. But after impasse, including exchange of last, best offers, the parties prepared for interest arbitration. Hayes called a meeting to break the logjam. The Fire Fighters argue that the way Hayes did it was coercion: he said in so many words that, "I am not going to fund an arbitration award, so we need to make a deal." (Fire Fighters closing argument). The Fire Fighters contend that even Cole and Eberhart said Hayes could not say it because it would be coercive. The Fire Fighters argue that the purpose of the April 20 meeting was to coerce them so they would not go to interest arbitration - which would be "meaningless" anyway -- and to get them to propose new offers.

The Fire Fighters contend the City violated the Public Employment Relations Act (PERA) when Mayor Hayes

stated during the April 20, 2000, negotiating session, that he would not fund an arbitrator's award. The Fire Fighters assert that on April 20, the City decided to get its results illegally.

The City, on the other hand, denies that it violated PERA by making any such statement. Hayes denied making the statement alleged by the Fire Fighters. Cole testified that if Hayes had made such a statement, Cole would have asked for a recess, pulled Hayes aside, and then advised him to not make such a statement in negotiations because it would be illegal. The City asserts that an "elected governing body may elect not to provide funding for the monetary terms of a CBA regardless of whether the agreement is reached by mutual consent or binding arbitration." *UACEA v. University of Alaska*, 988 P.2d 105 (Alaska 1999). The City contends that "stating the law does not affect good faith bargaining." (City's Prehearing Statement at 5). The City further alleges Drygas is not a credible witness, and the City argues it showed good faith in the negotiating process.

### Relevant Law.

Under AS 23.40.110(a)(5), an employer is required to bargain collectively in good faith with the organization that is the exclusive representative of employees in an appropriate unit, including but not limited to discussing grievances with the exclusive representative. Good faith has been described as "an open mind and a sincere desire to reach an agreement" and "a sincere effort . . . to reach a common ground." I Patrick Hardin, *The Developing Labor Law*, at 608 (3d ed. 1992), quoting *NLRB v. Montgomery Ward & Co.*, 133 F.2d 676, 12 L.R.R.M.(BNA) 508 (9th Cir. 1943), and *General Elec. Co.*, 150 NLRB 192, 194, 57 L.R.R.M.(BNA) 1491 (1964), enforced 418 F.2d 736, 72 L.R.R.M.(BNA) 2530 (2d Cir. 1969), cert. denied, 397 U.S. 965, 73 L.R.R.M. (BNA) 2600 (1970). In *Hotel Roanoke*, 293 NLRB 182, 184 (1989), the Board stated: "In determining whether a party has bargained in bad faith, the Board looks to the totality of the circumstances in which the bargaining took place. *Port Plastics*, 279 NLRB 362, 282 (1986); *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984). The Board looks not only at the parties' behavior at the bargaining table, but also to conduct away from the table that may affect the negotiations. *Port Plastics*, 279 NLRB at 382."

AS 23.40.110(a)(1) prohibits an employer from interfering with, restraining or coercing an employee in the exercise of the employee's rights guaranteed in AS 23.40.080. AS 23.40.080 protects the right to self-organize, form, join, or assist an organization to bargain collectively through representatives of the employees' own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

In determining whether the City committed an unfair labor practice, we must determine, under the totality of the City's conduct, whether the City failed to bargain in good faith, or interfered with, restrained or coerced the Fire Fighters in the exercise of rights guaranteed under AS 23.40.080. "In determining whether particular statements constitute threats or are permissible opinions or predictions reasonably based in fact, the statement must be considered in the totality of relevant circumstances." *Nabors Alaska Drilling, Inc.*, 325 NLRB 574, 158 L.R.R.M. (BNA) 1004 (1998), citing to *Action Mining*, 318 NLRB 652, 654 (1995). Further, in determining whether a statement constitutes unlawful coercion or interference, the employer's "motive in making such statements or proof of whether the coercion succeeded or failed are not relevant to the analysis. Rather, coercion exists if the conduct reasonably tends to interfere with the free exercise of employee rights." *Nabors Alaska Drilling*, 325 NLRB 574; 158 L.R.R.M. (BNA) 1004. <sup>[12]</sup> This test is objective, not subjective. See *Fairbanks Fire Fighters Ass'n, Local 1324, IAFF vs. City of Fairbanks*, Decision & Order No. 247, at 6 (December 14, 1999), reversed on other grounds in *City of Fairbanks vs. State of Alaska*, 4FA-00-98 CI (June 5, 2001).

In *NLRB v. Gissel Packing Co., Inc.*, 395 U.S. 575, 89 S.Ct. 1918 (1969), the United States Supreme Court discussed threats that constitute unlawful coercion or interference in the context of the duty to bargain. The Court pointed out that:

"[A]n employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the Board. Thus, section 8(c) (29 U.S.C. section 158(c)) merely implements the First Amendment by requiring that the expression of 'any views, argument, or opinion' shall not be 'evidence of an unfair labor practice,' so long as such

expression contains ‘no threat of reprisal or force or promise of benefit’ in violation of section 8(a)(1). Section 8(a)(1), in turn, prohibits interference, restraint or coercion of employees in the exercise of their right to self-organization.

Any assessment of the precise scope of employer expression, of course, must be made in the context of its labor relations setting. Thus, an employer’s rights cannot outweigh the equal rights of the employees to associate freely, as those rights are embodied in section 7 and protected by section 8(a)(1) and the proviso to section 8(c). And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear.<sup>[13]</sup>

### Credibility.

We will first address the credibility of the witnesses. We observed the witnesses and their demeanor during the hearing. We find all witnesses credible. However, we will give more weight to the testimony of the Fire Fighters’ witnesses who attended the April 20, 2000, bargaining meeting, than to that of the City’s witnesses at that meeting. Witnesses Drygas, Learned, Raygor, and Davis were consistent and certain in their testimony regarding the Hayes’ statements. Moreover, Drygas and Learned recalled in detail how the parties were seated at the meeting, and the Fire Fighters’ proposals. Cole, on the other hand, did not remember how many Fire Fighters attended, the details of the seating arrangement, or especially the Fire Fighters’ proposals made at the meeting. He did not take notes of the meeting. Hayes had trouble recalling any specific new proposals the Fire Fighters made on April 20, 2000. Further, while both Hayes and Cole could not remember the then significant part of the meeting--what the Fire Fighters proposed -- they claim to remember that Hayes did not state he would refuse to fund an arbitration award. We find this inconsistent, and based on the above factors and our observation of the witnesses, we reduce the weight of their testimony.

### Coercion.

The City alleges that because the Fire Fighters did not raise the unfair labor practice issue for a significant period, the statement must have been planted in Drygas’s notes, and it therefore did not occur. We find that Hayes made the statement as alleged by the Fire Fighters. Hayes and Cole may not have considered Hayes’ statement significant at the time, and therefore may not have remembered what he said, because they did not perceive any reaction from the Fire Fighters. However, the Fire Fighters’ reaction is understandable. They had just been told in so many words that the only way to a collective bargaining agreement was through negotiations, and the implication was they would be required to reduce their offer. Drygas and Learned testified that they did not file an unfair labor practice charge at that time or for some time thereafter because the Fire Fighters hoped to reach agreement. We find that because the Fire Fighters knew the City would be funding the Fire Fighters’ contract, and they hoped to achieve a contract after the April 20 meeting, they wanted to avoid ‘biting the hand that feeds them.’

We find, by a preponderance of the evidence, that the Fire Fighters have proven their complaint that the City committed an unfair labor practice. This violation consisted of Hayes stating at the outset of the meeting on April 20, 2001, that he would not fund an arbitrator’s award, so the parties needed to settle the contract.

Such a statement dishonored the arbitration process mandated by PERA for fire protection employees who reach impasse and are unable to resolve the deadlock through mediation.<sup>[14]</sup> It demonstrates a closed mind, rather than a willingness to try to reach agreement. The statement would also have a tendency, when expressed in the environment of the collective bargaining table, to give a clear impression to the Fire Fighters that arbitration would be futile, and they would need to find alternatives to their right to arbitration if they wanted to get a contract with the City. Their only recourse in their goal to get a contract, absent arbitration, would be to reduce their offer. This is especially so in the Fire Fighters’ case because under the Public Employment Relations Act, they are deemed Class I employees who are prohibited from striking. They have no economic weapon to use in the collective bargaining process. They are therefore economically dependent on the employer to a high degree, and they have no recourse but to ultimately submit



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**CONCLUSIONS OF LAW**

1. The Fairbanks Fire Fighters 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. Collective bargaining is an activity protected by the Public Employment Relations Act. AS 23.40.080.
5. By stating to the Fire Fighters' negotiating team, during a negotiating meeting, that he would not fund an arbitrator's award, Mayor James Hayes, as representative of the City of Fairbanks, violated the duty to bargain in good faith under AS 23.40.110(a)(5). This statement continued a pattern of threats and coercion by the City and violated Board Order Number 2 in *Fairbanks Fire Fighters Ass'n, Local 1324, IAFF vs. City of Fairbanks*, Decision and Order No. 221 (June 25, 1997). Further, the totality of the City's conduct frustrated the collective bargaining process.
6. By engaging in conduct violating AS 23.40.110(a)(5), the City also interfered with protected rights in violation of AS 23.40.110(a)(1).
7. The appropriate remedy is for the City to cease and desist from making such bad faith and coercive statements, in violation of AS 23.40.110(a)(1) and (a)(5).

**ORDER**

1. The City of Fairbanks is ordered to CEASE AND DESIST from making threatening or coercive statements during collective bargaining, in violation of AS 23.40.110(a)(5) and AS 23.40.110(a)(1).
2. The City of Fairbanks shall CEASE AND DESIST from infringing in any manner upon the rights guaranteed under AS 23.40.070 -- 23.40.260. The City shall also take affirmative action designed to effectuate the policies of the Public Employment Relations Act.
3. 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 and serve each employee affected personally. 8 AAC 97.460.

**ALASKA LABOR RELATIONS AGENCY**

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Aaron Isaacs, Jr., Chair

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Karen Mahurin, Board Member

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Dick Brickley, Board Member

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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 in the matter of *Fairbanks Fire Fighters Ass'n, Local 1324, IAFF vs. City Of Fairbanks*, Case No. 00-1073-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 17th day of October, 2001.

\_\_\_\_\_  
Earl Gibson, Jr.  
Administrative Clerk III

This is to certify that on the 17th day of October 2001, a true and correct copy of the foregoing was mailed, postage prepaid to

Charles Dunnagan, FFFA, Local 1324, IAFF  
Marilyn Stowell, Deputy City Attorney

\_\_\_\_\_  
Signature

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[1] On April 20, 2001, the hearing examiner notified the parties of a tape recording glitch. The parties discussed the matter with the hearing examiner in a teleconference on May 3, 2001. The parties then sent written notice dated May 7, 2001, that they were satisfied that the record was adequate, as is, to determine the issues in dispute. The record then closed on May 18, 2001.

[2] Fire protection employees are class (a)(1) employees whose services may not be given up for even the shortest period of time. Because they do not have the right to strike, AS 23.40.200(b)(1) provides that “If an impasse or deadlock is reached in collective bargaining between the public employer and employees in this class, and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under AS 09.43.030.”

[3] Patrick Cole said the parties “were on track to arbitrate it.” (Cole testimony.)

[4] Cummings did not testify at the hearing but was present, as an assistant to City attorney Stowell, during the first day of the hearing.

[5] Mayor Hayes testified that he usually sits to the immediate right of the head of the table. He did not testify as to where anyone else sat.

[6] Cole did not take notes of the meeting. See also Finding of Fact 20 and 30.

[7] In the original letter, the quoted statement was in bold letters.

[8] We agree with Drygas’s testimony that it was a matter of semantics.

[9] During the hearing, Attorney Dunnagan for the Fire Fighters clarified that the Fire Fighters were not accusing Eberhart of making a threatening statement about funding of agreements. Eberhart and Shumate also testified for the City, but we do not find that their testimony is relevant to whether Hayes made the comment about non-funding an arbitration award on April 20, 2000.

[10] This seems questionable in light of the fact the Fire Fighters have been unable to get approval for a collective bargaining agreement for over five years.

[11] The last, best offer referred to here is the one that was on the table when the meeting began, not the reduced offer that was made during the April 20, 2000, meeting.

[12] This same test applies to violations under both AS 23.40.110(a)(5) and (a)(1). See *Lassen Community Hospital* [get whole cite], 278 NLRB 370, 122 L.R.R.M. (BNA) 1029 (1987) (“[T]he test of interference, restraint, and coercion under Section 8(a)(1) . . . does not depend on an employer’s motive nor on the successful effect of the coercion. Rather, the illegality of an employer’s conduct is determined by whether the conduct may reasonably be said to have a tendency to interfere with the free exercise of employee rights under the Act.”) Because motive is irrelevant, we have not considered evidence or argument regarding the employer’s motive for its conduct. Further, we have not considered evidence or argument on whether the coercion succeeded or failed because the test for coercion is objective.

[13] See *In the Matter of Township of Mine Hill*, 12 New Jersey Pub. Employee Rep. section 17197 (June 26, 1986) (township engaged in unlawful interference and refusal to bargain in good faith where mayor threatened to lay off certain police employees, who were members of union’s negotiating team, in retaliation for union’s expressing intent to initiate interest-arbitration process in negotiations.)

[14] AS 23.40.200(a) and (b).

[15] Mayor Hayes’ memorandum to the City Council was dated the same day (June 19, 2000) the Mayor sent a letter to Mark Drygas denying that the Mayor made the statement contained in Drygas’s notes. There is no allegation, however, by the Fire Fighters that this letter was an unlawful retaliation.

[16] We urge the City and the Fire Fighters to sit down, negotiate in good faith, and spend whatever time it takes to get a collective bargaining agreement.

[17] AS 23.40.070.