ALASKA LABOR RELATIONS AGENCY

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SOUTHWEST REGION SCHOOL DISTRICT,

Complainant,

vs.

SOUTHWEST REGION EDUCATION ASSOCIATION, NEA-ALASKA,

Respondent.

Case No. 01-1084-ULP

DECISION AND ORDER NO. 257

This matter was heard on July 17 and 18, 2001, in Anchorage, Alaska, before the Alaska Labor Relations Agency. The panel hearing the matter includes board Chair Aaron Isaacs, Jr., and members Dick Brickley and Raymond Smith. Hearing Examiner Mark Torgerson presided. Board Chair Isaacs was unable to attend the hearing and subsequently listened to the hearing tapes and reviewed the record. The record closed on September 20, 2001, after Chair Isaacs finished reviewing the record.

Appearances: Thomas Wang, attorney, for Southwest Region School District (the District); Mike Dinges, business agent, for Southwest Region Education Association, NEA-Alaska (the Association).

Digest: The duty to bargain in good faith is bilateral. In determining whether an accused party has committed an unfair labor practice, the charging party's conduct will also be considered. The totality of the parties' conduct negates a finding that the Southwest Region Education Association committed an unfair labor practice.

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DECISION

Statement of the Case

The District filed this complaint charging the Association with an unfair labor practice for refusing to bargain in good faith. The Association denies the charge and alleges the District should be found to have committed an unfair labor practice for failing to bargain in good faith.[1] Hearing Officer Jean Ward investigated the District's charge and found probable cause that the Association committed a violation. The Association requested this hearing.

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

Issues

1. Did the Association commit an unfair labor practice under AS 23.40.110(c)(2) by failing to bargain in good faith, by a) refusing to meet in face-to-face bargaining from early November of 2000 until May 2001; b) inappropriately conditioning bargaining on obtaining concessions from the District; c) declaring impasse unilaterally and prematurely; and d) presenting proposals that are so unacceptable that they suggest a failure to bargain in good faith?[2]

2. If the Association committed an unfair labor practice, what is the appropriate remedy?

Findings of Fact

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

1. The Southwest Region Education Association, NEA-Alaska is recognized as the exclusive collective bargaining representative of certain teachers in the Southwest Region School District. There are 84 certified employees in this bargaining unit. (Jt. Exh. A-17).

2. The most recent collective bargaining agreement (CBA) between the Association and the District covered the period July 1, 1996, to June 30, 1999. (Jt. Exh. F). The parties had prior three-year contracts beginning in 1990 and in 1993. (Jt. Exhs. C & E.)

3. Don Evans is the chief negotiator for the District. He has been Chief Executive Officer (CEO) and Superintendent of the District in the past. He works for Education Resources, Incorporated (ERI). He lives in Anchorage. He negotiated the contract with the Association that expired on June 30, 1999. He usually attended negotiations as the District's only representative, but up to four other people sat on the District's negotiating team on occasion. They included two school board members, who are from Manokotak and New Stuyahok, and two team members from Dillingham.

4. On September 21, 1998, David Hanson, president of the Association, sent a letter to the District expressing an interest in bargaining, and more specifically, the collaborative bargaining "that Dillingham City Schools experienced this fall."[3] (Jt. Exh. A-1).

5. In a November 11, 1998, letter to Don Evans, Hanson accepted the District's "offer of committing to three days of 'risk free' collaborative negotiations." (Jt. Exh. A-3). Hanson added: "Knowing that both parties have the children and the quality of education in Southwest Region Schools as their primary focus, it should be relatively easy to find common ground in these proceedings." The parties subsequently entered this collaborative bargaining process and reached a tentative agreement in 1999. However, on October 27, 1999, Douglas Gray, Jr., the new Association president, informed Evans that a majority of the Association's members rejected the contract by secret ballot vote. Gray noted that from what he had heard from other members, "the largest concern was the insurance. The majority believed that this would somehow compromise their financial situation and health benefits." (Jt. Exh. A-4).

6. The parties met again for a second round of negotiations and reached a second tentative agreement. However, this agreement was also rejected by the membership in the spring of 2000.

7. Despite Association objections, the parties met in Dillingham for all five sessions of negotiations during the first two rounds of bargaining in 1999 and 2000. (Jt. Exh. A-18).

8. John Brown was president of the Association during the years 2000 and 2001. He was chief spokesperson for the Association's negotiating team in 1999. In a July 21, 2000, letter to the District's new Chief Executive Officer, Mark Hiratsuka, Brown attempted to restart negotiations in August 2000, by requesting that the parties meet during the

"Fall Inservices." (Jt. Exh. A-6). Brown suggested meeting during the inservices to preserve the Association's available leave time.[4] After no response and then a second inquiry by Brown, Hiratsuka responded on August 9, 2000, that the District's negotiator, Don Evans, was unavailable in August. (Jt. Exh. A-8). He asked Brown to propose alternate dates. Brown responded on August 13, 2000, and requested clarification of Evans' status with the District. (Jt. Exh. A-9). He also expressed disappointment that there would be no negotiations "for the entire month of August. We had hoped to get things off to a good start . . . ." (Jt. Exh. A-9). On August 17, 2000, Hiratsuka wrote Brown that Evans was the District's negotiator, Hiratsuka was CEO, and Education Resources, Inc. (ERI) employed both. ERI was under contract with the District. Hiratsuka wrote that Evans was available to negotiate between September 11 and September 22. (Jt. Exh. A-10).

9. On August 29, 2000, Brown faxed a letter to Hiratsuka that the Association's negotiating team would be available during the proposed September period. He also stated that "Togiak would make a great location for these negotiations." (Jt. Exh. A-11). Togiak is 70 miles from Dillingham. There are several plane flights available each day, either by commercial or charter service, between Togiak and Dillingham. Brown also requested a floppy disk copy of the parties' current collective bargaining agreement. That same day, Hiratsuka spoke with Evans, who agreed to the proposed dates. Hiratsuka proposed the parties meet in Dillingham. He also asked that the Association submit leave requests for its negotiation team. (Jt. Exh. A-12). The Association requested that the parties meet for negotiations in the villages in the District, rather than in Dillingham where the two previous rounds of negotiating sessions were held. Eleven of the Association's bargaining unit employees[5] reside in Dillingham, while the remaining 73 members reside in outlying villages in the area comprising the Southwest Region School District. The largest group of Association members (20) resides in Togiak.

10. On September 6, 2000, Brown faxed a letter to Hiratsuka and expressed disappointment that the District proposed Dillingham as a site for negotiations without explaining why Togiak was unacceptable. He added the following explanation as support for Togiak as a site:

> Togiak has a new administration that is taking a more aggressive stance on discipline. It is working well. The negotiators that teach at that [site] feel that to maximize their support of local and district policies it would [be] best if they were in Togiak so that they could be on call during the negotiations. We realize that the district inservices were not convenient to Mr. Evans' schedule for negotiations. While the dates Sept 11-22 may be convenient for him, they fall during the first month of school. As you know, this is the period of time when teachers establish a routine for their students and lay down the frame work for the entire year[']s learning. For these reasons, please agree to negotiation in Togiak.

(Jt. Exh. A-13). Brown also thanked Hiratsuka for information requested by the Association and delivered by Marie Paul. He also requested additional information from the District, including:

> 1) Scatter grams for Teacher Salaries FY 00-01, 2) A copy of the Negotiated Agreement on disc, requested previously 3) One copy of each Negotiated agreements between the District and Administrators going back to 1990, or the first one there after, up to the most recently adopted agreement, 4) A copy of all contracts with ERI, current and past, excluding those for the position of CEO 5) the Year End Comprehensive Financial Report for last school year, 99-00, requested previously, as soon as it is available. 6) The budgets as adopted by the Southwest Region School Board, including revenues, for FY 1999-2000, 1998-99, and 1997-98. Please include a detailed breakdown of the adopted budget by object code for each of these years, requested previously.

11. Brown again faxed a letter to Hiratsuka on September 12, 2000. In it, he noted he had received no reply to his September 6 request for negotiations in Togiak, and the scheduled negotiations were less than 48 hours away. He was confused by the lack of response. But he stated that negotiating time should not be wasted; therefore, "with great reluctance," he agreed to Dillingham as a location for the first meeting. However, "to lessen the impact on students, as mentioned in my previous letter, the negotiators will only be available for Friday, September 15, 2000. We will be prepared to compare calendars, schedule and lay down ground rules for future meetings." (Jt. Exh. A-14).

12. Hiratsuka faxed Brown a response to the September 6 letter on September 12, prior to receiving Brown's September 12 faxed letter. Hiratsuka said some information Brown requested had already been sent previously, and they would attempt to get the other information. Hiratsuka also said the District "does not agree to conduct the negotiation team meeting in Togiak as you requested." Because of the short time left before the scheduled meeting, Hiratsuka told Brown to call Don Evans in Anchorage to discuss the issue. (Jt. Exh. A-15). Hiratsuka sent a second letter on September 12, 2000, acknowledging Brown's September 12, letter, and told Brown to communicate with Evans in Anchorage on all issues surrounding negotiations. (Jt. Exh. A-16).

13. On September 13, 2000, one day prior to the scheduled negotiations, Evans wrote Brown and stated:

> Having heard nothing from your Association since last spring, the District was notified by you (at the end of July) that you wished to negotiate during the District-wide in-service in August. With August calendars already crowded, Mr. Hiratsuka let you know that August was not workable. He also suggested that you provide him with some alternative dates . . . . After receiving no suggestions for alternative dates . . . [he] let you know that I would be available . . . September 10 - 22, 2000. . . You [recommended] . . . September 14, 15, & 16, 2000. The District agreed to your proposed dates. . .
> Now, less than 72 hours prior to the agreed meeting dates, you have reneged by informing the District that the Association will only be able to meet on Friday, September 15, 2000. I hope that during the remainder of the negotiations process the District will be able to rely more successfully on the matters agreed to by the Association.

(Jt. Exh. A-17).

14. The parties met on September 15, 2000, at Dillingham. They worked on ground rules and discussed the location to hold the next round of negotiations. They discussed but did not agree to all the ground rules. They could not agree on location for future bargaining sessions. The Association proposed that the parties alternate sites among Dillingham and the three largest villages in the District, including Togiak, Manokotak, and New Stuyahok. The District proposed that all sessions take place in Dillingham. (Jt. Exhs. A-18 -- A-19). The District and the Association agreed to meet on October 19-21; November 2-4; and November 30, December 1 and 2. (Jt. Exh. A-20).

15. The parties exchanged proposed ground rules and locations, by fax and letter, in late September and in October 2000. In a September 29, 2000, letter, the Association's Chief Spokesperson, Bruce Foerch, expressed concerns about draft ground rules sent by Evans. Of particular concern was the question of meeting location:

> Although you have insisted on [Dillingham] for the past few years, it is not in the best interest of the Association to do so. In the spirit of negotiations, the Association has relented. We even met with you in Dillingham September 15, although the President of the Association had continually request[ed] this meeting to be held in Togiak so two of our members could be close to their classrooms in case they were needed.
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> We countered your proposal to include Dillingham in the rotation with the three largest sites in our District where a member of the Association's team lives and works. Again, you came back to your first offer of only meeting in Dillingham. In the spirit of compromise, we offered to meet with you half the time in Dillingham and half the time in our district's largest village, Togiak, on an equal rotational basis. Your response was that you would only meet with us in Dillingham. We asked for your reasoning on this issue but received none.

(Jt. Exhs. A-23 -- A-24. See also Jt. Exh. A-22).

16. The District objected to the Association's proposal for open negotiations. In response, the Association accepted the District's proposal to keep negotiations closed unless both parties agreed prior to the meeting to have them open. (Jt. Exh. A-23).

17. Between September 29, 2000, and October 30, 2000, Foerch and Evans exchanged proposals for ground rules. They disputed what was agreed upon at the September 15, 2000, session, and what was still in dispute regarding ground rules and location of upcoming bargaining sessions. (Jt. Exhs. A-18 -- A-27). The Association assumed, from discussions that occurred on September 15, that the October 19-21 sessions would occur in Togiak. Association President Brown reserved the Togiak Cultural Center on October 12. (Jt. Exh. A-30). Evans wrote Foerch on October 17, 2000, and asserted that the District had not agreed to meet in Togiak. He added that he was ready to meet in Dillingham on the 19th, but would not fly to Dillingham from his Anchorage home if he did not have agreement on location from Foerch by 7:00 a.m. on the 19th. (Jt. Exh. A-28). Evans and Foerch exchanged more letters but could not agree on location for the October 19-21 sessions. (Jt. Exhs. A-31 -- A-34). In his letter to Evans, Foerch noted that the two bargaining team members from Togiak had already committed to helping, during non-bargaining periods, with a wrestling tournament that had been scheduled in Togiak for several weeks. However, Evans continued to insist on Dillingham as a site for all bargaining locations. The Association continued to insist that the District consider alternate sites. (Jt. Exhs. A-35 -- A-37). On October 30, 2000, Evans faxed Foerch a letter stating that the "District sees no reason to change the past practice of negotiating in Dillingham, but if the Association suggests alternative locations, those proposals will be considered." Evans wrote Foerch that negotiations scheduled for November 2 would be canceled if the District had not heard from the Association by 9:00 p.m., on November 1, 2000. (Jt. Exh. A-38). Evans also conditioned having future negotiating sessions on the Association providing an affidavit of membership. Although this had been provided in previous negotiating rounds, Evans questioned whether the Association had the support of its members due to the rejection by the membership of the previous two tentative agreements between the parties. The Association provided the affidavit as requested.

18. On October 31, 2000, Foerch expressed disappointment that Evans did not propose alternative locations for the negotiations, that the District still had not provided "material the Association has requested many months ago," and that the District still had not provided the Association with a list of District team members so the Association could prepare the appropriate number of packets. Foerch told Evans the Association did not want to cancel negotiations because further delay would not benefit anyone. Foerch implied that Manokotak would be a fitting location for the November 2 negotiations because three of the Association's team members had a reading inservice there. Foerch informed Evans the Association bargaining team would be meeting the evening of November 1 and would call Evans before his stated 9:00 p.m. deadline. (Jt. Exh. A-38).

19. Foerch and Evans spoke by phone the evening of November 1, 2000. Foerch summarized the conversation in a letter faxed to Evans. (Jt. Exh. A-39). Foerch again expressed disappointment that the District would not accept a location other than Dillingham for the location of bargaining, specifically Manokotak, as three Association members had a reading inservice there. Foerch informed Evans that the Association would negotiate in Dillingham November 2-4, "under protest." Foerch thanked Evans for the use of the District's condominium in Dillingham, and for $40.00 travel per diem, because the Association had "very limited funds" remaining after attempting to negotiate a contract for the "past few years."

20. The parties negotiated and agreed to (TA'd) several items during the November 2-4, 2000, sessions. Some of these items included provisions on sick leave banks, personnel files, dues deductions, travel, and legal leave. (Jt. Exh. J).

21. During the November 2000 negotiating sessions, the parties discussed the location for the next bargaining session. The District continued to insist on Dillingham. At the conclusion of these sessions, the Association gave the District a draft of an unfair labor practice charge the association planned to file with the Alaska Labor Relations Agency (Agency).

22. The Association filed an unfair labor practice charge against the District alleging the District committed bad faith bargaining by insisting that negotiations be done in Dillingham. The parties agreed that they would put negotiations on hold until after this unfair labor practice charge was resolved.

23. In early January 2001, the Association notified the Agency that it was withdrawing its ULP charge, in order to resume negotiations. The Agency dismissed the Association's ULP complaint without prejudice on January 5, 2001.

24. The parties resumed corresponding regarding proposed dates and locations to meet for negotiations. On January 10, 2001, Foerch wrote Evans in response to Evans' January 8 faxed memorandum to Foerch. Foerch explained his attempts to contact Evans:

> You also stated in this letter, ' . . . I did not hear from you regarding my earlier offer to work out future tentative meeting dates . . . .' Mr. Evans, I called you last week at your ERI office right after I talked with NEA about withdrawing the unfair labor practice, to [discuss] proposed time and places for future negotiations. I called during normal business hours but no one answered the phone. . . I left you a message [on your answering machine].

(Jt. Exh. A-40).

25. The District offered to negotiate on Saturday and Sunday, January 27 and 28, in Dillingham. The District had offered to negotiate on weekends to save the Association leave time and time away from classes. The Association declined the offer to negotiate on Sundays for religious and family reasons, and reiterated to Evans on January 10 that Sunday negotiations were not an option. (Jt. Exh. A-41). The Association also pointed out to Evans that one of his

proposed negotiating dates was the same day as the NEA-Alaska Delegate Assembly in Anchorage. Foerch did not want to wait until January 27 to negotiate and instead offered to bargain on January 22 and 23 in Togiak. The Association offered housing and meals at no cost to Evans during his stay in Togiak. Foerch informed Evans that if the District insisted on meeting in Dillingham, the Association requested assistance with travel and leave expenses for a January 22-23 trip. (Jt. Exh. A-41).

26. Evans responded to Foerch's January 10 letter on January 15, 2001. Evans disputed what the parties had agreed to or not agreed to regarding negotiations on Sundays. "I have not agreed to not negotiate on Sundays." He also denied that he committed to submit the District's whole initial contract proposal in bold face and italics. He agreed to submit future proposals in the format requested by the Association. Evans informed Foerch he was not available on the 22nd and 23rd due to another commitment. Instead, he proposed a bargaining session in Dillingham on February 2 and 3 since NEA-Alaska business agent Mike Dinges was traveling to St. Paul on February 4 and could be available for negotiations. (Jt. Exhs. A-42 -- A-43).

27. On January 22, 2001, Foerch further clarified the issue over bargaining on Sundays. The Association's negotiators needed a day to take care of personal and family life. Foerch then proposed the parties not wait until February 2 but instead meet in Togiak on January 29 and 30. Foerch noted that NEA-Alaska was now on strike, and that was one reason the Association asked Dinges to withdraw the Association's unfair labor practice charge. Foerch offered to negotiate without Dinges. Foerch again expressed disappointment that Evans refused to negotiate in Togiak, especially in light of the recent visit there by the District's CEO, Mark Hiratsuka, and the District's attorney, John Sedor, and several other District officials. Hiratsuka and Sedor attended a community meeting on January 18, 2001. If Evans again refused to come to Togiak, Foerch reiterated the previous offer to negotiate in Dillingham if the District would assist with travel and leave expenses. Foerch again requested information from the District that was requested "several months ago. Now we are told by Marie Wheeler that the budget information that she has previously given the Association is inaccurate and misleading. Just one example was when she said that her salary was $90,000 but the budget printout she supplied to us shows that the Business Manager was paid a salary of $146,000 last year. The association would like these budget discrepancies cleared up immediately." (Jt. Exhs. A-44 -- A-45). Marie Wheeler has been the District's business manager since 1991. She denied stating that the information provided to the Association was inaccurate.

28. Evans responded that the District would not agree to negotiate in Togiak, but would meet in Dillingham on January 29 and 30. Evans set a deadline of January 25 at 5:00 p.m. for the Association to agree to meet in Dillingham. The District offered to provide housing at its condo, working lunches both days, and use of a vehicle. (Jt. Exh. A-46).

29. On January 25, 2001, Foerch again expressed disappointment that Evans refused to come to Togiak. Foerch again offered to come to Dillingham "if the district would be willing to assist us with airfare, related travel expenses, and extended association leave for the purpose of negotiating . . . . In your letter you did not respond to this request. The last time that we came to Dillingham you offered the Association per diem and now you are not even offering that." Foerch asked Evans to respond immediately and promised to get back to him that evening. (Jt. Exh. A-47). Foerch concluded the letter by stating: "If you truly wish to avoid further delays in negotiations you might reconsider sending the Association a copy of your proposal in a format that indicates which items that you have included and excluded so that we can read it before we arrive at the bargaining table again and straighten out the confusion about the budget information." (Jt. Exh. A-47).

30. On January 25, 2001, Evans notified Foerch by fax that the District would also provide per diem on the 29th and 30th. (Jt. Exh. A-50).

31. Foerch responded on January 25, 2001, and thanked Evans for the per diem offer. Foerch told Evans that he had spoken to the Association's president, John Brown, who stated that because of the "diminishing funds from three years of negotiating in Dillingham, we will need assistance to cover at least half of our airfare." (Jt. Exh. A-48).

32. After returning on January 27, 2001, from a basketball game in Bristol Bay, Foerch checked his fax and found no response to his request for travel assistance from the District. He faxed Evans and reported he had not received a response. He told Evans that if the District could not provide travel assistance as requested, the Association was willing to meet in Togiak. (Jt. Exh. A-51).

33. On January 27, 2001, Evans faxed Foerch that he had already responded regarding meeting location and the District's offer of assistance. "I assumed that my response was clear and it was not necessary to respond to a repeat of your request." Evans also informed Foerch he would not meet on January 29 and 30 because the parties did not agree to the meeting location and time prior to Evans' deadline of January 26 at 5:00 p.m. Evans was "open to discussing optional dates . . . ." He again offered the condo, vehicle use, and per diem for any future meetings in Dillingham. (Jt. Exh. A-52).

34. On January 29, 2001, Evans offered to negotiate on February 5 and 6, 2001, in Dillingham. He also informed Foerch that, "if you wish to discuss additional association leave, negotiation cost factors, and/or the sharing of negotiations expenses, I am prepared to do so at the table on the 5th and 6th." (Jt. Exh. A-53).

35. On February 1, 2001, Evans faxed Foerch notice that he had not received a response regarding his January 29, 2001, letter to Foerch. To insure that Evans could make his own travel arrangements from Anchorage to Dillingham, Evans gave Foerch a deadline of February 2, 2001, at 5:00 p.m. to respond. He reiterated his proposal for negotiating as set forth in his January 29 memorandum. (Jt. Exh. A-54).

36. On February 1, 2001, Foerch responded to Evans' January 29, 2001, faxed letter. Foerch expressed disappointment that Evans was unavailable for negotiations that week. "This is the second time that we have scheduled a date only to have you back out at the last minute. It takes a lot of time and planning to check schedules of four or five people, and to find a date that they can all make within the window that you, as the district's sole negotiator have available. Every time you cancel an agreed upon date, it takes hours of work and numerous phone calls for the Association to reschedule." He pointed out to Evans that teacher negotiators must arrange for substitute teachers, and some of them must make child care arrangements. He informed Evans that Evans' next proposed dates conflicted with writing assessment commitments that the District was requiring of each teacher. Foerch accused Evans of falsely stating that Evans had previously offered to negotiate expenses, costs, and leave. Foerch denied that Evans had ever made any such statement to Foerch. Foerch again requested the "economic data and other related information" the Association had requested since September 2000. Foerch also expressed frustration that although Evans refused to negotiate in any of the villages, the District sent a team of administrators and the District's attorney to the villages to discuss topics related to negotiations. Foerch claimed that in one of those meetings, the District's team said the budget information provided to the Association was "either misleading or inaccurate." Foerch complained that the Association still did not have copies of the District's proposed contract in an agreed upon format. Foerch reminded Evans of the Association's limited resources. (Jt. Exhs. A-55 -- A-56).

37. On February 3, 2001, Evans responded to Foerch's January 13, 2001, letter requesting documents and information for negotiations. Evans told Foerch that since receiving the January 13 request, the District had been "reviewing and verifying the availability of the documents and information." Evans provided some information, said other information was unavailable, and informed Foerch the District could provide the materials to the Association for $.25 per page. Evans informed Foerch that the request regarding life and health insurance could require approximately 1000 pages. (Jt. Exhs. A-57 -- A-59).

38. On February 5, 2001, Evans responded by letter to Foerch's February 1, 2001, letter. He accused Foerch of "repeatedly" [misrepresenting] the truth." Among other subjects, he responded to Foerch's accusations about Evans' unavailability to meet, to Foerch's claim that he did not receive Evans' faxes, to the alleged false statement regarding negotiation of costs and expenses, and to the assertion that the District had not provided all information requested by the Association. Evans offered to meet during any two-day period between February 23, 2001, and March 9, 2001. Evans told Foerch the Association could choose the specific days. Evans said the District felt the Association was not bargaining in good faith, if it continued "to insist that the District bargain (via memorandum and letters) just to get the Association back

to the negotiation table." Evans added that "both parties need to return to the bargaining table as soon as possible. The District is prepared to negotiate at the table . . . ." (Jt. Exhs. A-60 -- A-62).

39. Foerch responded to Evans' February 5, 2001, faxed letter on February 7, 2001. In his response to Evan's accusations, he denied that the Association had not bargained in good faith. He asserted that, to the contrary, "you [Evans] have even refused to agree to your own proposals." Foerch informed Evans that the Association had only one business leave day left to conduct negotiations. Foerch informed Evans that he was waiting to hear from the Association's executive board on how to proceed with negotiations.[6] (Jt. Exhs. A-82 -- A-83).

40. On February 16, 2001, Foerch informed Evans that the Association declared impasse "in regards to our attempt to negotiate a new contract after three years of collective bargaining." Foerch requested the services of a mediator. (Jt. Exh. A-84).

41. The District did not respond to the declaration of impasse until March 8, 2001. In a letter of that date, Evans told Foerch that the District disagreed that the parties were at impasse. He asserted that during the last session at the negotiating table (in November 2000), the parties reached tentative agreement on several proposals, and they made progress "throughout the meeting". Evans accused the Association of bad faith bargaining, and of delaying bargaining by refusing to return to the bargaining table and by forcing the District to bargain by mail and fax "just to get the Association back to the table." Evans notified Foerch that the District was filing an unfair labor practice charge with the Agency. He added that the District was ready to meet and negotiate during the Agency's investigation of the charges. He offered to meet in the village of Aleknagik or Dillingham, and to provide per diem, a vehicle, and use of the District's condo. (Jt. Exh. A-85).

42. On March 9, 2001, the District filed an unfair labor practice complaint against the Association. The District alleged the Association was bargaining in bad faith in violation of AS 23.40.110(c). On April 10, 2001, Agency Hearing Officer Jean Ward found probable cause that a violation occurred.

43. On April 26, 2001, Foerch e-mailed Evans that the Association agreed that negotiations should resume and should take place at the negotiating table. Foerch also accused Evans of offering a "take it all or leave it proposal" that was "economically inferior to a contract proposal that has already been voted down by the Association membership." Foerch reiterated previous disputes and Association responses to issues in dispute. In response to Evans' proposal to Aleknagik as a negotiating location, Foerch responded that Evans was well aware that it would be more costly to negotiate in Aleknagik than in Dillingham. Foerch reiterated that "the Association stands ready to move forward with substantive negotiations, as we have been all year." Foerch proposed that the parties meet "immediately in Togiak" and continue negotiating until the parties reach an agreement for 2001 and 2002. (Jt. Exhs. A-87 -- A-89).

44. On May 2, 2001, Evans responded by e-mail to Foerch's April 26, 2001, e-mail. He stated in part: "Once again, I disagree with the accuracy of most of your interpretations of events and your misrepresentation of many facts." (Jt. Exh. A-90).

45. On May 9, 2001, Foerch e-mailed Evans and suggested the parties meet in Dillingham on May 16 and 17. Foerch informed Evans that the Association rejected the District's "all or nothing" contract and requested that Evans present the Association with a contract that included a salary schedule for 2001 and 2002. (Jt. Exh. A-91).

46. Evans responded to Foerch's May 9, 2001, e-mail the same day. Evans informed Foerch he would try to clear his calendar "[e]ven with this short notice . . . ." He added: "Be advised that at no time did I present the District contract proposal as 'all or nothing.' I'm afraid that you have once again confused the truth with the rhetoric the Association has been using to misrepresent me and the District's proposal." (Jt. Exh. A-92).

47. Evans informed Foerch by e-mail on May 11 that he was unable to clear his calendar. Evans proposed the parties meet in Dillingham on May 21 and 22. (Jt. Exh. A-93). Foerch e-mailed Evans on May 15 that May 21 and 22 would not work for the Association because those were the last two regular school days of the year in Togiak, and they were mandatory teacher work days. Foerch proposed the parties "audioconference" on May 16 and 17, or after 3:30 p.m. on May 21. Foerch also asked Evans if he was interested in negotiating during the summer, and said the Association would like to "reserve" August 13 to August 15, 2001, to meet in Dillingham, "at the very latest." (Jt. Exh. A-94).

48. Evans responded by e-mail on May 16, 2001. He agreed to meet by telephone conference on May 21. He also proposed a Dillingham meeting on May 23 from 9:00 a.m. until 5:00 p.m. (Jt. Exh. A-95). Foerch responded on May 17, 2001, that although he had commitments on May 23, he would try to adjust his schedule, and he would contact the other Association team members. He told Evans they could finalize their May 23 meeting on May 21. (Jt. Exh. A-96).

49. A prehearing conference was held on the Association's unfair labor practice complaint on May 24, 2001. A hearing was scheduled for July 17 and 18, 2001.

50. Foerch sent Evans a letter, dated May 24, 2001, stating he was glad the parties resumed bargaining. He informed Evans the Association rejected the District's last offer, submitted just before the end of the negotiating session. Foerch sent a 9-page counter proposal. (Jt. Exhs. A-97 -- A-106). Evans acknowledged receipt on May 24, 2001. Evans proposed the parties meet in Dillingham on June 20 and 21. (Jt. Exhs. A-107 -- A-108).

51. On May 29, 2001, Foerch wrote a letter to Evans and noted school was out for the summer and many teachers left for the summer. He also noted Mike Dinges had already informed the District he would be unavailable on the proposed dates but would be available on June 8 and 9. Alternatively, Foerch again proposed August 13 - 15, 2001). (Jt. Exh. A-109).

52. Evans phoned Foerch and responded by letter on June 1, 2001, that he would not be available on June 9 but would be available on June 8 after the District's School Board meeting. He anticipated the meeting would end at 2:30 p.m., and they could negotiate until 5 p.m. that day, when Evans then had to catch a plane back to Anchorage. Evans' business, ERI, was negotiating a new contract with the School District at the June 8 school board meeting. Evans also said August 13 -15 would not be available dates because the school year will have started by then, and school activities and responsibilities would prevent adding negotiation activities. Evans expressed a desire to settle the contract prior to the beginning of the school year. He offered several dates in June and July. Alternatively, he proposed the week of August 27, 2001. (Jt. Exh. A-110.).

53. Foerch responded on June 4, 2001. The Association agreed to accommodate Evans' schedule and meet the afternoon of June 8, after the school board meeting, from 2:30 p.m. to 5 p.m. Foerch said he had an obligation in Fairbanks, but he would change his schedule for his return trip from Fairbanks to fit Evans time limitations on June 8. Foerch indicated the Association would not be available on the other proposed dates, and he asked the District to reconsider August 13 to 15 because all of the teachers would be in Dillingham for inservices. Foerch proposed the parties meet between 5 p.m. and 10 p.m. on those days, to avoid school activities. (Jt. Exhs. A-111-- A-112).

54. The June 8, 2001, school board meeting went later than anticipated. Evans was available to negotiate for only 10 minutes before he had to catch a plane to Anchorage.

55. Weather conditions sometimes hamper the ability to travel between Dillingham and the various villages in the Southwest Region School District area.

56. Dillingham has the most advanced airport facilities in the Southwest Region School District area. It has the only paved runway in the area that encompasses the District.

57. There is availability of sleeping facilities in Togiak, including the school, and bed and breakfasts. Teachers also allow guests in their homes. The Association offered to help find lodging for Evans if negotiations are held in Togiak.

58. The Togiak Cultural Center is available as a site for negotiations in Togiak. The Center has adequate facilities for conducting negotiations between the parties.

59. Evans does not like to sleep on school floors, especially the older he gets. It would be less convenient for Evans to negotiate at a location other than Dillingham.

60. The District and the Association exchanged proposals several times during bargaining between September 2000 and June 2001. They tentatively agreed to several proposals. However, each rejected the other's initial

monetary proposals regarding salary and medical benefits.

61. The Association never refused to negotiate in Dillingham. The District did refuse to hold negotiating sessions in Togiak.

62. The District did not provide the scattergram of financial information requested by the Association on September 6, 2000, until November 2000. Some of the other information requested on September 6, 2000, was not provided until February 2001. The Association needed the requested financial information because it did not know what financial impact its salary proposals might have on the District's budget, and it did not want to bankrupt the District.

63. There are several factors that caused a delay in negotiations. We believe the lack of oral communications between Foerch and Evans was one factor. Both parties utilized primarily written communications, sent by fax or e-mail, in their dealings regarding negotiations and scheduling of meetings. Foerch and Evans had only three telephone conversations during the September 2000 to June 2001 period.[7] This hampered the ability of the parties to agree in a timely manner to a date and location for negotiations. The ability to schedule and hold negotiating sessions was also affected by the schedule of Don Evans and his Anchorage residence, which required him to fly to Dillingham, and by the various residential locations of the four members of the Association's team. Foerch, the Association's chief spokesperson in 2000 and 2001, resides in Togiak along with one other team member. The other two members live in New Stuyahok and Manokotak. Other factors included the agreed-to delay caused by the Association's filing of an unfair labor practice, and school and Association-related obligations of the Association's team. The District's delay in providing information also stalled negotiating progress. However, the most significant factor was the parties' nonstop dispute over the location for bargaining sessions.

64. The negotiating ground rules were not clear to the Association. The parties have not agreed to all ground rules. Nonetheless, during several of the negotiating sessions between September 2000 and June 2001, the parties met and tentatively agreed to several contract terms. However, they did not agree on the major issues related to salaries and medical benefits. Both parties have made substantial changes from their initial positions at the negotiating table. For example, the District has withdrawn its initial proposal on medical benefits. Instead of providing medical benefits, that proposal would have added a set amount to each employee's salary and would give them the option to buy their own medical costs. The Association has reduced its initial salary proposal from 12 percent to a 6 percent increase over three years. The Association last received a raise, because of a union contract, approximately five years ago. The Association's members received a one percent increase at that time, but also incurred increases to medical insurance and housing rentals.

65. The District's dogged insistence on Dillingham as the only acceptable site for negotiations had a negative effect on the parties' ability to meet and negotiate for a new contract, as well as its refusal to provide some relevant information in a timely manner.

66. The District and the Association did not meet for bargaining between November 4, 2000, and May 23, 2001. However, both parties have contributed to the lack of progress in negotiations during their third attempt to negotiate a collective bargaining agreement.

DISCUSSION

The District alleges various instances of bad faith bargaining by the Association during the parties' attempt to negotiate a new contract. It contends that the Association violated AS 23.30.110(c)(2) of the Public Employment Relations Act (PERA) when it: "(1) refused to meet in face-to-face bargaining from early November of 2000 until May 2001; (2) inappropriately conditioned bargaining on obtaining concessions from the District; (3) declared impasse unilaterally and prematurely; and (4) presented proposals which are so transparently unacceptable that they strongly suggest a refusal to bargain in good faith." (District's July 3, 2001, Prehearing Brief at 1). The District argues that "individually and collectively," these allegations "lead to the inescapable conclusion that the Association has violated its duty to bargain in good faith." In its opening statement, the District asserted that the core of its charge against the Association is the dispute over the location of bargaining. The District argues that the parties have conducted most of their negotiations in

Dillingham in the past rounds of bargaining, and Dillingham is the best site under the totality of the circumstances.

The Association denies it committed an unfair labor practice by failing to bargain in good faith. It argues that, to the contrary, the District has failed to bargain in good faith and has "engaged in a pattern of bad faith bargaining . . . ." (Association's July 3, 2001, Prehearing Brief at 7). The Association contends that there is no one reasonable site for bargaining, but parties must meet near employees at reasonable times. It argues that the District's continued insistence on Dillingham as the location for bargaining is an unfair labor practice "by itself."

AS 23.40.110(c)(2) states: "A labor or employee organization or its employees may not refuse to bargain collectively in good faith with a public employer, if it has been designated in accordance with the provisions of AS 23.40.070 -- 23.40.260 as the exclusive representative of employees in an appropriate unit."

As a preliminary matter, we must decide whether to address the Association's assertion that the District committed an unfair labor practice. The District argues there is no procedural basis for finding it violated PERA. We agree. There is no active unfair labor practice charge filed by the Association against the District, covering the allegations the Association set forth in this matter. That being the case, the Agency has not investigated the allegations, and there has not been any probable cause finding. Therefore, the Association's request that we find the District committed an unfair labor practice violation is dismissed at this time. We will next address each of the District's allegations.

1. Refusal to meet in face-to-face bargaining.

There is no dispute that the parties did not meet in face-to-face bargaining between November 4, 2000, and May 23, 2001. The District accuses the Association of bad-faith bargaining by refusing to meet at reasonable times in Dillingham for negotiations. As noted, the Association argues that the law requires that the parties meet near the bargaining unit's employees at reasonable times.

In *Fairbanks Fire Fighters Ass'n, Local 1324, IAFF, vs. City of Fairbanks*, Decision and Order No. 256, at 9-10 (October 17, 2001), we stated that in the context of collective bargaining,

> 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."

In determining whether a violation occurred, we will review both parties' conduct at and away from the negotiating table, not just the conduct of the Association. In I Patrick Hardin, *The Developing Labor Law*, page 634-35 (3d ed. 1992), it states:

> The duty to bargain is a bilateral one, however, so that where both parties have been equally dilatory, or where the union has broken off negotiations and made no further request for bargaining, or has failed to request the employer to bargain, the Board has refused to find bad faith on the part of the dilatory employer.[8]

The District contends that the Association bargained in bad faith by its refusal to meet in face-to-face bargaining in Dillingham for an unreasonable period. It is undisputed that the parties did not meet for bargaining from November 2000 until May 2001. Clearly, the dispute over travel overshadowed all other issues and disputes related to the collective bargaining experience between the District and the Association. The dispute over location took on a life all its own and hindered progress in negotiations. We have reviewed all the evidence, including the testimony of witnesses, and we find that the responsibility for failure to meet face-to-face, or otherwise, in negotiations lies with both parties. We find that each side insisted on its own location for bargaining to the point that meetings were generally delayed, cancelled, or never scheduled from the time of the first communications in July 2000, until the last negotiations on record occurred in June 2001.

However, we do find that the District's dogged insistence on holding meetings in Dillingham was a primary factor in delaying negotiations. The District contends Dillingham was the best site for negotiations primarily because it was past practice of the parties to negotiate there, and the District's headquarters in Dillingham contained records that would be readily available. Regarding availability of records, we cannot understand why the District chose Aleknagik as an alternative site if Dillingham was such an important location due to the records availability. In our view, Aleknagik was probably worse than Dillingham as a location for both bargaining teams, as they would then be required to go even farther from Dillingham to negotiate, thus reducing available negotiating time and increasing the Association team members time away from their employment for the District. We do not understand why the District would propose a seemingly more onerous site for both parties.

The District's other contention is that past practice dictates where the parties negotiate. While past practice is a factor to consider in analyzing appropriate location, it is not the sole determining factor.[9] Regarding the past practice for negotiations in Dillingham, the testimony was undisputed that the Association had long protested holding meetings only at Dillingham, but had relented and met there in the spirit of reaching agreement. Past practice, then, was not just to meet in Dillingham, but to meet in Dillingham under protest by the Association. In fact, it may be more appropriate to say that the past practice was that the District insisted on meeting in Dillingham. Moreover, the Association did not waive the right to suggest an alternative bargaining location after agreeing to meet previously in Dillingham.

Location of bargaining was one dispute addressed in a previous Board decision, *International Brotherhood of Electrical Workers Local Union 1547, AFL-CIO vs. City of Seldovia*, Decision and Order No. 208 (September 23, 1996). There we did not decide what the appropriate location would be for the parties. We did conclude, though, that both parties shared responsibility for infrequency of meetings due to setting conditions on the location of negotiations. *Id. at 9*.

The National Labor Relations Board (NLRB) and other jurisdictions have addressed appropriate locations for conducting collective bargaining sessions.[10] In *Mid-America Transportation Company*, 141 N.L.R.B. 326, 52 L.R.R.M. (BNA) 1316, (1963), the NLRB addressed a dispute over location of negotiations. The employer was a Tennessee corporation with its corporate office in Memphis and its "fiscal office" in St. Louis, Missouri. The union had an office in St. Louis. The union requested negotiations in St. Louis and the employer insisted on Memphis. The union also proposed a compromise site halfway between the two locations. The NLRB concluded that the employer's principal office was in St. Louis. It stated that *where* the parties conduct their negotiations "is a matter of little or no moment. The important element

is that the two parties sit down as reasonable men with the intent and desire to arrive at a mutually agreeable contract. The locale, of course, should be the most convenient and economical for all concerned and where records necessary for the negotiations are readily available." 141 N.L.R.B. at 335.

In *BPS Guard Service, Inc. D/B/A Burns International Security Services*, 300 N.L.R.B. 1143, 136 L.R.R.M. (BNA) 1291 (1990), the NLRB reviewed past decisions on disputes over location of bargaining. The employer in this case provided guard services to operators of nuclear powerplants throughout the United States. The union represented employees at two plants in Illinois and one in Florida. The Board pointed out that its historical emphasis is for parties to conduct bargaining at the locale of the represented employees. It cited to *NLRB v. Lorillard Co.*,[11] where the court held that an employer is obligated to "make his representatives available for conferences at the plant where the controversy is in progress" and confer "at reasonable times and places." The Board also noted the recent case of *Tower Books*[12]. In *Tower Books*, the Board "emphasized that it does not advocate a per se approach in deciding where bargaining should take place. Rather, it considers all the relevant circumstances." 300 N.L.R.B. 1133. The Board added:

The Board [in *Tower Books*] found an 8(a)(5) refusal to make a reasonable and sincere effort to meet for collective bargaining where the company failed to provide an "overriding reason compelling negotiations" at its proposed bargaining site located far from the affected union and employees. It was this failure combined with the company's "intransigent insistence" on that distant location that led the Board to characterize its actions as a "stratagem to delay or avoid bargaining" and thus a violation of Section 8(a)(5).

In the case before us, we find the parties share responsibility for the lack of progress and infrequency of negotiating sessions due to the location dispute. Both parties proposed locations for bargaining but refused to compromise so negotiations could proceed on the issues important for reaching an agreement. However, we find that any refusal by the Association to meet in face-to-face negotiations did not constitute an unfair labor practice violation under AS 23.40.110(c)(2). We believe that the District's "intransigent insistence" on Dillingham was the primary factor in delaying the negotiating process between the parties. The evidence indicates that the District insisted on Dillingham because of records availability and because it would be inconvenient for its negotiator to travel to the villages proposed by the Association.[13] Based on the record before us, we do not believe records availability is required for every negotiating session between these two parties.

2. Did the Association inappropriately condition bargaining on obtaining concessions from the District?

The District contends the Association refused to bargain unless the District provided certain benefits to the Association's negotiating team, which would reduce the team's cost of travel for negotiations. We have already noted above that the location dispute dominated and hindered progress in negotiations. We further indicated that the evidence shows both parties set conditions on meeting for bargaining, and on the location of negotiating sessions. They share responsibility for failure to meet and negotiate. However, the Association's request for assistance with some travel and per diem costs was not an inappropriate attempt to gain a concession.

The Association's request to negotiate in villages where its team members were required to be present for school-related activities appears to be a reasonable request that would be more convenient for the team members. If the District had agreed to accommodate the Association's team, for example, when some team members were required to attend a reading inservice in Manokotak in November 2000, the negotiating process could have made progress. The Association even offered to negotiate in evenings so its bargaining team members could fulfill their employment obligations during the day. We find this is an example of the District's failure to accommodate the Association's needs, while the evidence shows [14]

several examples of the Association accommodating the District's needs.

The whole bargaining process was overshadowed by the parties' ongoing dispute over the appropriate location for bargaining. The District adamantly insisted on bargaining in Dillingham because its office there contained the District's records. Also, the District's negotiator did not want to fly to the villages due to unpredictable weather conditions and the possibility of sleeping on the schools' floors. However, there was no evidence that records availability was a significant issue here. In fact, the Association contends it did not receive some of the information it requested, in order to gauge the appropriateness of its salary proposal. In any event, the record does not establish that Dillingham was vital as a location for every bargaining session because school district records were located there.

Regarding the travel issue, someone will be required to travel to negotiations, since the negotiators are spread out in the Southwest District area, and the District's negotiator resides in Anchorage. Conducting negotiations in Dillingham is the most convenient for the District's travel requirements and least convenient for the Association's team members. One side or the other will have to face the unpredictable weather, sleeping quarters away from home, and the general inconvenience of traveling. Neither team should be required to do all the traveling and put up with all the inconvenience.

The District did offer an alternative village site, but oddly, it did not offer to meet in one of the three major villages proposed by the Association. Instead, it proposed to meet in Aleknagik, which undisputedly has fewer facilities than either Dillingham or Togiak, at the least, and requires air travel or a river crossing to reach it via one route. Further, there was no evidence there are school records there, or that there are computer or fax facilities. On the other hand, Togiak has a cultural center that is available and adequate for conducting negotiations. This building contains computers, fax availability, meeting rooms, and restrooms. The Association has offered to find places for the District to stay at no cost, and to provide meals. Finally, as we have noted, there was no evidence presented that records at the Dillingham office were vital to the negotiating process each of the few times the parties met. This is evidenced by the May 21, 2001, telephone conference meeting between the parties. We believe that if fax or e-mail facilities are available, a site other than Dillingham should work well as an alternate site for the parties, provided they plan ahead and gather the documents needed at the negotiating meeting. We note that the District has not hesitated to send its teachers to the villages for inservices, and it sent its Chief Executive Officer, attorney, and several others to the villages to conduct meetings with the public. However, it refused to send its negotiator there to work with the Association's team on negotiations for a new contract.

Because the Association has been forced to bear the largest financial burden and time to travel to Dillingham, we cannot conclude that it inappropriately conditioned bargaining on receiving concessions from the District.

3. Did the Association declare impasse unilaterally and prematurely?

It is undisputed that the Association declared impasse unilaterally on February 16, 2001. The question is whether this declaration was premature. In other words, were the parties at impasse in February 2001?

In his labor law treatise, Patrick Hardin discusses impasse and the duty to bargain: "The duty to bargain does not require a party 'to engage in fruitless marathon discussions at the expense of frank statement and support of his position.' Where there are irreconcilable differences in the parties' positions after exhaustive good-faith negotiations, the law recognizes the existence of an impasse." Hardin at 691.

We have previously stated: "A finding of impasse requires a determination that meaningful progress is not likely to be made on mandatory subjects of bargaining." *Alaska State Employees Ass'n v. State of Alaska*, Decision & Order No. 178, at 13 (1994), *quoting Alaska State Employees Ass'n v. State of Alaska*, SLRA Order & Decision No. 124 (Sept. 14, 1989). To determine whether meaningful progress is likely to be made on mandatory subjects of bargaining, we have looked at the factors named in the principal NLRB case addressing impasse, *Taft Broadcasting Co.*, 163 N.L.R.B. 475, 64 L.R.R.M. (BNA) 1386 (1967).[15] That case states:

> Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations, are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

Id. at 478, 64 L.R.R.M. (BNA) at 1388; *Alaska State Employees Ass'n v. State of Alaska*, Decision and Order No. 178, at 13; *see generally* I Patrick Hardin, *The Developing Labor Law* 692-696 (3d ed. 1992).

We find that bargaining between the parties was not sufficiently exhausted on mandatory subjects to declare impasse. On the one hand, we understand why the Association may have felt the parties were at impasse. The parties had negotiated for more than two years, the Association's membership had rejected two TA'd agreements, the parties were unable to even agree on the location and ground rules for bargaining beginning in the fall of 2000, and each side believed the other party was submitting proposals that were unreasonable. On the other hand, the Association's declaration of impasse seems to be more related to its frustration with the bargaining location dispute and its lack of sufficient business leave available for negotiations, than to a bona fide deadlock in negotiations. Nonetheless, the Association's stated desire to seek out a mediator reflects its frustration with the way negotiations had gone to that point in the process. The evidence indicates the Association sincerely felt the parties were at a deadlock. However, as the District points out, the parties had not even discussed some of the important monetary issues. This lack of discussion on these issues was due in part to the District's failure to provide requested information timely.

In this case, the Association's declaration of impasse was premature. However, a premature declaration of impasse, by itself, does not necessarily constitute an unfair labor practice. It constitutes some evidence of bad faith bargaining. In the context of the entire negotiating process between the District and the Association, the Association's lapse in negotiations was relatively brief.

The Association returned to a bargaining mode by no later than April 26, 2001, when it contacted the District about negotiating. While a two-month lapse in negotiating without valid reason is normally unacceptable, the parties may have been awaiting the outcome of the Agency's investigation on the District's unfair labor practice charge. They had previously agreed to stop negotiating during the investigation of the complaint filed by the Association in November 2000. The probable cause finding on the District's charge was issued on April 10, 2001. The Association returned to bargaining approximately two weeks later. Under the totality of the circumstances, we do not find the Association committed a violation due to premature declaration of impasse.

4. Did the Association present proposals that were "so transparently unacceptable that they strongly suggest a refusal to bargain in good faith?"

The NLRB has stated that, "it is 'not the Board's role to sit in judgment of the substantive terms of bargaining,' and stated further that, '[t]he Board will not attempt to evaluate the reasonableness of a party's bargaining proposals, as distinguished from bargaining tactics, in determining whether the party has bargained in good faith." *Horsehead Resource Development Co., Inc.*, 321 N.L.R.B. 1404, 153 L.R.R.M. (BNA) 1200 (1996).[16] "The obligation to bargain collectively 'does not compel either party to agree to a proposal or require the making of a concession.' If a term 'is genuinely and sincerely held, if it is not mere window dressing, it may be maintained forever though it produces a stalemate.'" *CJC Holdings, Inc.*, 320 NLRB 1041, 1045, 152 L.R.R.M. (BNA) 1254 (1996), *citing to NLRV v. Herman Sausage Co.*, 275 F.2d 229, 231 (5th Cir. 1960).

"Bad-faith bargaining must be inferred from a party's conduct at or away from the bargaining table, since an intent to frustrate agreement is rarely articulated. The distinction between lawful 'hard' bargaining and unlawful 'bad faith' or 'surface' bargaining is a difficult one to draw and depends on the facts of each case." I Patrick Hardin, "*The Developing Labor Law*, page 593 (1992) (citations omitted). Applying the totality of the circumstances, we find the Association did not bargain in bad faith. We find the Association's beliefs were sincerely held regarding its concern over medical benefits and over its salary proposal. The Association had not received a raise through a collective bargaining agreement for several years. It appears its initial salary proposal was an attempt to make up for lost ground.

Some of the Association's initial proposals were made without having all the information it had requested from the District. Regarding the District's delay in providing information, Patrick Hardin states:

> Delay in supplying requested information necessary for negotiations or for administration of the contract may also be considered bad faith. Failure to supply wage information promptly, or delay in furnishing the union a current list of employees, wage rates, and job classifications or a copy of the pension plan, has been treated as evidence of bad faith.[17]

I Patrick Hardin, *The Developing Labor Law*, at 635 (3d ed. 1992).

There is no other evidence supporting a finding of bad faith bargaining. The Association's correspondence with the District, and the testimony of its witnesses reflect a sincere desire to reach agreement with the District on a new contract. The Association did make some concessions during the parties' bargaining sessions, as did the District. At most, some of the Association's actions may be deemed 'hard bargaining' in nature. Under the totality of the circumstances, the Association did not bargain in bad faith.

After weighing all the evidence, and applying the totality of the circumstances standard, we cannot conclude that the District has proven by a preponderance of the evidence that the Association committed an unfair labor practice. The District's unfair labor practice charge is denied and dismissed.

CONCLUSIONS OF LAW

1. The Southwest Region School District is a public employer under AS 23.40.250(7).

2. The Southwest Region Education Association is an organization under AS 23.40.250(5).

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

4. The parties were not at impasse when the Association declared impasse on February 16, 2001. However, the totality of both parties' conduct during the negotiating period between July 2000 and June 2001 negates a finding of an unfair labor practice under AS 23.40.110(c)(2) against the Association for premature declaration of impasse.

5. The parties share the responsibility for failure to meet in face-to-face negotiations between November 2000 and May 2001. Under the totality of the circumstances, the Association's conduct does not violate the duty to bargain in good faith under AS 23.40.110(c)(2).

6. The Association did not violate AS 23.40.110(c)(2) by inappropriately conditioning bargaining on obtaining concessions from the District.

7. The Association did not violate AS 23.40.110(c)(2) by presenting proposals that were so unacceptable that they suggested a failure to bargain in good faith.

ORDER

1. The complaint of the Southwest Region School District is denied and dismissed. The parties are ordered to return to negotiations, bargain in good faith, and demonstrate flexibility in determining the locations for negotiations, among other things.

2. The Southwest Region School District 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.

ALASKA LABOR RELATIONS AGENCY

_____

Aaron Isaacs, Jr., Chair

_____

Raymond Smith, 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 in the matter of *Southwest Region School District v. Southwest Region Education Association, NEA-Alaska*, Case No. 01-1084-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 19th day of December, 2001.

_____

Earl Gibson, Jr.

Administrative Clerk III

This is to certify that on the 19th day of December, 2001,

a true and correct copy of the foregoing was mailed,

postage prepaid to

Thomas Wang, Southwest Region School District_____

Mike Dinges, Southwest Region Education Association

_____

Signature

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[1] The Association has not filed an unfair labor practice complaint to support this allegation.

[2] See District's July 3, 2001 Brief at 1.

[3] The letter indicates the Dillingham City Schools had a successful experience with this type of negotiating process.

[4] In the letter, Brown indicated the previous round of bargaining terminated at the end of the school year because the Association had "insufficient 'leave time'" available to conduct negotiations.

[5] Four of the eleven employees are members in the Association.

[6] Among other things, the Association also accused the District of refusing to hear "numerous grievances" filed during the prior two years.

[7] There was no evidence presented as to why Evans and Foerch did not simply get on the phone and iron out some of the issues that arose during this period. A phone conversation may have helped avoid or resolve disputes that occurred when the two accused each other of misunderstanding what the other had said.

[8] Case citations in Hardin omitted. *See also International Brotherhood of Electrical Workers Local Union 1547, AFL-CIO vs. City of Seldovia*, Decision and Order No. 208 (September 23, 1996).

[9] *See Alaska Community College Federation of Teachers, Local No. 2404 vs. University of Alaska*, Order and Decision No. 84 (October 31, 1983), where past practice was considered in determining whether a party committed an unfair labor practice by suddenly insisting on a change of location. In the case before us, the Association's request for change of location was not sudden.

[10] "Relevant decisions of the National Labor Relations Board and federal courts will be given great weight in the decisions and orders" of the Agency. 8 AAC 97.450(b).

[11] 117 F.2d 921, 924 (6th Cir. 1941); rev'd on other grounds, 314 U.S. 512 (1942).

[12] 273 NUW 671, 672 (1984), enfd. mem. 772 F.2d 913 (9th Cir. 1985).

[13] In our view, the Association's request to conduct some of the negotiations in the villages is reasonable.

[14] Negotiations require reasonable 'give and take.' We strongly urge both sides to work together in this 'give and take'

process.

[15] Our regulation 8 AAC 97.450(b) provides: "Relevant decisions of the National Labor Relations Board and federal courts will be given great weight in the decisions and orders made under this chapter and AS 23.40.070 -- 23.40 260 . . . ."

[16] *See Dunn Packing Company*, 143 NLRB 1149, 1152, 53 L.R.R.M. (BNA) 1471 (1963): "The law does not empower the Board to order either party to recede or make concession." *Accord, National Labor Relations Board v. Herman Wilson Lumber Company*, 355 F.2d 426, 429 (1966).

[17] Case citations in Hardin omitted.