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PUBLIC SAFETY EMPLOYEES ASSOCIATION,) )  
AFSCME LOCAL 853, AFL-CIO, ) )  
Complainant, ) )  
vs. ) )  
CITY OF FAIRBANKS, ) )  
Respondent. ) )

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CASE NO. 14-1658-ULP

**DECISION AND ORDER NO. 305**

We decided this unfair labor practice complaint and motion for summary judgement based on the written record, including briefing filed by the parties. The record closed on September 4, 2015, when we completed deliberations.

**Digest:** The City of Fairbanks committed an unfair labor practice violation by approving its collective bargaining agreement with the Public Safety Employees Association and then not funding the agreement.

**Appearances:** Stephen Sorenson, attorney for complainant Public Safety Employees Association; Paul Ewers, attorney for the City of Fairbanks.

**Board Panel:** Lynne Curry, Vice Chair; Will Askren and Lon Needles, Board Members.

**DECISION**

**Statement of the Case**

The Public Safety Employees Association (PSEA) filed an unfair labor practice against the City of Fairbanks for bad faith bargaining, alleging that the City violated AS 23.40.110(a)(5) by negotiating a tentative collective bargaining agreement in which the City Council pre-approved the monetary costs of the agreement before they were offered to PSEA. The City Council then ratified the agreement formally by a 4-3 vote, but almost two months later, the City

Council suspended its rules, reconsidered the tentative agreement, and rejected it. The City denies any wrongdoing.

### **Issues**

1. Did the City of Fairbanks violate AS 23.40.110(a)(5) by refusing to bargain in good faith when it negotiated, approved, and ratified the parties' negotiated collective bargaining agreement but then later rejected the agreement?
2. If the City of Fairbanks violated AS 23.40.110(a)(5), what is the remedy?

### **Findings of Fact**

1. The Public Safety Employees Association (PSEA) represents the public safety department employees at the City of Fairbanks (City).
2. PSEA and the City commenced negotiations for a collective bargaining agreement to cover the period for the fiscal years 2014 to 2017.
3. The Fairbanks Mayor has responsibility over labor relations matters on behalf of the City. In most cases, the Mayor is the lead negotiator on the City's bargaining team. However, as reflected in this case, the Fairbanks City Council also has a considerable role in negotiations. The City Council's role in the negotiating process is outlined in Fairbanks General Code Section 42-1(2)(c), which provides:

The city council shall review and identify noneconomic bargaining items upon which the mayor may commence negotiations and reach tentative agreement. The city council shall review and identify economic bargaining items upon which the mayor may commence negotiations; however, the mayor shall make no tentative agreement to any economic proposal which substantially deviates from the city council's approval prior to receiving further approval.

(Respondents Prehearing Statement, at 3).

4. During negotiations, the City's negotiating team took any agreed-upon financial terms to the City Council for its approval or disapproval. The City's negotiators then let the PSEA negotiators know of the City Council's decision. Only after approval did the parties tentatively agree (TA) to proposed sections of the contract. This process, with involvement of the City Council, progressed until the parties TA'd all sections of the proposed collective bargaining agreement.
5. The parties reached a tentative agreement, and on August 11, 2014, Mayor John Eberhart presented the proposal to the Fairbanks City Council for approval. The agreement was

presented as Ordinance number 5953. In accordance with council rules, the ordinance went through its first reading. Meeting minutes show that this ordinance was advanced to the City Council's next regular meeting on August 25, 2014.

6. On August 25, 2014, the City Council listened to public testimony on Ordinance 5953. One person who testified was Ron Dupee, President of PSEA. Dupee told the Council that by tally on August 22, the PSEA bargaining unit employees ratified the parties' tentative agreement.

7. Other citizens testified during the council meeting, both in favor of and opposed to ratification.<sup>1</sup> Jeff Johnson, who had served on the city's finance committee for more than ten years, expressed concern about provisions in the contract. Among his concerns, Johnson asserted that the proposed contract changes would impact overtime, wages, and retirement and would offer even more benefits to the more senior employees. He expressed opposition to a provision in the new contract that would reduce the police department's regular work week from 40 hours to 36 hours because it would require more overtime pay. He contended that several positions would need to be added to the department to accommodate the proposed increases in annual leave.

8. Johnson's assumptions calculated the cost of the new TA'd agreement at approximately \$2.6 million, nearly three times the City administration's estimated price tag of \$890,000. Johnson asserted that the City could not afford the proposed agreement and would "have to pull from the infrastructure or lay off employees to fund increases beyond the rate of inflation." (Exhibit 5, at 5-6).<sup>2</sup>

9. Council members asked multiple questions about the tentative agreement. After hearing concerns expressed by the public and the City Council, Mayor Eberhart "clarified that there is nothing in the proposed PSEA contract that was not within the authority granted to the negotiating team by the Council." (Exhibit 5, at 10).

10. After extensive discussion by the City Council, and after receiving considerable public testimony, the City Council voted, on August 25, by a 4-3 margin to adopt Ordinance 5953 and ratify the collective bargaining agreement. Mayor Eberhart voted in favor of ratification.

11. The City Council meeting on August 25, 2014, adjourned on August 26 at 12:05 a.m. (Exhibit 5, at 18).

12. City Clerk Janey Hovenden posted notice of the Council's adoption of Ordinance 5953. (Exhibit 6).

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<sup>1</sup> During the discussion of Ordinance 5953, the police received "multiple calls threatening to shoot everyone." (Exhibit 5, at 12). The mayor's staff closed the blinds and the police posted guards. The City Council agreed to continue with the meeting.

<sup>2</sup> Exhibit 5 is the Fairbanks City Council Regular Meeting Minutes, August 25, 2014.

13. On August 27, 2014, City Council member Matherly filed a motion for reconsideration of Ordinance 5953. The City Clerk rejected the motion, and Mayor Eberhart ruled that the motion was untimely under Fairbanks General Code Section 2-120(g), which requires reconsideration to be filed within 24 hours. (Exhibit 7, at 8).

14. On September 8, 2014, at the City Council's next regular meeting, Council member Matherly requested suspension of the rules "concerning the reconsideration of Ordinance 5953." By roll call vote, the City Council voted 5-1 to suspend its rules and reconsider its ratification of the PSEA/City agreement. Mayor Eberhart explained that under the reconsideration procedure, the Council would "reopen" Ordinance 5953 as if its ratification never occurred. (Exhibit 7, at 8).

15. The City Council then allowed more public testimony on Ordinance 5953 at the September 8 meeting. Among those testifying, Jeff Johnson again expressed concerns about the cost of the agreement, based on his own assumptions. Johnson "estimated that the cost of the PSEA contract would be much higher than what the fiscal note indicated." (Exhibit 7, at 10).

16. The Mayor's Chief of Staff, Jim Williams, stated that the original fiscal note presented with Ordinance No. 5953 was researched and calculated very carefully based on a 36-hour workweek. He stated that the conflicting opinions presented are based on much different assumptions than the assumptions used by the administration. (Exhibit 7, at 12). In response to a question from a City Council member, Williams expressed belief that the City could afford the contract "if it is tightly managed." (Exhibit 7, at 12). Further, in response to a question from Mayor Eberhart, Williams said that the TA'd contract would save the City money on current wages and overhead "if management sticks to the assumptions set forth, the contract will save the City money." (Exhibit 7, at 13).

17. Acting Police Chief Johnson stated that it is the department head's job to "manage employees' hours within the parameters of the policies and contract in place." (Exhibit 7, at 14). He said that Jeff Johnson's assertion that employees would still be working 40 hours per week under the new contract was inaccurate. (Exhibit 7, at 14).

18. Mayor Eberhart expressed confidence in his administration's assumptions and reminded council members that department heads "believe that the contract will work." (Exhibit 7, at 16). He said he believed the fiscal note on Ordinance No. 5953 was "solid." He concluded that "to undo the ratification of Ordinance No. 5953 would be very regressive and demoralizing." (Exhibit 7, at 16).

19. The City Council then voted, by a 5-2 margin, to reconsider Ordinance 5953. After a brief recess, Council member Hilling moved to postpone the vote on Ordinance No. 5953 until its September 22 meeting. But pursuant to an amendment, the City Council voted to postpone the vote to its November 3, 2014 meeting. (Exhibit 7, at 16).

20. At the November 3 meeting, several citizens commented again on the PSEA/City tentative agreement. Council members also chimed in. Among those speaking, Mayor Eberhart

asked his Chief of Staff, Jim Williams to comment on who came up with the idea of the 36-hour work week. Williams said the concept was raised, during negotiations, when the parties were nearly at impasse. Former police chief Zager brought it up. The idea was presented to the City Council in executive session and then offered to PSEA after the City Council provided its input.

21. After hearing the additional testimony and then discussing the tentative agreement, the City Council voted 6-0 to reject the tentative agreement.

### Analysis

1. Did the City of Fairbanks violate AS 23.40.110(a)(5) by refusing to bargain in good faith when it negotiated, approved, and ratified the parties' negotiated collective bargaining agreement but then later rejected the agreement?

PSEA maintains that the parties have had a binding and enforceable agreement as of August 25, 2014, when the City Council ratified the agreement at the Council meeting. PSEA argues that the City committed an unfair labor practice violation under AS 23.40.110(a)(5) by negotiating and pre-approving the financial terms of the parties' tentative agreement, then ratifying the parties' tentative agreement, then suspending its rules and rejecting the agreement more than two months after ratification. PSEA contends that this scenario of actions by the City is tantamount to a per se refusal to sign a ratified, binding agreement. (See generally, PSEA Opposition to City's Motion for Summary Judgment, at 5-9).

The City denies any wrongdoing. The City argues that the City Council's "initial approval of the economic terms to be offered by its bargaining team is not, and cannot be considered as final and binding. The City Council can give direction to its bargaining team but may only take final action on the [tentative agreement] after a proper public hearing." (Respondent's Prehearing Statement at 6). The City asserts that ratification is a "separate and distinct part of the collective bargaining process." (*Id.* at 6).

Before addressing the primary issues in this matter, we must first analyze two preliminary matters. First, we address a procedural matter: the City's motion for summary judgment. The City filed this motion based on its assertion that there were no genuine issues of material fact. Summary judgment procedures are found in Rule 56 of the Alaska Rules of Civil Procedure. These rules "do not apply to administrative proceedings unless specifically adopted by regulation or statute." *State Department of Revenue, Child Support Enforcement Division v. Gerke*, 942 P.2d 423, 426 (Alaska 1997). Neither the Public Employment Relations Act nor agency regulations contain specific provisions for summary judgment procedure.

In *Fairbanks Fire Fighters v. City of Fairbanks*, Decision and Order No. 244 at 4 (June 8, 1999), we addressed a party's request for summary judgment:

We have considered [the motion for summary judgment] as a request for a hearing and decision on the written record. Under 8 AAC 97.390, this Agency

may consider motions. However, neither [the Public Employment Relations Act] nor our regulations requires us to apply the Alaska Rules of Civil Procedure, which contain the summary judgment procedure. We will not apply a summary judgment procedure to this proceeding. Rather, we will apply the traditional standard required by our regulations for this type of petition[.]

In this case, the parties have agreed that there are no disputed issues of material fact. In any event, rather than applying a summary judgment process under the civil rules, we will decide the merits of this matter based upon the written record. In doing so, we will apply the traditional standard of proof for unfair labor practices; that is, complainant PSEA has the burden of proving all the elements of its claim by a preponderance of the evidence. AS 23.40.130; 8 AAC 97.340; AS 44.62.460(e)(1).<sup>3</sup>

As a second threshold issue, we must determine whether the Fairbanks City Council's actions in the collective bargaining process with the Public Safety Employees Association constitute actions by a public employer under the Public Employment Relations Act. If so, the City Council's acts will be considered in determining whether an unfair labor practice violation occurred. AS 23.40.250(7) defines public employer as follows:

"public employer" means the state or a political subdivision of the state, including without limitation, a municipality, district, school district, regional educational attendance area, board of regents, public and quasi-public corporation, housing authority, or other authority established by law, and a person designated by the public employer to act in its interest in dealing with public employees[.]

In the typical scenario, employees of the executive branch of a state or political subdivision comprise the "public employer" in a negotiating process. They are commonly the representatives designated to negotiate collective bargaining agreements. Under normal circumstances, these representatives do not include officials of the legislative branch. However, the facts here indicate the Fairbanks City Council, the city's legislative branch, was actively involved in negotiations with PSEA. Each time the city negotiators struck a tentative deal with PSEA negotiators on economic proposals, the city negotiators took the deal to the City Council for approval in executive session. This level of involvement puts the City Council square in the middle of the negotiating process. This active involvement makes the Council members' actions accountable in determining whether there was an unfair labor practice violation in this case.

We will now determine whether the actions by the City, in the negotiating process with PSEA constituted an unfair labor practice violation. Under AS 23.40.110(a)(5), an employer may not "refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative." Good faith, in the context of bargaining, has been described as "an open mind and a sincere desire to reach an agreement" and "a sincere effort . . .

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<sup>3</sup> AS 44.62.460(e)(1) provides: "Unless a different standard of proof is stated in applicable law, the petitioner has the burden of proof by a preponderance of the evidence if an accusation has been filed under AS 44.62.360 . . . ."

to reach a common ground."<sup>4</sup> Further, the duty to bargain in good faith is an "obligation . . . to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement . . . ."<sup>5</sup>

In *Hotel Roanoke*, 293 NLRB 182, 184 (1989), the National Labor Relations Board<sup>6</sup> 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, 382 (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 the City committed an unfair labor practice, we must determine, under the totality of the circumstances, whether the City failed to bargain in good faith by the City Council's pre-approving the financial terms of the tentative agreement as those terms were presented to them, then ratifying the agreement after public hearing and the opportunity to seek comment and ask questions, then later reconsidering and rejecting the ratified contract after more than a two-month delay. We conclude that a violation was committed.

The process the City applied under the facts of this case supports a conclusion that it bargained in bad faith. The terms of a collective bargaining agreement are not effective until a legislative body appropriates the money. See *Public Safety Employees Ass'n, Local 92, International Union of Police Associations, AFL-CIO v. State*, 859 P.2d 980 (Alaska 1995); *Public Employees' Local 71 v. State*, 775 P.2d 1062 (Alaska 1989). The issue under the specific facts of this case is, did the City Council, in its active role in negotiations, drive the City to act in bad faith by authorizing its negotiators to offer contract terms to PSEA, then approving those terms as negotiations progressed, and finally ratifying those terms and the entire agreement at a public meeting, only to reverse all of its previous actions and undo the ratified agreement by rejecting those terms more than two months after ratification by invoking unusual procedures. We find that by striking a deal, ratifying that deal, and then stringing out and delaying the reconsideration process to ultimately attempt to deny PSEA its due, the City violated the duty to bargain in good faith and committed an unfair labor practice.

2. If the City of Fairbanks violated AS 23.40.110(a)(5), what is the remedy?

The next question for determination is, what is PSEA's remedy for the City's unfair labor practice violation? We find that the City's actions after the August 25, 2014 ratification do not negate the effectiveness of the parties' agreement. We conclude that the City and PSEA had a valid and enforceable contract, ratified by both parties, effective August 25, 2014. We must now

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<sup>4</sup> See I John E. Higgins, Jr., *The Developing Labor Law*, 914-915 (6<sup>th</sup> ed. 2012), and cases cited therein.

<sup>5</sup> *Id.* (quoting *NLRB v. Montgomery Ward & Co.*, 133 F.2d 676, 686, 12 LRRM 508, 517 (9<sup>th</sup> Cir. 1943)).

<sup>6</sup> The Alaska Labor Relations agency gives "great weight" to relevant decisions of the National Labor Relations Board. 8 AAC 97.450(b).

analyze whether the City had a valid excuse for changing or modifying the terms of the August 25 agreement.

We find that by approving economic terms during negotiations, and then ratifying those terms after getting the fiscal data and testimony to make a decision, the City bound itself to the agreement with PSEA. Reviewing the entire course of conduct in this case, the parties reached agreement after the give and take of several months of bargaining. As we have noted, during this period of negotiations, the City's negotiating team presented the City Council with proposed economic terms and conditions. The City Council then approved or rejected those terms. The parties then TA'd those terms that were approved by the City Council. The City's administration then calculated the cost of the tentative agreement's economic terms in a fiscal note and presented the fiscal note to the City Council. After hearing testimony and considering the fiscal note and the tentative agreement, the City Council ratified the agreement on August 25, 2014. We conclude, based on the evidence and arguments presented, that the City and PSEA had an enforceable agreement after the City ratified it on August 25, 2014.

There was no evidence of a substantial change in the City's financial picture between the initial August 25 ratification and the eventual November 3 rejection. The only change between the August and the November City Council meetings was a change in *perception* based on a calculation of different, competing assumptions and a changed conclusion drawn by the City Council, based on its choosing a different assumption of the effect of the monetary terms of the tentative agreement.

The City gave no other reason for its November action. We have already concluded that a valid, enforceable contract exists since August 25, 2014. Since there was a valid, enforceable agreement, the City is required to give notice and opportunity to negotiate any changes to the agreement. The City did not provide such notice and opportunity.

PSEA requests that we "issue an order requiring the City of Fairbanks to execute the August 25<sup>th</sup> approved collective bargaining agreement, and to recognized [sic] that all PSEA members employed by the Fairbanks Police Department shall be entitled to all benefits of the collective bargaining agreement, including but not limited back pay, PERS contributions, health care contributions, overtime and all other benefits from August 25, 2014 to present, together with interest." (PSEA Opposition to City's Motion for Summary Judgment, at 13).

In *Alaska Public Employees Association/AFT, AFL-CIO, vs. City of Nome, Nome Joint Utility System*, Decision and Order No. 176 (May 24, 1994) (*City of Nome*), the City of Nome failed to present a tentative agreement to the Nome City Council and the utility board for approval or disapproval. We found that the City of Nome committed an unfair labor practice violation. The Alaska Public Employees Association asserted that the appropriate remedy for failure to ratify a tentative agreement was the enforcement of the contract, citing *National Labor Relations Board v. Strong Roofing & Insulation Co.*, 393 U.S. 357, 70 L.R.R.M. (BNA) 2100 (1969) (*Strong Roofing*).<sup>7</sup> We noted that the employer in *Strong Roofing* refused without

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<sup>7</sup> "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 . . ." 8 AAC 97.450(b).

justification to execute the parties' collective bargaining agreement. The court found that it was appropriate under those circumstances to award payment of fringe benefits that would have been owed under an executed, effective agreement. (See analysis and citations in *City of Nome*, Decision and Order No. 176, at 9). We then noted that the facts in *City of Nome* were different than the facts in *Strong Roofing* because the unfair labor practice in *City of Nome* was a failure to present a tentative agreement for ratification, not a failure to execute an agreement as in *Strong Roofing*.

We went on to summarize that "the facts in this case do not justify the *extraordinary remedy* of imposing the tentative agreement on the [City of Nome]." (*City of Nome*, Decision and Order No. 176, at 10) (emphasis added). Based on the facts in the case before us, we have already found that there was a binding and enforceable collective bargaining agreement between the parties effective August 25, 2014. We find that under these facts, ordering the City to execute the parties' agreement is justified. We order them to do so.

### **CONCLUSIONS OF LAW**

1. The Public Safety Employees Association is an organization under AS 23.40.250(5).
2. The City of Fairbanks is a public employer under AS 23.40.250(7).
3. This Agency has jurisdiction to consider unfair labor practice complaints under AS 23.40.110.
4. The Public Safety Employees Association proved by a preponderance of the evidence that the City of Fairbanks committed an unfair labor practice violation under AS 23.40.110(a)(5).
5. AS 23.40.215(a) requires that the "monetary terms of any agreement entered into . . . are subject to funding through legislative appropriation." City Mayor John Eberhart presented the parties' tentative agreement to the Fairbanks City Council.
6. The City Council of Fairbanks ratified the tentative agreement it reached with the Public Safety Employees Association on August 25, 2014, but it failed to execute the agreement as required. The City presented no valid excuse for its failure to execute the agreement.

### **ORDER**

1. The City of Fairbanks shall execute the collective bargaining agreement it reached with the Public Safety Employees Association, and that it ratified on August 25, 2014.

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

**ALASKA LABOR RELATIONS AGENCY**

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Lynne Curry, Vice Chair

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Lon Needles, Member

**DISSENT OF MEMBER WILL ASKREN**

I respectfully dissent from the majority's decision for the following reasons. First, I believe the City Council, as the legislative body under AS 23.40.215, is not a public employer as defined in the Public Employment Relations Act (PERA). This Board has not previously concluded a legislative body is a "public employer," there is no law supporting such an assertion, and the precedent set here is troubling to me. Without specific authority from the State legislature, legislative bodies are outside the purview of this board's authority. Second, I believe that PSEA, as the moving party, failed to prove its case. The correct decision would have been to dismiss the ULP and order the parties back to the bargaining table.

It is undisputed that PSEA's ULP charge is against the City Council and not the Administration. The evidence is clear that Mayor Eberhart supported approval of the monetary terms of the collective bargaining agreement. The burden of proof rests on PSEA. The standard of proof necessary is "by a preponderance of the evidence." "Preponderance of evidence" is defined as enough evidence to make it more likely than not that the facts the claimant seeks to prove are true. Even assuming the City Council *could* be subject to an unfair labor practice charge under PERA, PSEA failed to prove its allegations by the above standard.

The City Council members voted to ratify the PSEA contract based on their belief that the cost of the contract over three years would be reasonably close to \$890,000 (PSEA Charge Against Employer, second to last attachment and City Prehearing Statement, page 4). This was acceptable to 4 of the 7 council members (with Mayor Eberhart breaking the Council's 3-3 tie), as proven by their votes to initially ratify the contract (PSEA Exh. 5, page 13 ). The evidence shows the City Council was not trying to string out the negotiations, delay contract

implementation, or to force the Union into regressive bargaining. When confronted with the information that the contract might actually cost the city \$2.6 million (City Prehearing Statement, Page 4), the Council voted to suspend its rules and reconsider the matter. The contract was ultimately rejected by a unanimous vote of all 6 council members (PSEA Exh. 10, page 10). When the Council rejected the contract they were rejecting the potential unforeseen additional \$1.7 million in liability. For me, that's what the preponderance of the evidence shows (PSEA Exhibits 1-11). The Council did not reject the contract because all six members at the last moment decided it would be a good idea to string out negotiations, delay contract implementation, or force the Union into regressive bargaining. That said, it is not the province of this Board to judge the process used by a legislative body in determining whether to fund an agreement under AS 23.40.215. That process is up to that body and its electorate.

It is understandable why the affected Police Department employees and the Union were disappointed in the final outcome. The Council member comments reflected in the meeting minutes likewise express disappointment among themselves. The City Council voted the contract down at its November 3, 2014 meeting, after much discussion and reluctance. Based on the objective, unbiased facts in the written record, the only conclusion that can reasonably be drawn is that the contract was rejected, not because the Council members wanted to string out negotiations or force the union into regressive bargaining, but due to concern over the financial assumptions. Regardless of the emotion this sparked with the Union members, the Council members and the Administration, until the ratification process is complete, it is simply not complete or binding.

The Alaska Supreme Court has made it clear that a legislative entity has a right to reject a collective bargaining agreement. Alaska Community College Federation of Teachers v. University of Alaska, 669 P.2d 1299 (Alaska 1983). The City Council rejected the contract. That's the bottom line. Further, the City Council is the legislative body that authorizes or rejects funding of contracts. The process they use to approve or reject monetary terms is not subject to review under PERA. As the Alaska Supreme Court provided in UACEA v. University of Alaska, 988 P.2d 105, 108 (1999), AS 23.40.215(a) "does not direct the legislature to take action on a request for funding; nor does it provide for funding by default in the event of legislative inaction. Rather, it simply hinges the effectiveness of the monetary terms of any public-sector CBA on legislative funding." The process the legislative body used to fund, or not, a collective bargaining agreement is not subject to potential violation under the unfair labor practice provisions of PERA.

More specifically, in this case, whether or not the Council failed to follow its statutory procedures when suspending its rules, voted to reconsider and hold a reconsideration vote, or whether or not a potential \$1.7 million of unexpected additional liability is significant enough to allow the legislative body to suspend its rules for "good cause", are not areas this Agency should delve into. Those decisions should be left to the courts and the political process. In that regard, I do not believe this Agency has jurisdiction to decide the validity of the City Council's actions in rejecting the collective bargaining agreement. Again, that decision belongs in the courts.

Finally, the remedy the Union seeks from this Agency is not available. The issue before us is whether or not the City committed an unfair labor practice under AS 23.40.110(a)(5). The parties have already agreed in their CBA that decisions regarding when the contract commences and terminates will be left up to the courts (PSEA Statement of Charge, last attachment and City Exhibits 1 and 2). Until it is determined by court order that a new contract indeed exists, any other remedies such as back pay, etc. are premature.

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Will Askren, 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 mailing 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 *Public Safety Employees Association, AFSCME Local 853, AFL-CIO vs City of Fairbanks*, Case No. 14-1658-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 24th day of November, 2015.

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Margaret L. Yadlosky  
Human Resource Consultant

This is to certify that on the 24th day of November, 2015, a true and correct copy of the foregoing was mailed, postage prepaid, to:

Stephen Sorenson, PSEA  
Paul Ewers, City of Fairbanks

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Signature