ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8612

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simply keep their $750.

The third unilateral demand was that the teachers be required, at the University's discretion, to teach three more hours per sememster. Presently, the teachers are required to teach 12, plus a fifth part which involves community service, research or writing, or some other agreed upon part.

While there is no argument that the teachers presently are required to teach a fifth part, the teachers view the authority of the University to unilaterally impose a fifth class as objectionable. The teachers see themselves as being required to teach 25% more actual class time than they were before. The University argues that increased student enrollment necessitates the teachers having more actual class time.

The University proposals as viewed by the Union, are the teachers teach 25% more per year; give away their guaranteed step increases for a system that may or may not be agreed upon by the parties; and, to give away their Union subsidization rights which are presently very extensive.

The University argues that the merit system has to be implemented to reflect changing economic times, Union subsidization should stop, and teachers of the community college

are there to teach; therefore, the fifth part is reasonable because of the increasing student demands.

The National Labor Relations Agency cases, as well as our own Orders and Decisions, have repeatedly discussed the difficult criteria of determining when good faith bargaining is occurring. One of the prime indicia of good faith is that the parties have an open mind and sincere desire to reach an agreement, as well as a sincere effort to reach some common ground. The lack of good faith may be found from subjective states of mind evidenced by various types of overt conduct. PERA contemplates that a bargaining process will occur. Under this scheme, if working conditions and wages are set unilaterally, or in a manner which avoids the bargaining process, good faith bargaining has not occurred. The Agency notes that the individuals outside the bargaining team of the Union made demands which were apparently substantially agreed to by the University even though those demands were not made by the Union bargaining team.

The Agency also realizes the significance of the April 19, 1983 letter from John Nelson to the University which proposed a Federal Mediator. The terms impasse and deadlock are used

interchangeably in our statutes and the legal significance is important. When an impasse occurs and bargaining breaks down, as a well recognized matter of Federal law, the employer may unilaterally impose his last offer on the Union members. This Federal principle has not been directly addressed or adopted by this Agency. This Order and Decision does not adopt said principle. However, all litigants before this Board are aware that relevant Order and Decisions of the NLRB and Federal courts are given great weight by this Agency. (See 2 AAC 10.440). The Agency has repeatedly stated its purpose as (a) interpreting statutes and regulations; and, (b) attempting to aid both parties so collective bargaining is given the opportunity to work under our particular State law.

The Agency wishes to take the opportunity to discuss in obiter dictum, its application of the statutes so the parties are not (a) assuming that a unilateral request for mediation will automatically have the Agency request same; or (b) the parties are not racing the impasse to impose their last offer (if said Federal principle is adopted and applied in Alaska law), or, (c) assuming this Agency views one party's request for mediation or declaration of deadlock as the sole prerequisite to

having a strike vote or strike under AS 23.40.200, and (d) explain the legal criteria the Agency looks at in making its determinations.

The Agency realizes that every impasse or deadlock does not necessitate mediation. Impasses often come and go through the bargaining process. Parties take positions and retract them, manuever for a position in collective bargaining by changing their positions, and resolve impasses without the aid of mediation. That is simply part of the collective bargaining process. The next type of impasse occurs when the parties need outside assistance to aid them. AS 23.40.190 gives the Agency wide discretion in aiding the parties when it states in part, "The Labor Relations Agency may appoint a competent, impartial disinterested person to act as mediator in any dispute either on its own initiative or other requests of one of the parties to the dispute." (Emphasis added.) The Agency has utilized said statute to call the Federal Mediation Conciliation Service to aid the parties. Sometimes the mediation works and the mediator leaves the parties to negotiate. The mediator can be called back by the parties or the Agency if a new impasse is reached.

In most of the collective bargaining negotiations, the parties have reached agreement without a strike or arbitration. The ACCFT/Univerity of Alaska negotiations are a notable exception to the norm in Alaska. AS 23.40.200 requires mediation, a deadlock, and a strike vote as prerequisites to a strike for public school and education and institutional employees. The Agency has, in the past, interpreted aforesaid statutes and will continue to do so as follows:

1. Deadlocks often occur in collective bargaining. The Federal Mediation and Conciliation Service has been repeatedly called on by this Agency to aid the parties in breaking such deadlocks. The deadlock may be over a single item, or a series of items. However, that deadlock under AS 23.40.190 does not ripen into a deadlock or impasse under AS 23.40.200 until there are "irreconcilable differences in the parties' positions after good faith negotiations have taken place." Such good faith negotiations contemplate the use of a mediator to attempt to break the temporary deadlocks that the parties encounter, and full and frank exchange of materials, information, and positions.

2. The determination of when a deadlock has reached

the proportions of one that contemplates the implementations of AS 23.40.200 is a difficult one for the parties and the Agency. The Agency has been requested repeatedly to find that an impasse occurs and that request has been objected to by responding party. The Agency has looked at the length of negotiations, the tone of the negotiations, the positions of the parties (as to whether they have changed their positions since the beginning of negotiations), and other relevant facts brought to the Agency by the parties.

In the present case, the record is clear that the Union was still attempting to reach agreements on several contract portions with the aid of the Federal Mediator, and that the University was also responding to the mediator's efforts by exchanging information and proposals. Based upon those facts, it is clear to the Agency that the impasse did not reach a level where there were "irreconcilable differences after good faith negotiations."

3. The deadlock, under AS 23.40.190, is one that evidences the parties' ability to reach an agreement by themselves. There is no requirement that the parties attempt to exhaustively reach agreement without aid from the Agency or the

Federal Mediation Conciliation Service. The Agency has been quick to request the aid of outside parties whenever both parties have requested same. If one party objects to mediation, the normal procedure has been to confer with both parties to attempt see what the nature of the dispute is, attempt to determine what the significance of the items upon which the parties are deadlocked, and make a determination as to whether the outside assistance is necessary. Often times, the parties are not communicating as well as they could be, and new ideas, new suggestions and new proposals offered by the mediator are helpful before the Agency calls the Federal Mediation and Conciliation Service, we attempt to determine whether the parties had engaged in meaningful discussions over bargaining proposals, offered counterproposals, or otherwise attempted to narrow the gap of disagreement. The number of bargaining sessions and length of time the parties have met without meaningful progress are important factors considered by the Agency before calling upon the Federal Mediation and Conciliation Service. The Agency has often used the Federal Mediation and Conciliation Service and found it to be extremely effective.

4. The Agency also notes that in any negotiation,

significant positions are taken in the area of wages, hours and working conditions of employment. The most significant positions are often directly related to salaried benefits. Major items change from negotiation to negotiation.

There are always other items on the table which seem to be used as bargaining chips that can be added to or taken away, with less overall importance to the major items. The determination whether there is an impasse or deadlock, normally has been granted by the Agency whenever a stipulation has been entered. If a petition is filed and a hearing is held, the Agency looks at the totality of the facts to make its determination.

Based upon the complete record and the totality of the circumstances, the Agency makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That the University of Alaska has engaged and is engaging in bad faith bargaining, surface bargaining, and bargaining without any intention of reaching an agreement with the Union.

2. That the University has not refused to meet with

the Union negotiating team at reasonable times.

3. That the issue of the University refusing to negotiate with the Union at reasonable places was decided in ULPC 83-1.

4. That the University engaged in bad faith bargaining by unilaterally demanding that the Union accept the University's proposals on compensation, workload, and Union subsidization.

5. That the merit system proposal is illusory in that either party could unilaterally veto it by simply refusing to accept the other party's system.

6. That the University quickly solidified their proposals on the compensation, workloads, and subsidization issue, and refused to bargain in good faith on the remaining issues at the bargaining table unless the Union accepted the University's three major proposals.

7. That overt acts of the University show the bad faith intent by demanding that the Union accept the three major proposals.

8. That the totality of the conduct shows an obvious bad faith motive. That the University was guilty of surface bargaining by rejecting the Union's proposals, tendering their

own, and not attempting to reconcile the differences. Also, the University refused to discuss items outside the three or issues.

9. That the University did not violate its duty to bargain in good faith by proposing the workload and subsidization offers that reduced the Union's rights and prerogatives. The bad faith was their unilateral demands without a willingness to discuss other items.

THEREFORE, the Agency FINDS that the University, as a matter of law, had engaged and is engaging in bad faith bargaining, surface bargaining, and bargaining without an intention of reaching an agreement with the Union and that the University has attempted to declare an impasse where none exists;

IT IS HEREBY ORDERED THAT the University cease and desist from the bad faith practices aforesaid mentioned in the Findings of Fact and Conclusions of Law.

DATED this 17 day of September, 1983.

C.R. "STEVE" HAFLING, Chairman
ALASKA LABOR RELATIONS AGENCY

DATED this 17 day of Sept., 1983.

MORGAN REED

State of Alaska

LABOR RELATIONS AGENCY

P. O. BOX 57[illegible] • ANCHORAGE, ALASKA 99502
TELEPHONE (907) [illegible] 248-2630

[illegible] HAFLING
[illegible]
[illegible]
[illegible] REED

[illegible] PAUZAUSKIE
CONSULTANT

BEFORE THE ALASKA LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGE FEDERATION OF TEACHERS, LOCAL NO. 2404,	
Complainant,	
and	
UNIVERSITY OF ALASKA	
Respondent.	ULPC 83-3

ORDER ON RESPONDENT'S MOTION FOR RECONSIDERATION OF ORDER AND DECISION NO. 81

ULPC 83-3 was filed by the Union on or about June 10, 1983. Hearings on said charges were heard during the week of June 20, 1983 and the Agency rendered an oral Order and Decision on June 24, 1983. On July 15, 1983, the Agency issued a written Order and Decision, No. 81, on the matter. The University's Petition For Reconsideration was filed on two points. The first point is that the Agency should reconsider and modify Order and Decision No. 81 because salient parts are ambiguous and, unless clarified, will create confusion between the parties and others concerning important rights and obligations under the act. The "rights and obligations" language refers to the issue and concept of deadlock as that term is used in the act.

The second issue is that to the extent Decision No. 81 states or implies that the University committed an unfair labor practice because it refused to compromise during bargaining, the Decision should be modified.

The Agency has received the Petition For Reconsideration, and while the Agency does not feel the original one was ambiguous, does GRANT the Petition. Amended Order and Decision No. 81A is attached hereto and incorporated herein.

The Agency DENIES the Motion for Reconsideration on point two, and sets forth its reasons for denial as follows:

1. REFUSAL TO COMPROMISE. The University states in its Petition for Reconsideration (Page 6, Line 16-28):

> That although the Order and Decision of the Agency specifies that the totality of the circumstances were considered in determining whether the University violated its obligations to bargain in good faith, the Agency's decision strongly suggest that a different standard was utilized which led to its conclusion i.e., the Agency apparently determined that the University did not bargain in good faith because either the Agency disliked or disapproved of the substantative provisions of the University's proposals on three disputed items upon which the partis could not agree, or, the University was found to have bargained in bad faith because it refused to compromise its bargaining position or grant concessions on the three issues.

The University then quoted the last sentence of AS 23.40.210 to point out that "these obligations do not compel either party to agree to a proposal or require the making of a concession." We point out that the overt acts of the University showed their attempt to compel the Union to agree to the three University proposals before the University would even bargain

on their 40 or 50 other proposals. The statutory language cited above is and the record is a clear basis for, the Agency's findings. The University first attempted to require that the Union make concessions by their bad faith bargaining tactics. We believe it is clear from the Order and Decision that the Agency disapproved of the manner in which the University conducted its negotiations.

The testimony of Evan Johnson, the chief negotiator, and Marvin Hennen, of the Department of Administration, (who took notes, although he did not participate in the hearings) clearly points out that the University simply said "take it or leave it" to the Union and did not, in good faith, attempt to reconcile the differences in the parties' respective positions. The University's method of negotiations led the Agency to find there was clearly bad faith bargaining.

Based upon the foregoing,

IT IS HEREBY ORDERED THAT the University's Petition for Reconsideration is GRANTED, IN PART, as set forth in Order and Decision No. 81A attached hereto and incorporated herein, and that the University's other point for reconsideration is HEREBY DENIED.

DATED this 8th day of September, 1983.

C.R. "STEVE" HAFLING, Chairman
ALASKA LABOR RELATIONS AGENCY

MORGAN REED

STATE OF ALASKA

BEFORE THE

STATE LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, LOCAL No. 2404, Complainant, and UNIVERSITY OF ALASKA, Respondent.	Unfair Labor Practice Charge Nos. 83-1 and 83-3 PETITION FOR RECONSIDERATION

COMES NOW, Respondent, UNIVERSITY OF ALASKA, by and through its undersigned attorneys, OWENS & TURNER, P.C.; pursuant to AS 23.40.130 and 44.62.540, and respectfully requests that the Alaska State Labor Relations Agency reconsider and modify its Order and Decision No. 80 issued in ULPC No. 83-1 and also reconsider and modify its Order and Decision No. 81 issued in ULPC No. 83-3.

In support of said Petition, Respondent, University of Alaska will rely on the Memorandum in Support of Petition For Reconsideration annexed hereto.

RESPECTFULLY SUBMITTED, at Anchorage, Alaska, this 8th of August, 1983.

OWENS & TURNER, P.C.
Attorneys for Respondent,
University of Alaska

By Thomas P. Owens
Thomas P. Owens, Jr.

OWENS & TURNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
425 "G" STREET, SUITE 920
ANCHORAGE, ALASKA 99501
(907) 276-3963

STATE OF ALASKA

BEFORE THE

STATE LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, LOCAL No. 2404, Complainant, and UNIVERSITY OF ALASKA, Respondent.	Unfair Labor Practice Charge Nos. 83-1 and 83-3 MEMORANDUM ON BEHALF OF UNIVERSITY OF ALASKA IN SUPPORT OF PETITION FOR RECONSIDERATION

I.

PRELIMINARY STATEMENT

A. As To ULPC No. 83-1 and Order and Decision No. 80

The charge in ULPC No. 83-1 was filed on or about March 22, 1983, by the Alaska Community Colleges' Federation of Teachers, Local No. 2404 (hereinafter "Union"). Hearings on said charge were held during the week of June 20, 1983, and the Alaska State Labor Relations Agency (hereinafter "Agency") rendered an oral Order and Decision on the matter on June 24, 1983. On July 14, 1983, the Agency issued written Order and Decision No. 80 in the matter. The University of Alaska's (hereinafter "University") Petition for Reconsideration and Memorandum in support thereof have been filed and submitted within thirty (30) days of mailing of the Agency's July 14, 1983, written Order and Decision and are therefore timely under AS 44.62.540.

B. As to ULPC No. 83-3 and Order and Decision No. 81

The charge in ULPC No. 83-3 was filed by the Union on or about June 10, 1983. Hearings on said charge were held during the week of June 20, 1983, and the Agency rendered an oral Order and Decision on June 24, 1983. On July 15, 1983,

OWENS & TURNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
425 "G" STREET, SUITE 920
ANCHORAGE, ALASKA 99501
(907) 276-3963

the Agency issued written Order and Decision No. 81 in the matter. The University's Petition for Reconsideration and Memorandum in support thereof have been submitted and filed within thirty (30) days of the Agency's July 15, 1983, written decision and are therefore timely under AS 44.62.540.

II.

THE AGENCY SHOULD RECONSIDER AND MODIFY ORDER AND DECISION NO. 80 BECAUSE THE CONCLUSION OF LAW CONTAINED THEREIN THAT THE UNIVERSITY REFUSED TO DISCUSS ALTERNATE MEETING PLACES WITH THE UNION IS CONTRARY TO THE AGENCY'S EXPRESS FINDING OF FACT THAT THE UNIVERSITY DID DISCUSS ALTERNATE MEETING PLACES WITH THE UNION

The Charge filed by the Union in ULPC No. 83-1 alleges, inter alia, that the University " . . . refused to discuss any alternate meeting places." (Paragraph 4 of Charge, at 2) This was, in fact, the issue litigated in ULPC No. 83-1 and the Agency conluded that the University violated the Act. (See Order and Decision No. 80, Conclusion of Law #1) However, Order and Decision No. 80 clearly and correctly discloses that the University did in fact discuss with the Union the possibility of changing the location of the then on-going bargaining sessions. Thus, at page 2 of Order and Decision No. 80, the Agency notes that "the University replied" to the Union's request for discussion concerning a possible change in the location for bargaining. Moreover, in its Order and Decision the Agency notes that these discussions included: (1) an exchange of views concerning the University's claim that the then presently utilized location for bargaining was mandated by a provision of the collective bargaining agreement; and (2) an assertion by the University that the academic and administrative duties of Chancellor Biggerstaff and other members of the University negotiating team could best be satisfied if negotiations continued to be held in Building A. (Order and Decision No. 80 at page 2, Finding of Fact No. 3 at page 3) These express findings of fact by the Agency are directly

OWENS & TURNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
425 G STREET, SUITE 920
ANCHORAGE, ALASKA 99501
(907) 276-3963

OWENS & TURNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
425 "G" STREET, SUITE 920
ANCHORAGE, ALASKA 99501
(907) 276-3963

contrary to the conclusion set forth in the Order and Decision that the University refused to discuss alternate meeting places with the Union.

The Supreme Court has noted that under the Administrative Procedure Act, an agency will be found to have abused its discretion if it is established on review that the agency's findings "are not supported by substantial evidence in the light of the whole record." Application of Peterson, 499 P.2d 304, 306 (Alaska 1972). In the instant case, it is clear that the Agency's finding that the University committed an unfair labor practice by refusing to discuss alternate meeting places with the Union is not supported by substantial evidence in the record because that conclusion is in direct conflict with the Agency's express finding that the University and Union did discuss the Union's request for a relocation of the bargaining sessions. Accordingly, it is respectfully requested that the Agency reconsider Order and Decision No. 80 and modify said Order and Decision by concluding in accordance with the Agency's finding of fact, that the University did discuss with the Union the Union's request to relocate the bargaining sessions and that the University did not, therefore, commit the unfair labor practice alleged.

III.

THE AGENCY SHOULD RECONSIDER AND MODIFY ORDER AND DECISION NO. 81 BECAUSE SALIENT PARTS THEREOF ARE AMBIGUOUS AND, UNLESS CLARIFIED, WILL CREATE CONFUSION BETWEEN THE PARTIES AND OTHERS CONCERNING IMPORTANT RIGHTS AND OBLIGATIONS UNDER THE ACT

In Order and Decision No. 81, the Agency addressed and commented at length upon the issue or concept of "deadlock" as that term is used in the Public Employment Relations Act (hereinafter "Act"). The University respectfully submits that salient parts of Order and Decision No. 81 which address the term "deadlock" are ambiguous, and unless clarified by the Agency, would needlessly create confusion between the parties

herein as well as others to whom the Act applies with respect to important rights and obligations under the Act.

It is the position and understanding of the University that under the clear terms of the Act, there is but a single type of deadlock as that term is used in the Act. However, a reading of Order and Decision No. 81 reveals that the Agency, either intentionally or inadvertently, has apparently concluded that there are two kinds of deadlock -- one under AS 23.40.190 and another under AS 23.40.200. 1/ We believe this conclusion is directly contrary to the unambiguous terms of the Act.

Nowhere does the Act makes reference to more than one type or kind of deadlock. Both AS 23.40.190 and 23.40.200 refer to deadlock in the singular, speaking of "a" deadlock. Moreover, all references to deadlock in AS 23.40.200 clearly refer to the same deadlock addressed in AS 23.40.190. Thus, AS 23.40.200(b) provides that with respect to class (a)(i) employees (those who are prohibited from striking), if "an impasse or deadlock is reached . . . and mediation has been utilized without resolving the deadlock," arbitration shall be utilized. (emphasis supplied) Similarly, subsection (c) of AS 23.40.200, which addresses the need for enjoining class (a)(2) employees from striking (those with a limited right to strike), provides that arbitration shall be carried out if an impasse or deadlock still exists after the issuance of an injunction. These provisions of the Act clearly demonstrate that degrees or different types of deadlock are not contemplated or provided for in the Act. Rather, they demonstrate that different consequences may flow from the existence of a deadlock, depending on

1/ We note in passing that in Decision No. 81, the Agency gratuitously announced under "which deadlock" the University would be permitted to implement its final offer. While the parties to this action and the Agency are all in agreement that as a matter of law an employer may implement its final offer when the parties have bargained to deadlock, the Agency's announcement of when such an implementation may occur is dicta, since that point was never an issue in the proceedings and never argued by the parties.

OWENS & TURNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
425 "G" STREET, SUITE 920
ANCHORAGE, ALASKA 99501
(907) 276-3963

the point in time involved, e.g., if the parties are deadlocked after a reasonable period of negotiations, mediation can be requested or ordered under AS 23.40.190, whereas if the parties (class (a)(2) employees) are still deadlocked after mediation and after the issuance of an injunction, arbitration will be ordered under AS 23.40.200. Aside from the consequences that flow from a deadlock depending upon the point in time one is considering, a deadlock under AS 23.40.190 and 23.40.200 are one and the same without any qualitative or quantitative differences.

It is respectfully requested that the Agency reconsider Order and Decision No. 81 and modify the Decision to clarify the ambiguity contained therein pertaining to the issue of whether there are different types of "deadlocks".

IV.

TO THE EXTENT DECISIONS NO. 80 AND 81 STATE OR IMPLY THAT THE UNIVERSITY COMMITTED AN UNFAIR LABOR PRACTICE BECAUSE IT REFUSED TO COMPROMISE DURING BARGAINING, THE DECISIONS SHOULD BE MODIFIED

With regard to Order and Decision No. 80, the Agency held that the University violated the Act because it refused to discuss the relocation of bargaining with the Union. That issue has been addressed in Part I, supra. However, in Finding Of Fact No. 3 of the Decision, the Agency also stated: "That the University's inflexible position to the proposed changes were unreasonable and made in bad faith." Yet on page 2 of the Decision, the Agency stated that: "The Agency respects Chancellor Biggerstaff's position and his duties. The Agency respects the positions of the individuals who came to Anchorage from Kodiak and Bethel, who wanted to be close to their phones

OWENS & TURNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
425 'G' STREET, SUITE 920
ANCHORAGE, ALASKA 99501
(907) 276-3963

. . . " 2/ Moreover, the Agency noted that in declining to relocate the bargaining sessions away from the Anchorage campus, the University relied upon Article I, Section 1.5 of the collective bargaining agreement which provided: "Negotiations shall be scheduled at times and places that provide minimal interference with instructional, administrative, and other employment duties of the negotiating team." Given these factual and contractual bases for resisting location of the bargaining sessions, the Agency's "Finding of Fact" that the University's "inflexible position was unreasonable", appears to amount to a conclusion of law that a party must compromise its positions during bargaining or run the risk of being found to have bargained in bad faith.

In ULPC No. 83-3, the Agency was presented with the question of whether the University bargained in good faith. The Agency concluded that it did not. Although the Order and Decision of the Agency specifies that the totality of the circumstances were considered in determining whether the University violated its obligation to bargain in good faith, the Agency's decision strongly suggests that a different standard was utilized which led to its conclusion, i.e., the Agency apparently determined that the University did not bargain in good faith either because the Agency disliked or disapproved of the substantive provisions of the University's proposals on three disputed items upon which the parties could not agree, or, the University was found to have bargained in bad faith because it refused to compromise its bargaining position or grant concessions on the three issues.

The basis for concluding that the Agency premised its finding of bad faith bargaining either on its own subjective

2/ It should be noted that the record evidence reveals that University bargaining members from Kodiak and Bethel needed to remain at the Anchorage campus during bargaining sessions not for access to "phones" but for access to a computer system for necessary contact with their respective campuses.

OWENS & TURNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
425 "G" STREET SUITE 920
ANCHORAGE, ALASKA 99501
(907) 276-3983

disapproval of the University's three main bargaining proposals or because of the University's refusal to grant concessions on those issues during bargaining, can be found in the following quoted provisions of the Agency's findings of fact and conclusions of law:

> 4. That the University engaged in the bad faith bargaining by unilaterally demanding that the Union accept the University's proposals on compensation, work load and Union subsidization.
>
> . . . .
>
> 7. That overt acts of the University show the bad faith intent by demanding that the Union accept the three major proposals.
>
> 8. That the totality of the conduct shows an obvious bad faith motive. That the University was guilty of surface bargaining by rejecting the Union's proposals, tendering their own, and not attempting to reconcile the differences.

(Order and Decision No. 81 at page 10)

Section 23.40.250 of the Alaska Public Employment Relations Act provides that:

> (1) "Collective bargaining" means the performance of the mutual obligation of the public employer or his designated representatives and the reprsentative of the employees to meet at reasonable times, including meetings in advance of the budget making process and negotiate in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or negotiation of a question arising under an agreement and the execution of a written contract incorporating an agreement reached if requested by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession. . . .

(emphasis supplied)

It is emphatically clear from the plain words of AS 23.40.250 that the University cannot be compelled to agree to a proposal of the Union nor can it be required to grant any concessions during the course of bargaining. AS 23.40.250 is obviously patterned after, and is virtually identical to, §8(d) of the National Labor Relations Act (29 U.S.C. §158(d)). In interpreting §8(d), the United States Supreme Court has stated:

OWENS & TURNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
425 "G" STREET, SUITE 920
ANCHORAGE, ALASKA 99501
(907) 276-3963

> That section contains the express provision that the obligation to bargain collectively does not compel either party to agree to a proposal or require the making of a concession.
>
> Thus it is now apparent from the statute itself that the Act does not encourage a party to engage in fruitless marathon discussions at the expense of frank statement and support of his position. And it is equally clear that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements.

NLRB v. American National Insurance Co., 343 U.S. 395, 30 LRRM 2147, 2150 (1952) (footnote omitted).

The National Labor Relations Board and the Federal Courts have recognized that the process of collective bargaining is, by its very nature, " . . . an annealing process hammered out under the most severe and competing forces and counteracting pressures." NLRB v. Dalton Brick & Tire Corp., 301 F.2d 886, 895, 49 LRRM 3099, 3105 (5th Cir. 1962). During this process, the parties may lawfully attempt to achieve their objectives through hard bargaining. Adament insistence on a bargaining position is not, and should not, be found to constitute a refusal to bargain in good faith.

In the instant case, the Agency should not render ineffective AS 23.40.250 by an unjustified finding that the University had a "bad faith motive" or "bad faith intent" simply because the Agency may disapprove of the University's proposals or because of the University's lawful unwillingness to abandon those proposals. Accordingly, it is respectfully submitted that the Agency should reconsider and modify Order and Decision Nos. 80 and 81.

V.

CONCLUSION

For all the foregoing reasons, it is respectfully requested that the Agency reconsider and modify Order and Decision Nos. 80 and 81.

OWENS & TURNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
425 "G" STREET, SUITE 920
ANCHORAGE, ALASKA 99501
(907) 276-3963

RESPECTFULLY SUBMITTED, at Anchorage, Alaska, this 8th of August, 1983.

OWENS & TURNER, P.C.
Attorneys for Respondent,
University of Alaska

By Thomas P. Owens
Thomas P. Owens, Jr.

OWENS & TURNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
425 "G" STREET, SUITE 920
ANCHORAGE, ALASKA 99501
(907) 276-3963

STATE OF ALASKA

BEFORE THE

STATE LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, LOCAL No. 2404, Complainant, and UNIVERSITY OF ALASKA, Respondent.	Unfair Labor Practice Charge Nos. 83-1 and 83-3 AFFIDAVIT OF MAILING

STATE OF ALASKA)
: ss.
THIRD JUDICIAL DISTRICT)

Elizabeth A. Hedlund, being first duly sworn, deposes and states: that I am a secretary in the offices of OWENS & TURNER, Attorneys at Law, 425 "G" Street, Suite 920, Anchorage, Alaska 99501; that on the 10th day of August, 1983, I served a copy of the attached:

PETITION FOR RECONSIDERATION
MEMORANDUM ON BEHALF OF UNIVERSITY OF ALASKA IN SUPPORT OF PETITION FOR RECONSIDERATION

in the above entitled cause on:

JERMAIN, DUNNAGAN & OWENS
801 W. Fireweed Lane, Suite 201
Anchorage, AK 99503

and a courtesy copy to:

UNIVERSITY OF ALASKA
Attn: Astrid deParry
101 Bunnell Bldg.
303 Tanana
Fairbanks, AK 99701

by placing a copy thereof in an envelope properly addressed, containing proper and sufficient United States postage, and depositing same in the United States Postal Department as directed on said envelope.

Elizabeth A Hedlund
Elizabeth A. Hedlund, Secretary

OWENS & TURNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
425 "G" STREET, SUITE 920
ANCHORAGE, ALASKA 99501
(907) 276-2963

SUBSCRIBED AND SWORN to before me this 10th day of August, 1983.

Terri L. Foster
Notary Public in and for Alaska
My Commission Expires: 12/2/86

OWENS & TURNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
425 "G" STREET, SUITE 920
ANCHORAGE, ALASKA 99501
(907) 276-3963

State of Alaska
LABOR RELATIONS AGENCY
P O BOX 6701 • ANCHORAGE ALASKA 99502
TELEPHONE (907) [redacted] 248-2630

C. R. "STEVE" HAFLING
CHAIRMAN
[illegible]
MORGAN REED

[illegible] BRUZAUSKIE
CONSULTANT

BEFORE THE ALASKA LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGE FEDERATION OF TEACHERS, LOCAL NO. 2404, Petitioner, vs. UNIVERSITY OF ALASKA, Respondent.	ULPC 83-3

ORDER AND DECISION NO. 81

On June 10, 1983, the Petitioner charged the University of Alaska with unfair labor practices alleging the University violated AS 23.40.110(a)(5) by engaging in bad faith bargaining, surface bargaining, and bargaining without any intention of reaching an agreement with the union. The parties waived the timeliness requirements of notice, the hearings were held the week of June 20, 1983. An oral Order and Decision was delivered by the Agency on June 24, 1983, and this written Order and Decision follows.

The negotiations had two phases. From January 24th until the middle of March, 1983, the parties were engaged in "collegial" negotiations in which the parties conceptualized their positions and attempted to make their positions known. The parties hoped that by doing same, there would be an agreement

reached by consensus. The parties' past practices of offering and counteroffering proposals were not followed in this collegial phase. The collegial phase had some success, as some 20 items were agreed to. The Agency notes that those items are basically the same as those contained in the prior collective bargaining agreements. While the parties were conceptualizing their ideas, they were, in fact, always referring back to the previous collective bargaining agreements before putting those ideas into tentative approval status. The collegial phase was agreed to by both parties and both parties agreed that the collegial process would not produce a final and total agreement.

During the final week of March 1983, the parties exchanged their written proposals.

Two weeks later, the petitioner requested the services of the Federal Mediation and Conciliation Service. Meetings with the Federal Mediators from Seattle were held in early April, May and June 1983. The April 15th letter from John Nelson, which requested the mediator, stated that the parties were at impasse, and requested the services of the mediator. The parties met with the mediator in April, in May, and the first week of June, 1983. Numerous corresondence was sent between the parties during that period of time.

During this period of time, the position of the University quickly solidified into a position that the Union had

to accept three major items. The position of the University was that the Union had to accept the items as is, and then the 40-50 other issues at the table would quickly be resolved.

Item No. 1 was that the Union capitulate to the University's compensation package. The compensation package took away annual step increases that are in the present contract. The step increases are based upon years of continual service to the University, plus advanced degrees being obtained by the professors. The parties have developed vertical and horizontal grids whereby the bargaining unit members can change lanes and achieve higher pay by continual teaching, or by receiving advance degrees or other criteria. The University wanted to change the grid system into a merit system. However, the merit system was one that was to be developed in the fall by the joint cooperation of the University and the Union. Either party could unilaterally veto the existence of any merit system by simply not agreeing to it. The present salary grid system would then only be applicable to new teachers.

The University proposed an across the board wage increase for all members of the present bargaining unit. After the merit system was agreed to, the system would be implemented into the new contract.

The Agency finds that the proposal of merit system is in part, illusory. While the University is demanding that the

merit system proposal be agreed to by the Union, it is an agreement that either party could unilaterally stop. There is no system proposed to insure that a merit system would be in existence before the end of the contract.

The second major item that the University demanded the Union capitulate to was the Union subsidization issue. The University presently has subsidized the Union by granting the President of the Union six hours of teaching time, Union committee members time off for their duties, as well as providing office space and other rights for Union members. In exchange for the end of the Union subsidization, the University proposed a $750 payment to each bargaining unit member. There are over 275 bargaining unit members. The Union members could take the $750 and pay it to the Union to finance the Union's activities, or the Anchorage Community College instructors could simply keep their $750.

The third unilateral demand was that the teachers be required, at the University's discretion, to teach three more hours per semester. Presently, the teachers are required to teach 12, plus a fifth part which involves community service, research or writing, or some other agreed upon part.

While there is no argument that that the teachers presently are required to teach a fifth part, the teachers see the authority of the University to unilaterally impose a fifth class,

as objectionable. The teachers see themselves as being required to teach 25% more actual class time than they were before. The University argues that the increasing demands, because of increased student enrollment, are necessary for the continuation of the University.

The proposals are seen by the Union, that the University has demanded that they teach 25% more per year; give away their guaranteed step increases for a system that may or may not be agreed upon by the parties; and, to give away their Union subsidization rights wich are presently very extensive.

The University argues that the merit system has to be implemented to reflect changing economic times, Union subsidization should stop, and teachers of the community college are there to teach; therefore, the fifth part is reasonsable because of the increasing student demands.

The National Labor Relations Agency case, as well as our own Orders and Decisions, have repeatedly discussed the difficult criteria of determining when good faith bargaining is occurring. One of the prime indicia of good faith is that the parties have an open mind and sincere desire to reach an agreement, as well as a sincere effort to reach some common ground. The lack of good faith may be found from subjective states of mind evidenced by various types of overt conduct. PERA contemplates that a bargaining process will occur. Under this

scheme, if working conditions and wages are set unilaterally, or in a manner which avoids the bargaining process, good faith bargaining has not occurred. The Agency notes that the individuals outside the bargaining team of the Union made demands which were apparently substantially agreed to by the University even though those demands were not made by the bargaining team.

The Agency also realizes the significance of the April 15, 1983 letter from John Nelson to the University which proposed a Federal Mediator. In that letter, Mr. Nelson declared an impasse existed, and ever since that date, he has been trying to say that he meant a deadlock. The terms impasse and deadlock are used interchangeably in AS 23.40.200 and the legal significance of those are very important. The arbitration provisions of AS 23.40.200 occur whenever a deadlock or impasse exists. When an impasse occurs and bargaining breaks down, the University, as a matter of law, may unilaterally impose their last offer on the Union members. A mediator may be appointed under AS 3.40.190 if a deadlock exists.

This Agency has in the past, interpreted such statutes, and will continue to do so as follows:

1. Deadlocks often occur in collective bargaining. The Federal Mediation and Conciliation Service has been repeatedly called on by this Agency to aid the parties in breaking such deadlocks. The deadlock may be over a single item,

or a series of items. However, that deadlock, under AS 23.40.190 does not ripen into a deadlock or impasse under AS 23.40.200 until there are "irreconcilible differences in the parties' positions after exhaustive good faith negotiations have taken place." Such exhaustive good faith negotiations contemplate the use of a mediator to attempt to break the temporary deadlocks that the parties encounter, and the full and frank exchange of materials, information, and positions before an AS 23.40.200 impasse occurs.

The determination of when a deadlock has reached the proportions of one that contemplates the implementation of AS 23.40.200 is a difficult one for the parties and the Agency. The Agency has been requested repeatedly to find that an impasse occurs and that request has been objected to by responding party. The Agency has looked the length of negotiations, the tone of the negotiations, the positions of the parties (as to whether they have changed their positions since the beginning of negotiations), and other relevant facts brought to the Agency by the parties.

In the present case, the record is clear that the Union was still attempting to reach agreements on several contract portions with the aid of the Federal Mediator, and that the University was also responding to the Mediator's efforts by exchanging information and proposals. Based upon those facts, it is clear to the Agency that the impasse did not reach a level

where there were "irreconcilible differences after exhaustive good faith negotiations."

The deadlock, under AS 23.40.190, is one that evidences the parties' inability to reach agreement by themselves. There is no requirement that the parties attempt to exhaustively reach agreement without aid from the Agency or the Federal Mediation Conciliation Service. The Agency has been quick to request the aid of outside parties whenever both parties have requested same. If one party objects to mediation, the normal procedure has been to confer with both parties to attempt to see what the nature of the dispute is, attempt to determine what the significance of the items upon which the parties are deadlocked, and make a determination as to whether the outside assistance is necessary. Often times, the parties are not communicating as well as they could be, and new ideas, new suggestions and new proposals offered by the mediator are helpful. Before the Agency calls the Federal Mediation and Conciliation Service, we attempt to determine whether the parties had engaged in meaningful discussions over bargaining proposals, offered counterproposals, or otherwise attempted to narrow the gap of disagreement. The number of bargaining sessions and length of time the parties have met without meaningful progress are important factors considered by the Agency before calling upon the Federal Mediation and Conciliation Service. The Agency has often used the Federal

Mediation and Conciliation Service and found it to be extremely effective.

The Agency also notes that in any negotiation significant positions are taken in the area of wages, hours and working conditions of employment. The most significant positions are often directly related to salaried benefits. Major items change from negotiation to negotiation.

There are always other items on the table which seem to be used as bargaining chips that can be added to or taken away, with less overall importance to the major items. The determination whether there is an impasse or deadlock under AS 23.40.200 has normally been granted by the Agency whenever a stipulation has been entered. If a petition is filed and a hearing is held, the Agency looks at the totality of the facts to make its determination.

Based upon the complete record, and the totality of the circumstances, the Agency makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That the University of Alaska has engaged and is engaging in bad faith bargaining, surface bargaining, and bargaining without any intention of reaching an agreement with the Union.

2. That the University has not refused to meet with the

Union negotiating team at reasonable times.

3. That the issue of the University refusing to negotiate with the Union at reasonable places was decided in ULPC 83-1.

4. That the University engaged in the bad faith bargaining by unilaterally demanding that the Union accept the University's proposals on compensation, work load and Union subsidization.

5. That the merit system proposal is illusory in that either party could unilaterally veto it by simply refusing to accept the other party's system and that no merit system could be reached at the unilateral insistence of any party.

6. That the University quickly solidified their proposals on the compensation, work loads, and subsidization issue, and refused to bargain in good faith on the remaining issues of the bargaining table unless the Union accepted the University's three major proposals.

7. That overt acts of the University show the bad faith intent by demanding that the Union accept the three major proposals.

8. That the totality of the conduct shows an obvious bad faith motive. That the University was guilty of surface bargaining by rejecting the Union's proposals, tendering their own, and not attempting to reconcile the differences. Also, the University refused to discuss items outside the three major issues.

9. That the University did not violate its duty to bargain in good faith by proposing the work load and subsidization offers that reduced the Union's rights and prerogatives. The bad faith was their unilateral demands without willingness to discuss other items.

THEREFORE, the AGENCY FINDS that the University, as a matter of law, has engaged and is engaging in bad faith bargaining, surface bargaining, and bargaining without an intention of reaching an agreement with the Union and that the University has attempted to declare an impasse where none exists under AS 23.40.200,

IT IS HEREBY ORDERED THAT the University cease and desist from the bad faith practices aforesaid mentioned in the Findings of Fact and Conclusions of Law.

DATED this 15th day of July, 1983.

C. R. "Steve" Hafling

C. R. "Steve" Hafling, Chairman
Alaska Labor Relations Agency

BEFORE THE LABOR RELATIONS AGENCY

ANCHORAGE COMMUNITY COLLEGES FEDERATION OF TEACHERS, LOCAL 2404,

Charging Party,

vs.

UNIVERSITY OF ALASKA,

Charged Party,

ULPC 83-3

ORAL ORDER AND DECISION

PRESENT:

FOR LOCAL 2404: MR. WILLIAM K. JERMAIN
Jermain, Dunnagan & Owens
Attorneys At Law
801 Fireweed Lane, Suite 201
Anchorage, Alaska 99503
(907) 276-6532

FOR THE UNIVERSITY OF ALASKA: MR. THOMAS P. OWENS, JR.
Owens & Turner
Attorneys At Law
425 G Street, Suite 920
Anchorage, Alaska 99501
(907) 276-3963

FOR THE LABOR RELATIONS AGENCY: MR. WILLIAM J. PAUZAUSKIE
Attorney At Law
1101 W. 7th Avenue
Anchorage, Alaska 99501
(907) 276-2232

June 24th, 1983
1:55 p.m.
303 K Street, Suite 409
Anchorage, Alaska

PROCEEDINGS

The second Order and Decision we have decided today is ULPC 83-3. This charges the University of engaging in bad faith bargaining, surface bargaining and bargaining without any intention of reaching an agreement with the Union. The University has allegedly shown its bad faith by declaring impasse where none exists and by refusing to meet with the Union negotiating team at reasonable times and places.

The issue of reasonable times and places was really decided in ULPC 83-1 so I'm not going to refer to it in this oral Order and Decision.

The Agency has duly considered all the evidence and is ready to issue its findings of facts and conclusions of law.

The parties, of course, had the collegial phase of bargaining which lasted from Ju- -- January 24th till approximately the middle of March. The collegial phase, the parties "conceptualized" their positions and attempted to make the positions of their respective parties known.

They reached an agreement on 20 some items and the Agency notes that all those items are basically the same as were contained in the prior collective bargaining agreements, so while the parties were saying that they were conceptualizing their ideas they were always referring back to the previous collective bargaining agreement before putting their ideas in writing or whatever their conceptualization was. This mode of

communication was agreed to by both parties and it's mutually agreed it broke down. The parties agreed that since the agreement time was running out at the end of March and since no movement had been made for approximately a month, that it was time to begin hard bargaining. The hard bargaining started and stopped with unusual abruptness. The positions of the parties, and in particular the University, quickly solidified into a position that the Union had to accept three major items which were and could basically be classified as take-aways and there was little exchange offered for anything in return. The Union was also told that they would have to give something for anything more that they wanted to receive, in addition to the take-aways under the new agreement.

To be more specific, the University demanded that the Union capitulate to the University's compensation package. This compensation package took away annual step increases of agreed pay for continual service to the University. The compensation package proposed also included a 4% wage increase which was really not drastically lower than those obtained by APEA this year, but the step increase being taken away took away the guarantee of another approximately 3% increase per year.

The University as a part of this also demanded a merit system that was proposed by the University be accepted by the Union. The basic fact of the merit system is that no one has

or can exactly explain what the system would be because it was a system to be agreed upon by the joint corroboration of the University and the Union, but nevertheless, it was demanded that that system be proposed and accepted -- correction, not proposed accepted but accepted as a part of the package. As written the proposed, in a take it or leave it mode, either party could unilaterally veto the existence of any merit system vis-a-vis the Union and University.

Also, the University unilaterally demanded, in the take it or leave it mode, the requirement that the union agree to do away with the salary grid system which rewards the employees for continued service, continued education and other factors. This grid system would only be applicable to incoming teachers.

The second major item the University demanded the Union accept was the union subsidation issue. The University has in the past subsidized the Union by granting the President of the Union six hours of teaching time, paid at the option of the Union to buy out the contract for six or more hours; giving the grievance chairman some similar opportunities and five other individuals thirty (ph) hours of subsidation for services performed for the Union. Also, the Union has (indiscernible) some office space and other rights.

In exchange for the take away of Union subsidation the University has proposed a $750.00 payment to each bargaining unit member.

The third unilateral demand is that the teachers be required, at the University's discretion, to teach three more hours per semester. Presently the teachers teach 12. The University would have the obligation--correction, the authority to unilaterally impose a requirement of 15 teaching hours.

Presently the contract has provisions where the teachers are required to teach 12 hours and another "fifth part" of their assignments is to perform service of some form. The fifth part of the load is now being proposed to be taken away by the University, it would be changed to the teaching at the University's sole discretion.

The Agency finds the workload requirements and the union subsidation demands are substantial changes from the past agreements reached. They are not, in and of themselves, necessarily repulsive. However, the Agency specifically finds that the merit system increase and compensation package contains items that are illusory.

None of the three items mentioned above, in and of themselves, was relied upon for the final determination of good or bad faith. However, when those three items are added to the attitude that you shall agree to these three items or we'll not discuss anything further, leaves this Agency with no other alternative than to find that the University has committed an unfair labor practice.

The University has attempted to explain away its

reasoning, but this Board finds itself in the position of the Union, that we do not understand how the University has made anything more than a demand that the Union accept the three major proposals and then the parties may negotiate the 40 or 50 other items that are still left on the table. We find the totality of the conduct shows an obvious bad faith motive. The act requires that the parties negotiate in good faith with the view of reaching an agreement if possible.

One of the prime indicia (ph) of good faith is that the parties have an open mind and sincere desire to reach an agreement, as well as a sincere effort to reach some common ground.

We feel the record is clear that the Union has been suggesting counter proposals to the University and the University, even with the assistance of the Federal mediator, has been unilaterally rejecting any discussion of the counter proposals until the Union capitualtes some of the three demands discussed above -- correction, to all three demands discussed above.

PERA contemplates that a bargaining process will occur. Under this scheme, if working conditions or wages are set unilaterally, or in a manner which avoids the bargaining process, good faith bargaining has not occurred. The lack of good faith may also be gleaned from subjective states of mind evidenced by various types of overt conduct. The Board finds

that individuals outside the bargaining team made demands that were apparently substantially agreed to by the University, even though those demands were not suggested by the bargaining team. From at the timing of the hardline proposals taken in view of the fact that they'd only been discussed for approximately two weeks is indicative of the University's intention not to budge. Of course this Board makes the finding and has to acknowledge that a first best offer is not in and of itself, per se, violation, however we note that the University refuses to even listen to a Union counter-offer unless the three University proposals are accepted. They have unilaterally set the tone of negotiations by saying accept what we want or we won't even talk to you.

The agency notes that the fact that the mediator has not declared an impasse and the University claims there is. There is an obvious purpose for attempting to claim an impasse because it could result in the unilateral imposition of the University's last offer to the Union.

This Board also realizes the significance of the April 15th 1983, letter from John Nelson to the University. In that letter Mr. Nelson declared an impasse and ever since then he's been trying to say he meant a deadlock, because of its significant meaning under AS 23.40.190 which allows the Agency to appoint a mediator if a deadlock exists, however in this case, the parties selected their own mediator by contacting the Federal

Mediation Conciliation Service. Since 4/15/83, the Union has consistently moved -- correction, the University has consistently moved towards a deadlock and a hardening of the initial hardline positions which were -- they undertook. This Agency has been through enough negotiations to know that it is rare that the parties agree with the first proposals or even the first counter proposals and we also note that the basic changes that were made to the first proposals in this case were minor in significance as to the affect of the major proposals on the parties. We note that there has been some movement made but we find that the University has consciously moved towards an impasse.

The fact that there is not a present merit system proposed is particularly troublesome to the Agency. The University is proposing something which the parties could agree to, but who would agree to a system that either party could unilaterally veto or upset? Who could agree to a system that has a method-- that has no method towards the end of it to force the parties into an agreement? It is similar to the Agency to again suggesting collegial bargaining to the parties and that has already been tried in this case and it has obviously failed.

The Agency incorporates the above stated reasons into its findings of fact and conclusions as a matter of law that an unfair labor practice has occurred. A violation of 23.40.110(a)(5) has happened and that the University has

refused to bargain in good faith.

This Agency orders the University to cease and desist from such practice and meet with the Union no later than Friday, July 1, and discuss when and how negotiations should continue. If the parties agree to continue the present negotiations with the Federal Mediation Service, the parties may of course do so. If the parties wish to contact this Agency concerning mediation this Agency would be more than willing to assist.

This Agency feels that a discussion of impasse versus deadlock is necessary for the parties. Without belaboring the way that our statutes are written the Agency would like to make the following comments.

The duty to bargain does not require a party to engage in a fruitless marathon discussion at the expense of frank statements in support of their position. However, we note the terms deadlock and 23.40.190 and 23.40.200 (a) and (c), which state in part or as follows, and I'll paraphrase this.

If an impasse or deadlock is reached in the collective bargaining between the public employer and employees in the class, and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under AS 09.43.030.

Our past orders and decisions, and the intent of the act is a situation in which the following occurs:

1. Initially a deadlock may occur, but that deadlock has to rise in the level of a "irreconcilable difference in the parties positions after exhaustive good faith negotiations have taken place." It is under those conditions that the deadlock becomes applicable for the arbitration, strike provisions, et cetera, to be put into force.

2. So what this Agency wants to see is exhaustive good faith negotiations before the type of deadlock or impasse referred to in 200 entitles the parties to strike, et cetera.

We note that the Alaska Statute definition does not define deadlock or impasse and this Agency has wanted to note its position for the record in an attempt to aid the parties. Both the parties note that this Agency has not allowed an impasse to be declared unilaterally. It has determined an impasse to be a situation that encompasses basically all substantive issues. For example, an empasse on a single issue does not necessarily suspend the obligations to bargain on other unsettled issues. Any suspension is applicable when a party has employed -- is inapplicable when a party has employed bad faith motives or unfair labor practices.

Finally, this Agency would like to note some things for the record and these are things that are concerning the Union's position in the negotiations. This is (Indiscernible) the Union has not been accused of any unfair labor practice, however,

we'd like to take this opportunity as we do in other cases, to comment on several facts which we feel contributed to the animosity between the parties.

Item number 1 is the fact the Union has taken a position to meet only with a mediator. It appears that the mediator has made some process (ph) and the Union can perhaps look at meeting without the mediator present to see if further process and achievements can be made without having to have the Federal mediator come up from Seattle. In Anchorage we used to have Federal mediators present and we no longer do and we realize the time problems and the need for timely negotiations in the case.

On the time issue the Union noted that it wanted 19 days to formulate counter proposals. At first glance this seems to be a lengthy period of time to the Agency, and thirdly we noted a lack of evidence concerning questions for supporting (Indiscernible) issues directed between both parties. The parties have taken positions that teachers nationwide teach so many hours per year or salary demands are inapplicable or step increases or applicable or inapplicable and it seems that the parties could prove each others positions by requesting information, vis-a-vis each other and we feel that this might help the negotiations.

Once again, thank you for your presence today. We hope to have the written orders out by Tuesday of next week but maybe

it will be later, it's hard to say.

BY MR. JERMAIN:

Thank you very much. We, on behalf of the Union state that we aprpeciate the Agency's comments directed to the Union and we'll take those into consideration and I think probably adopt all -- most or all of the suggestions.

END OF ORDER AND DECISION

ULPC 83-3

* * *

CERTIFICATE

UNITED STATES OF AMERICA)
) ss.
STATE OF ALASKA)

I, JACKIE DUNBAR, Notary Public in and for the State of Alaska, residing at Anchorage, Alaska and Electronic Reporter for R & R Court Reporters, do hereby certify:

That the annexed and foregoing transcript of Oral Decision was taken before me on the 24th day of June, 1983, beginning at the hour of 1:35 at the offices of 303 K Street, Suite 609, Anchorage, Alaska, pursuant to Notice to take the recorded proceedings on behalf of Alaska Labor Relations Agency.

That this transcript, as heretofore annexed, is a true and correct transcription of the testimony of said witness, taken by me electronically and thereafter transcribed by me;

That the transcript has been retained by me for the purpose of filing the same with Alaskaa Labor Relations Agency Anchorage, Alaska, as required.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 27th day of June, 1983.

Jackie Dunbar
NOTARY PUBLIC in and for Alaska

My Commission Expires: 12/5/83

BEFORE THE STATE OF ALASKA

LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGES'
FEDERATION OF TEACHERS, LOCAL
NO. 2404,

Charging Party,

vs.

UNIVERSITY OF ALASKA,

Charged Party.

_____/ No. 83-3

UNFAIR LABOR PRACTICE CHARGE

COMES NOW the Charging Party, ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, Local No. 2404, hereinafter Union, by and through its attorneys, JERMAIN, DUNNAGAN & OWENS, and alleges as follows:

1. The UNIVERSITY OF ALASKA, hereinafter University, by and through its officers and agents, has violated AS 23.40.110(a)(5) by the following acts.

2. The University has engaged in and is engaging in bad-faith bargaining, surface bargaining, and bargaining without any intention of reaching agreement with the Union. The University has shown its bad faith by declaring an impasse where none exists, and by refusing to meet with the Union negotiating team at reasonable times and places.

4. It is requested that the Alaska State Labor Relations Agency expedite the hearing of this matter, and hear the matter with Charge Nos. 83-1 and 83-2 scheduled to be heard beginning June 20, 1983.

RESPECTFULLY SUBMITTED this 10th day of June, 1983 at Anchorage, Alaska.

JERMAIN, DUNNAGAN & OWENS
Attorneys for Charging Party

By Allison E. Mendel
Allison E. Mendel

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, ALLISON E. MENDEL, having been first duly sworn upon oath, depose and say:

1. I am Allison E. Mendel, an attorney for the Charging Party, and I have knowledge of the facts herein.

2. To the best of my knowledge and belief, the statements in the foregoing document are true.

Allison E. Mendel

Allison E. Mendel

SUBSCRIBED AND SWORN TO before me this 10th day of June, 1983.

Notary Public for Alaska
My Commission expires: 7-2-87

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
: ss.
THIRD JUDICIAL DISTRICT)

I, [illegible] being first duly sworn, depose and state as follows: I am employed by the law firm of JERMAIN, DUNNAGAN & OWENS. On the 10th day of June, 1983, I served true and correct copies of [illegible] upon [illegible] by:

XX DELIVERED TO OFFICE ____ MAIL

SUBSCRIBED & SWORN to before me the day and year first above written

[illegible]
Signature

NOTARY PUBLIC IN AND FOR ALASKA
MY COMMISSION EXPIRES: [illegible]

JERMAIN, DUNNAGAN & OWENS
(907) 276-0932

DLPC

State of Alaska
LABOR RELATIONS AGENCY
P.O. BOX 6701 • ANCHORAGE, ALASKA 99502
TELEPHONE (907) 248-2630

C. R. "STEVE" HASLING
CHAIRMAN
MORGAN REED
WM. J. PATCAUSKIE
CONSULTANT

BEFORE THE ALASKA LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGE FEDERATION OF TEACHERS, LOCAL NO. 2404,

Complainant,

and

UNIVERSITY OF ALASKA,

Respondent.

ULPC 83-1

ORDER AND DECISION NO. 80A

On March 22, 1983, the Alaska Community College Federation of Teachers, Local No. 2404, (hereinafter called Union), charged the University of Alaska with an unfair labor practice alleging violation of AS 23.40.110(a)(1)(5), with the employer insisting that all the negotiations take place at Building A on the Anchorage Campus of the Alaska Community Colleges. That the Union proposed alternative meeting places but the University refused to meet at any other location than Building A and refused to discuss any alternative meeting places.

Hearings were held on said charge during the week of June 20, 1983 and an oral Order and Decision was made on June 24, 1983. On July 14, 1983, the Agency issued written Order and Decision No. 80.

The University of Alaska (hereinafter called University) filed a Petition For Reconsideration and memorandum in support thereof on or about August 10, 1983.

The Petition For Reconsideration contained two requests for reconsideration of Order and Decision No. 80. The first request for reconsideration is that the Agency should reconsider and modify Order and Decision No. 80 because the Conclusions of Law contained therein that the University refused to discuss alternate meeting places with the Union is contrary to the Agency's express finding that the University did discuss alternate meeting places with the Union.

The second request for reconsideration is to the extent that Order and Decision No. 80 stated or implied that the University committed an unfair labor practice because it refused to compromise during bargaining, and the Decision should be modified.

The Agency having considered the Petition, and reviewed the evidence, it has been decided to amend Order and Decision No. 80. The amendment will reflect that the first issue (reconsideration and modification because the Conclusion of Law contained therein that the University refused to discuss alternate meeting places with Union is contrary to the Agency's express Findings of Fact that the University did discuss alternate meeting places with the Union) is GRANTED. Issue number two, the statement or implied statement that the University committed an unfair labor

practice because it refused to compromise during bargaining is DENIED. The reason that the second part of the Petition for Reconsideration is denied is based upon the fact that the unfair labor practice was not the lack of an agreement to move the negotiations to another place, but the lack of negotiation in good faith concerning the issue of whether negotiations should be moved to another place.

Order and Decision No. 80 Amended Findings of Fact

1. That from January 24, 1983 to March 18, 1983, over forty-five negotiating sessions took place in Building A of the Chancellor's conference room at the University Campus.

2. That the parties to date have met at reasonable times.

3. That the Union proposed a change of meeting places to some other reasonable place in an attempt to aid the negotiating efforts.

4. That the University replied that 1.5 of the contract (dated July 1, 1979 through March 31, 1981, Exhibit 9 of Case No.: ULPC 83-1) stated as follows:

"(a) Negotiations shall be scheduled at times and places that provide minimal interference with the instructional, administrative, and other employment duties of the negotiating team . . . . Negotiations shall be held in Anchorage."

5. That the University replied to the Union's efforts to change the place of negotiations by stating that the duties

of Chancellor Biggerstaff and the other individuals of the University's negotiating team could only be met by meeting in Building A, the conference room at the Anchorage Community College.

6. That the testimony of Chancellor Biggerstaff and Evan Johnson, the chief spokesman for the State of Alaska, clearly shows that the University refused to change their steadfast position of going off campus, and refused to discuss the possibility of the alternate places proposed by the Union.

This Board notes that there are other reasonable places located in the Anchorage area that are reasonable meeting places that would fit within the confines of 1.5 of the contract by providing minimal interference with the instructional and administrative needs of the University. That while we respect Chancellor Biggerstaff's position and those duties of the individuals who came from other campuses to be part of the University's negotiating team, we find that the Building A conference room was not the only place in Anchorage that could satisfy 1.5 of the collective bargaining agreement.

Good faith negotiations means negotiations with the bona fide intent to reach an agreement if an agreement is possible. The University did not exhibit good faith in their negotiations by demanding that the negotiations take place solely in the conference room in Building A.

8. While the University did give some reasons and had a short discussion concerning the refusal to move, the University

refused to negotiate the proposal to move in good faith.

THEREFORE, this Agency makes the following Conclusions of Law:

1. That the University committed an unfair labor practice by refusing to negotiate in good faith concerning alternate meeting places with the Union. AS 23.40.110(50) states:

> A public employer or his agent 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.

AS 23.40.250 defines collective bargaining, in part, as:

> Collective bargaining means the performance of the mutual obligation of the public employer as designated representative and the representative of the employees to meet at reasonable times.

2. The statutory language contemplates meeting at reasonable places as well as reasonable times. 1.5 of the contract specifically states that the negotiations shall be scheduled at times and places that provide minimal interference . . . . The law contemplates meeting at reasonable times and places, and necessarily includes a good faith negotiation of what is included in reasonable times and places.

THEREFORE, the Agency reaffirms its Order of July 14, 1983, and ORDERS the University to cease and desist from the

practice of refusing to discuss alternate meeting places with the Union. The Agency will continue to maintain jurisdiction over the subject matter contained in this unfair labor practice for an indeterminate period of time and would request either party to contact the Agency if they wish to argue if continuing negotiations are not held at reasonable places.

DATED this 5th day of September, 1983.

C. R. "STEVE" HAFLING, Chairman
ALASKA LABOR RELATIONS AGENCY

MORGAN REED

State of Alaska
LABOR RELATIONS AGENCY
P.O. BOX 6701 • ANCHORAGE, ALASKA 99502
TELEPHONE (907) 248-2630

C. R. "STEVE" HAFLING
CHAIRMAN
RONALD M. HENRY
MORGAN REED

WM. J. PAUZAUSKIE
CONSULTANT

BEFORE THE ALASKA LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGE FEDERATION OF TEACHERS, LOCAL NO. 2404, Petitioner, vs. UNIVERSITY OF ALASKA, Respondent.	ULPC 83-1

ORDER AND DECISION NO. 80

On March 22, 1983, the Alaska Community College Federation of Teachers, Local No. 2404, (hereinafter Union), charging party, charged the University of Alaska, (hereinafter University), with an unfair labor practice alleging violation of AS 23.40.110(a)(1)(5) that the employer had insisted on all negotiations take place at Building A, at the Anchorage Campus of Alaska Community Colleges. That the Union proposed alternate meeting places but the University refused to meet at any other location than Building A and refused to discuss any alternate meeting places.

Hearings were held the week of June 20, 1983, and an oral Order and Decision was reached on June 24, 1983.

The background facts of this unfair labor practice charge is that the University and Union had met in over 40 prior sessions at the University Chancellor's conference room. That on

or about the 18th of March, 1983, the Union wanted to discuss a change in negotiation places, meaning the conference room in Building A at the Anchorage Community College.

The University replied that §1.5 of the contract demanded that negotiations be scheduled for times and places that provided minimal interference with the instructional, administrative and other employment duties of the negotiating team. That the duties of Chancellor Biggerstaff, and other individuals involved in the University's negotiating team, could only be met by the meeting in Building A.

The Union's request was supported by the facts that there were other facilities available in Anchorage that were only a short drive from the University campus, that the bargaining unit members offices were 5-10 minutes away from the University campus. The parties had negotiated until March 18, 1983, in one conference room and this conference room became a consistent reminder of the parties' difficulties, a change in location could be helpful for both parties.

In reaching the Agency's decision, the Agency has considered the totality of the conduct. The Agency respects Chancellor Biggerstaff's position and his duties. The Agency respects the positions of the individuals who came to Anchorage from Kodiak and Bethel, who wanted to be close to their phones in order to engage in negotiations. However, in view of the

totality of the circumstances, the Agency finds that an unfair labor practice occurred by the University's inflexible position with respect to reasonable bargaining places. The Agency finds that the parties to date have met at reasonable times and makes the following Findings of Fact:

1. That from January 24, 1983 to March 18, 1983, over 45 negotiating sessions took place in Building A, of the Chancellor's Conference Room at the University Campus.

2. That the Union proposed a change to some other reasonable place in an attempt to aid the negotiation efforts.

3. That the University replied that §1.5 of the contract, only allowed the Chancellor's Conference Room to be used as a meeting place. That the University's inflexible position to the proposed changes were unreasonable and made in bad faith.

THEREFORE, this Agency makes the following Conclusion of Law and Order:

1. That the University committed an unfair labor practice by refusing to discuss alternate meeting places with the Union and ORDERS the University to cease and desist from such practices. The Agency will maintain jurisdiction over the subject matter contained in this unfair labor practice for an indeterminate period of time, and would request either party to contact the Agency if they wish to argue that continuing

negotiations are not held at reasonable places.

DATED this 14 day of July, 1983.

C. R. "Steve" Hafling

C. R. "STEVE" HAFLING, Chairman
THE ALASKA LABOR RELATIONS AGENCY

BEFORE THE ALASKA LABOR RELATIONS AGENCY

ANCHORAGE COMMUNITY COLLEGES FEDERATION OF TEACHERS, LOCAL 2404,	)
Charging Party,	)
vs.	)
UNIVERSITY OF ALASKA,	)
Charged Party,	)

83-1

ORAL ORDER AND DECISION

PRESENT:

FOR LOCAL 2404:	MR. WILLIAM K. JERMAIN Jermain, Dunnagan & Owens Attorneys At Law 801 W. Fireweed Lane, Suite 201 Anchorage, Alaska 99503 (907) 276-6532
FOR THE UNIVERSITY OF ALASKA:	MR. THOMAS P. OWENS, JR. Owens & Turner Attorneys At Law 425 G Street, Suite 920 Anchorage, Alaska 99501 (907) 276-3963
FOR THE LABOR RELATIONS AGENCY:	MR. WILLAIM J. PAUZAUSKIE Attorney At Law 1101 W. 7th Avenue Anchorage, Alaska 99501 (907) 276-2232
	June 24th, 1983 1:55 p.m. 303 K Street, Suite 409 Anchorage, Alaska

PROCEEDINGS

Thank you, it's five till 2:00 on Friday, June 24th. I'm Bill Pauzauskie and I'm here to render the oral order and decision of the Agency on ULPC 83-1 and ULPC 83-3. First of all I'd like to apologize for being late, I just got out of a meeting with Steve Hafling in which I went over my notes on these orders and decisions.

The Agency would like to thank you for appearing here today. We wish to thank the attorneys and staff from the University and staff from the Union for their cooperation in holding the hearings on ULPC 83-1 and ULPC 83-3, and the beginning of the hearings on 83-2. The hearings on 83-2 will be continued until Wednesday of next week, June 29th is the date with a schedule of 9:00 to 12:00 and 1:00 to 4:30. Immediately after this decision being rendered we will attempt to get a room for you and notify you by phone. The same schedule will be applicable for Thursday of next week, and on July 1, if necessary we will be available for hearings from 8:00 to 11:00 a.m. I've been appointed the hearing officer by the Agency. It's also a possibility that Mr. Hafling will come in to sit in on the Agency's hearings.

The Agency wishes to note that they felt that the closing statements given by both counsel were most effective and the Agency appreciates the attorneys' preparation and diligence in preparing the cases.

This Agency's practice has been to give both reasons and decisions concerning unfair labor practices, unit clarifications, bargaining unit questions, et cetera, and also to attempt to facilitate the collective bargaining process. Therefore, we are going to present our findings of fact in this Order and Decision and will also present some suggestions to the parties as to how we see the collective bargaining problems.

This oral decision is not the final Agency order and decision. This oral decision is following with the Agency's practice of rendering an oral decision to be followed by a written one. The final order and decision will no doubt have more bitter dictum (ph), and will basically be based upon the same findings of fact and conclusions of law contained herein.

Therefore, our order and decision on UPLC 83-1 contains the following findings of fact and conclusions of law:

1. The Agency has considered the totality of the circumstances and all the evidence presented to it, including the past practices of the parties.

2. The Agency finds that there has been an unreasonable position taken by the University, that the position being coupled with unreasonable and illegal motives, and specifically with an intent to taken instransigent positions to block any agreement from being formed.

3. The collegial method that was informally conducted by the parties from January 24th and ended approximately two months later. The Union gave their first hardline proposals on or about the 25th of March and a week later the University replied.

4. The Agency finds that the prior collegial sessions obviously misled the Union as to the University's true intent of unilaterally demanding take-away proposals.

5. The two hard weeks of hard bargaining followed the exchange of proposals and those two hard weeks produced few changes -- few substantive changes in either parties' position.

6. It is safe to say the Union was obviously dumbfounded at the hardline positions taken by the University, which those hardline positions rapidly solidified in the next two weeks.

The Agency finds that the setting of the Chancellor's conference room became a reminder and a symbol of the past bargaining in which the Union agreed to meet at the Chancellor's office and in good faith agreed to collegially conceptualize their thoughts, only to be surprised at the University's hardline unilateral take it or leave it positions to the issues on the table.

The unilateral refusal to move and the unilateral refusal to seriously entertain movement suggested by the Union to a different place, reinforced the University's basic

attitude towards the Union of "What we want to keep, we will keep, and what the Union wants can only be gained by capitulation to our initial demands, and then giving something that meaning a decrease in your rights, for obtaining more rights in a different part of the agreement."

To characterize the position as anything different would be to allow semantics to replace the substance of the matter.

We find bad faith, bad motive and the unreasonableness are accomplished by relegating the Union in the collegial phase, then grinding negotiations to a halt by taking hardline, unilateral and unbending positions on items as simple as a place for negotiations. The Agency finds the University did not entertain a move to a location before the unfair labor practice was filed.

We respect Chancellor Biggerstaff's position and his duties. We respect the individuals who came to Anchorage from Kodiak and Bethel and who wanted to be close to their telephones, but with today's communications there are ample facilities for communications with either Juneau or any place inside or outside of Alaska at a moments notice. Other facilities in the Anchorage area have the same capabilitiy as being five or ten minutes from either Building A, the University President's office, the Chancellor's office, the Union President's office and really makes little difference

because a phone call to any room can accomplish the same result.

The Agency finds that in the past, the movement of the bargaining from various places has been helpful to the parties and we think that the same could be accomplished in this collective bargaining process.

Based upon the foregoing findings of fact and conclusions of law we find that an unfair labor practice has been committed. We order the parties to meet no later than Friday, July 1, 1981, and discuss alternative sites for bargaining.

The Agency's past practice of suggestions alluded to earlier will now be addressed. We suggest that either one week in Building A and one week elsewhere would facilitate the collective bargaining process or the parties could find a totally new place, be it the YMCA or the Federal Building, and there are of course other reasonable places that appear to be acceptable and reasonable to virtually everyone.

Finally, the Agency will retain jurisdiction over this unfair labor practice for an indeterminate period of time to determine if affirmative action is needed to carry out the provisions of AS 23.40.260.

This Agency is ordering the University to cease and desist from prohibitive practice for refusing to bargain collectively in good faith, and in particular, to bargain over reasonable meeting places with the Union. Nothing in this Order and Decision is to be interpreted to lead any party to

to believe that the parties have not met at reasonable times to date.

END OF ORDER AND DECISION

ULPC 83-1

* * *

C E R T I F I C A T E

UNITED STATES OF AMERICA)
) ss.
STATE OF ALASKA)

I, [illegible], Notary Public in and for the State of Alaska, residing at Anchorage, Alaska and Electronic Reporter for R & R Court Reporters, do hereby certify:

That the annexed and foregoing transcript of

[illegible] was taken before me on the [illegible]

day of [illegible], 1983, beginning at the hour of [illegible];

at the offices of [illegible],

[illegible], Alaska; that I was then and there present to take the recorded

proceedings on behalf of [illegible].

That this transcript, as hereinafore annexed, is a true and correct transcription of the testimony of said witness, taken by me electronically and thereafter transcribed by me;

That the transcript has been retained by me for the purpose of filing the same with Alaska Labor Relations Agency, Anchorage, Alaska, as required.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 27th day of June, 1983.

[signature]
NOTARY PUBLIC in and for Alaska

My Commission Expires: 12/5/83

BEFORE THE ALASKA LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, LOCAL NO. 2404, Charging Party, vs. UNIVERSITY OF ALASKA, Respondent.	Case No. ULPC 83-1

RECEIVED
[illegible]
WM J. PAUZAUSKIE

UNFAIR LABOR PRACTICE CHARGE

1. The Charging Party: Alaska Community Colleges' Federation of Teachers, Local No. 2404, Anchorage Community College, 2533 Providence Drive, Anchorage, Alaska 99504.

2. The Respondent: University of Alaska, Ed Biggerstaff, 3211 Providence Drive, Anchorage, Alaska 99504.

3. Charging Party's Representative: William K. Jermain, attorney, 801 West Fireweed Lane, Suite 201, Anchorage, Alaska 99503.

4. Nature of Charge: That since March 18, 1983, and continuing to date, the University, hereinafter employer, refused to bargain in good faith, in violation of Alaska Statute 23.40.110(a)(1) and (5). The negotiations between the employer and the union have been in progress for some seven weeks, with 47 negotiating sessions. The employer has insisted that all negotiations take place in Building A on the Anchorage campus of Alaska's Community Colleges. The union believes that alternate meeting places should be used

JERMAIN, DUNNAGAN & OWENS
ATTORNEYS AT LAW
801 WEST FIREWEED LANE, SUITE 201
ANCHORAGE, ALASKA 99503
(907) 276-8532

in order to expedite the bargaining process. The union has requested the employer meet at the Teamsters hall or at other union halls in meeting rooms for negotiations, but the employer has categorically refused to meet at any other location than Building A and refused to discuss any alternate meeting places. The union's proposal is based on the belief that continual interruptions which have marred the bargaining process to date with the management's bargaining team is a result of location of the meeting. The union believes an alternate source is a matter of right, and the employer's steadfast refusal to meet in other locations is a violation of the above-referenced provisions.

It is requested that the Alaska State Labor Relations Agency expedite the hearing in this matter, since the contract expires April 1, 1983.

I swear the above to be true and correct to the best of my knowledge and belief.

DATED this 22nd day of March, 1983 at Anchorage, Alaska.

WILLIAM K. JERMAIN

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 22nd day of March, 1983, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared WILLIAM K. JERMAIN, to me known and known to me to be the identical individual named in and who executed the foregoing instrument, and he acknowledged to me that he signed the same freely and voluntarily for the uses and purposes therein stated.

WITNESS my hand and official seal on the day and year in this certificate first above written.

Notary Public in and for Alaska.
My commission expires: 9.21.85.

JERMAIN, DUNNAGAN & OWENS
ATTORNEYS AT LAW
801 WEST FIREWEED LANE, SUITE 201
ANCHORAGE, ALASKA 99503
(907) 276-8532

STATE OF ALASKA)
) ss.
SECOND JUDICIAL DISTRICT)

Jon Kassem, being first duly sworn, deposes and states as follows: I am employed by the law firm of JERMAIN, DUNNAGAN & OWENS. On the 22nd day of March, 1983, I mailed one true and correct copies of

ULP

to Ed Bugni staff

Jon Kassem

SUBSCRIBED AND SWORN to before me this 22nd day of March, 1983.

Kathryn Kadarauch

Notary Public in and for Alaska
My commission expires: 12/21/85

STATE OF ALASKA)
) ss.
SECOND JUDICIAL DISTRICT)

Jon Kassem

83

ULP

AG's anchorage office

Jon Kassem

22nd March 83

Kathryn Kadarauch

12/21/85

Receipt of a copy of the foregoing _____ acknowledged this ____ day of _____, 19__.

_____ Attorney for _____

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

SECTIONAL ANALYSIS OF SB 467 - AN ACT RELATING TO COLLECTIVE BARGAINING BY EMPLOYEES OF THE UNIVERSITY OF ALASKA; EFD.

BY THE FINANCE COMMITTEE

SECTION 1 REMOVES EMPLOYEES OF THE UNIVERSITY OF ALASKA FROM CLASS 2 OF THE LABOR RELATIONS ACT. CLASS 2 ALLOWS FOR MEDIATION AND LIMITED STRIKE. UNIVERSITY EMPLOYEES WOULD THEN BE IN CLASS 3, ALLOWING UNLIMITED STRIKE.

SECTION 2 REMOVES TEMPORARY PART-TIME EMPLOYEES OF THE UNIVERSITY FROM THE DEFINITION OF "PUBLIC EMPLOYEE"

SECTION 3 PROVIDES THAT THIS ACT WILL NOT EFFECT A COLLECTIVE BARGAINING AGREEMENT IN EFFECT ON THE EFFECTIVE DATE OF THIS ACT.

SECTION 4 EFFECTIVE DATE.

TELEGRAM

ALASCOM, INC.
PHONE: 586-5000
JUNEAU, AK 99802

RECEIVED

Senator Josephson,

1984 MAR 6 PM 3 22

02064 NL ANCHORA-168 03-06 240P AST

PMS SEN JOE JOSEPHSON

POUCH V

0321

JUNEAU AK

THE WESTERN ALASKA BUILDING TRADES COUNCIL ON BEHALF OF ITS MEMBERS AND THEIR FAMILIES CATEGORICALLY OPPOSE THE PASSAGE OF SENATE BILL 467. THE CLEAR INTENT OF THIS LEGISLATION IS ANTI-UNION. IT IS IMPORTANT THAT YOU TAKE A STAND AGAINST A PUBLIC EMPLOYER WHO CONTINUALLY IGNORES EMPLOYEE RIGHTS AND SHOWS A CALLUS DISREGARD FOR STUDENTS AND THE PUBLIC. THIS LEGISLATION WILL ONLY HURT THE STUDENTS AND THE PUBLIC. THERE IS NO LOGICAL DISTINCTION BETWEEN THE RIGHTS OF PART-TIME AND FULL-TIME EMPLOYEES AND THEY MUST HAVE THE RIGHT TO ORGANIZE. IN ADDITION, ELIMINATING BINDING ARBITRATION AS A LAST STEP WHEN THE PUBLIC INTERESTS IS ADVERSELY AFFECTED IS GOOD AND NOT BAD. THE ECONOMIC PRESSURES IN SOLVING LABOR DISPUTES IN THE PRIVATE SECTOR DO NOT APPLY WITH THE PUBLIC EMPLOYER. THE SALARIES OF THE EXECUTIVES OF THE UNIVERSITY CONTINUE DURING A STRIKE. THE VICTIMS OF AN INABILITY TO REACH AN AGREEMENT ARE THE STUDENTS, THE TEACHERS AND THE PUBLIC. IT IS IMPERATIVE THAT YOU OPPOSE THIS BILL.

WESTERN ALASKA BUILDING TRADES COUNCIL

RICHARD PELUSO, PRESIDENT

TELEGRAM

ALASCOM, INC.
PHONE: 586-5[illegible]
JUNEAU, AK 99802

1984 MAR 6 PM 9 41

02076 NL ANCHORAGE ALASKA 664 03-06 1732 AST

PMS SENATOR JOE JOSEPHSON

POUCH V 0[illegible]5

JUNEAU AK 99811

RECEIVED

RE; SB467

DEAR SENATOR,

AS CHIEF NEGOTIATOR FOR THE ACCFT, I OBVIOUSLY AM NOT A DISINTERESTED PARTY. NEITHER, HOWEVER, DOES THE UNIVERSITY REPRESENT THE WISHES OF THE PEOPLE. YOU MUST REPRESENT THE PUBLIC.

THE UNIVERSITY HAS BEEN FOUND GUILTY OF VIOLATING PERA DOZENS OF TIMES IN THE PAST DECADE. THE BASIC FAIRNESS TO PUBLIC EMPLOYEES EMBODIED IN PERA IS CLEARLY A HINDRANCE TO THE UNIVERSITYS TREATMENT OF ITS EMPLOYEES. THE UNIVERSITY HAS, AS YOU WELL KNOW, RESISTED EVERY OUTSIDE PRESSURE, AND CONSISTENTLY MAINTAINED ITS RIGHT TO TOTAL AUTONOMY OF ACTION IN EVERY SPHERE. THE CURRENT BILL IS A REQUEST FOR LEGISLATIVE SUPPORT FOR THAT POSITION. I HOPE YOU WILL REJECT IT.

THE NEGOTIATIONS BETWEEN THE ACCFT AND THE UNIVERSITY HAVE BEEN ONGOING FOR MORE THAN 14 MONTHS. DURING THAT TIME, THE UNIVERSITY HAS ATTEMPTED TO FORCE A SERIES OF TAKE-AWAYS ON THE TEACHERS WHICH BEAR NO RELATIONS TO ACTUAL NEED WITHIN THE UNIVERSITY SYSTEM. THE ACCFT HAS OFFERED NUMEROUS PROPOSALS WHICH WOULD MEET LEGITIMATE CONCERNS FOR INCREASED EFFICIENCY AND PRODUCTIVITY. THESE GOOD FAITH OFFERS HAVE BEEN REJECTED BY THE UNIVERSITY, WHICH HAS CONTINUOUSLY INSISTED ON CONTRACT LANGUAGE RUINOUS TO TEACHERS AND TO THE ACCFT.

ADMINISTRATION'S INTENT IS TO BRING ABOUT AN END TO PUBLIC EMPLOYEES UNIONIZATION AT THE UNIVERSITY. AS THE ONLY RECOGNIZED BARGAINING UNIT IN THE ENTIRE UNIVERSITYS SYSTEM, WE, THE TEACHERS HAVE BEEN SINGLED OUT AS AN EXAMPLE TO OTHER EMPLOYEES CONTEMPLATING SELF ORGANIZATION.

PERA ESTABLISHES COLLECTIVE BARGAINING, NOT ONLY AS A RIGHT OF ALASKA(S) PUBLIC EMPLOYEES, BUT AS AN IDEAL METHOD OF EMPLOYER-EMPLOYEE RELATIONS. IT IS BASED ON THE PRINCIPLE THAT FAIRLY TREATED EMPLOYEES WHO PERCEIVE THEMSELVES AS PARTNERS WITH MANAGEMENT WIN PURSUIT OF GOALS OF SERVICE TO ALASKA WILL PERFORM THEIR DUTIES IN A SUPERIOR MANNER. THIS IS LAUDABLE. THIS IS SENSIBLE. THIS IS THE LAW. ALASKA CAN BE PROUD OF IT.

SHAMEFULLY, THIS IS NOT THE ATTITUDE OF THE UNIVERSITY. THE UNIVERSITY DEMANDS THE SAME FREEDOM OF ACTION IN REGARD TO ITS EMPLOYEES AS IT HAS DEMANDED IN THE PAST FROM THE LEGISLATOR, THE GOVERNOR AND THE COURT IN REGARDS TO ANY OTHER MATTER. THE UNIVERSITY SIMPLY REFUSES TO RECOGNIZE ANY BOUNDARY ON ITS INDEPENDENT AUTHORITY. THAT IS THE CRUX OF THE MATTER WHICH IS NOW BEFORE YOUR COMMITTEE.

THE UNIVERSITY HAS BEEN FOUND GUILTY OF FIVE SEPARATE UNFAIR LABOR PRACTICES AGAINST ITS TEACHERS IN THE PAST YEAR. THE UNIVERSITY DOES NOT WISH TO OR INTEND TO TREAT ITS EMPLOYEES FAIRLY. INSTEAD, THEY COME TO YOU FOR PERMISSION TO TREAT THEM UNFAIRLY. THIS IS A SHAME. THE UNIVERSITY MUST NOT BE ALLOWED TO REMOVE ITSELF FROM A FLAW WHICH ESTABLISHES FAIRNESS AS A MATTER OF PUBLIC POLICY.

I HOPE YOU WILL TEST MY CONTENTIONS WHEN PRESIDENT BARTON TESTIFIES BEFORE YOUR COMMITTEE. ASK, IF YOU WOULD, WHY THE UNIVERSITY HAS SEEN FIT TO PAY A NOTORIOUSLY ANTI-UNION ATTORNEY OVER DLRS400,000.00 TO FIGHT COLLECTIVE BARGAINING, WHILE CLAIMING FINANCIAL NEED IN ITS TAKE-AWAY DEMANDS AT THE NEGOTIATING TABLE, AND WITH SUCH CARELESS DISREGARD FOR THE FORWARD LOOKING PRINCIPLES ESTABLISHED BY PERA. THIS IS PUBLIC

IF YOU WOULD, WHY THE UNIVERSITY HAS SO CONSISTENTLY VIOLATED THE PERA ACT IN ITS DEALINGS WITH THE ACCFT. ASK IF THE UNIVERSITY IS AT ALL REPENTENT FOR ITS PAST VIOLATIONS. I THINK YOU WILL FIND THAT IT IS NOT. ITS VERY REQUEST OF SB467 IS ITS ANSWER. THE UNIVERSITY EXPECTS THE LEGISLATURE TO BECOME AN ACCOMPLICE IN THE UNIVERSITY(S) ILLEGAL ACTS.

I HOPE THAT YOU WILL NOT BE FOOLED. THE UNIVERSITY COMES TO YOU CLOAKED WITH ACADEMIC PRESTIGE. I URGE YOU TO LOOK BENEATH THAT CLOAK TO FIND THE TRUE MEANING AT THE HEART OF THE REQUEST FOR SB467. TREAT THE UNIVERSITY AS YOU WOULD ANY LAW BREAKER SEEKING RELEASE FROM THE LAWS WHICH BIND HIM FOR THE PROTECTION OF THE PUBLIC GOOD. IF ANY PUBLIC EMPLOYER IN THE STATE OF ALASKA NEEDS THE RESTRICTION OF PERA, IT IS THE UNIVERSITY.

SINCERELY,

DON MOHR, CHIEF NEGOTIATOR, ACCFT

UNFAIR LABOR PRACTICES - UNIVERSITY vs ACCFT

NOTE: Marv Hennon, of the Labor Relations Board staff was to be at the hearing today, as of 11:00 a.m., his flight has not been able to get into Juneau. Bruce Cummings, of Juneau office will be here if Mr. Hennen cannot make it.

1. The University entered into the negotiations demanding that the union accept three changes before going on to other matters. These three were:

*Ending the current advancement and pay system of longevity and education, to be replaced with a MERIT system. A system was not proposed, but was to be formed by committee at a later date. The merit system could also be voted down by either party, so the union has argued that there was no proposal actually offered.

*Increasing the workload from 12 to 15 credits.

*Eliminating the union subsidy by the university. The subsidy consists of:

Providing the union members with offices and meeting rooms.

hiring substitutes for teachers during negotiations

Guaranteeing the President of the union 6 hours of teaching time.

inexchange for the subsidy, the University offered to pay the bargaining team $750/each.

In 83-3 The Agency found the University had engaged in bad faith bargaining, surface bargaining and bargaining without any intention of reaching an agreement by unilaterally demanding that the union accept the University's proposals without negotiating.

The Agency noted that the merit system proposal was "illusory" because either party could unilaterally veto the plan.

2. In order 83-1 (and reaffirmed in the appeal 80A) The Agency found that the University engaged in bad faith negotiations by refusing to consider alternate meeting places for negotiations meetings proposed by the union.

3. In 83-5 The Agency found that the University committed an unfair labor practice by not offering History 246 to Ralph McGrath.

Ralph McGrath, the union president, had applied to teach a summer course. There were two other applicants. The university advertised that Mr. McGrath would teach the course in the manual of course offerings, and then hired another applicant to teach the class.

After both of the other applicants became unavailable to teach the course, the University affered the job to another teacher, who negotiates for management and had not applied to teach the course.

The Agency found that the University did not follow its own procedures in offering the course, and ordered it to cease and desist.

4. In 83-2 Three teachers involved with negotiations were denied summer teaching courses on the basis that they would be involved in negotiations in the summer session and substitutes would have to be hired for them. The union charged unfair labor practic, but the Agency found that one had not been committed by the University, because they are not required to offer summer teaching positions to anyone, and had made no promises for the courses to the teachers named.

5. Order and Decision 84 deals with the six cases involving time and place for negotiations meetings. The Agency made partial findings for both sides and set forth guidelines for the coninuation of negotiations in regards to time and place.

On page 18 the Agency says: "We find the position to be another example of how management is picking at every straw and arguing everything possible to avoid the true intent of Sec 1.5, while alleging that an arbitrator's decision of seven (7) years ago supports their decision" (note: Sec 1.5 is the agreement on how the arbitration will take place)

83-6 The Agency found that the university's demand of limiting negotiating hours was made in bad faith That terms and conditions of the meeting place were made in bad faith, as they have negotiated for years in the same place and the university was now demanding a location with support services, access to info from both parties at the location, and control of the location choice.

In 83-7 the Agency stated it did not want to set a precedence in ordering alternating sites, and dismissed the charge.

The Agency also dismissed 83-9, in which the University charged that the union engaged in bad faith negotiations by proposing meeting places they should have known were unavailable. The Agency found that the union had proposed alternate places,upon their availability

83-10 found the University alleging that the union engaged in bad faith negotiations by their demands for days and times for meetings. The Agency found for some charges and against others and issued guidelines for the continuation of negotiations on this basis.

the faculty organized and wanted their rights.

Recent law - impasse, mediation, impasse, strike vote, strike enjoined, injunction granted, arbitrator appointed strike a ritual dance

unlimited right to strike would make bargaining more realistic. union must take consequences for their action.

CC faculty failed natl avg. in salaries because of 14 mos of negotiations. Had been ahead prior to negotiations.

He really dynamic

dramatic difference in Alaska is C.C. other than ACC, they are more like outreach centers of college extension

Bruce Ludwig - Mort Hansen - LRB

Hansen spends most of his time in this office.

rationale for exempting part of Employees from Class 2, while putting some in Class 3.

have not tried other methods — arbitration is frustrating. Mediated - arb. makes some parties pressure on parties to make their own agreement.

arbitrater decisions on economic issue still in control of Legislature → appropriation.

existing statute favors continuity.

Fed. Mediation Service has few names in Alaska. American Arbitration Association has many more.

Tom Caulfield - AFL-CIO

oppose — Legislature should not get involved. Both sides should get back to negotiations.

Ralph McGrath — ACCFT 2404

pending before Superior Ct., a lawsuit over part-time Employee right to organize. Labor Relations Bd. to make criteria on who has what rights.

dy. in AG office — "Eligible to bargain must be full time teacher Employed the previous year."

* only time of binding arb in 1974 (requested by Gov.)
* 1976 - strike & negotiation.

Sigrid Orr - ACCFT 2404

ACC since 1975.

Issues:

1) Workload
2) Compensation
3) Union rights
4) Management rights

Bob Manners - NEA
opposes bill.

Arbitration awards close to negotiated agreement.

- Greater prob. of work stoppage
- Panel
- Legis. adequate control over monetary
- Arbitration is party, neutral and LEG finding

HESS - SB 7 4654

State of Alaska

LABOR RELATIONS AGENCY

P. O. BOX 6701 • ANCHORAGE, ALASKA 99502
TELEPHONE (907) [redacted] 248-2630

SUMMARY OF 1983 BUSINESS

UNFAIR LABOR PRACTICE CHARGES:

ULPC 83-1 ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, LOCAL NO. 2404 vs. UNIVERSITY OF ALASKA

Issue: Refusal to bargain in good faith and inability to agree on places to negotiate.

Decision: Order and Decisions No. 80 and 80A to cease and desist from the practice of refusing to discuss alternate meeting places.

ULPC 83-2 ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, LOCAL NO. 2404 vs. UNIVERSITY OF ALASKA

Issue: Denying summer employment to members of the bargaining team. Discontinuing contract exceptions by changing terms of employment and changed method of informing employees of such conditions.

Decision: Order and Decision No. 82 by dismissing the unfair labor practice.

ULPC 83-3 ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, LOCAL NO. 2404 vs. UNIVERSITY OF ALASKA

Issue: Bad faith bargaining, surface bargaining and bargaining without any intention of reaching agreement.

Decision: Amended Order and Decision No. 81(A) to cease and desist from bad faith practices.