Jean Ward, Hearing Officer
Alaska Labor Relations Agency
1016 West 6th Avenue, Suite 403
Anchorage, AK 99501-1963

RE: Alaska State Employees Association, AFSCME Local 52, AFL-CIO vs. University of Alaska, Case No. 11-1600-ULP

University of Alaska’s Response to ASEA Local 52’s June 27, 2011 Response

Dear Ms. Ward,

The University of Alaska (University) thanks you for a second opportunity to address the Alaska State Employee Association, ASEA-AFSCME Local 52’s (ASEA-AFSCME) allegations. ASEA-AFSCME’s claims are meritless and must be dismissed pursuant to 8 AAC 97.245.

ASEA-AFSCME’s June 27 Response (Response) attempts to take the University’s benign and legitimate actions and paint them in macabre tones in an effort to distort the University into some sort of monster. As will become obvious, the University has acted fairly towards our employees and in an effort to advance legitimate business interests. The University incorporates all arguments and defenses made in its May 4, 2011 response and addresses the following accusations from ASEA-AFSCME’s June 27, 2011 Response. Upon receiving a written request and reasonable time to accommodate it, the University will make any University employee mentioned below available for a deposition by ASEA’s counsel.

APPLICABLE LEGAL STANDARD

On one hand, ASEA-AFSCME acknowledges that the University’s reliance on Alaska Community College’s Federation of Teachers, Local No. 2404 v. University of Alaska, 669 P.2d 1299, 1307-1308
(Alaska 1983) (citing N.L.R.B. v. Litho Press of San Antonio, 512 F.2d 73, 76 (5th Cir. 1975) is correct. On the other, ASEA-AFSCME ignores half of that case’s holding in an attempt to stretch the case’s reach. The Alaska Supreme Court clearly said in Alaska Community College that:

There is, however, an important qualification to the seemingly unqualified language of section 8(a)(1). Even conduct which interferes with, restrains or coerces employees in the exercise of their collective rights may be held lawful if it advances a substantial and legitimate employer interest.

Id. at 1308, n. 8 (citing R. Gorman, LABOR LAW at 133 (1976)) (emphasis added). In each of the complaints ASEA-AFSCME makes below, they omit the Alaska Supreme Court’s “important qualification” that the University may, legally, take an action that limits ASEA-AFSCME’s rights if it advances a substantial University interest. The University has a substantial interest in protecting its employees’ privacy, making sure that they are presented with factual information during this unionization campaign, and protecting them from fraud, and University actions have consistently advanced that interest.

THERE IS NO “ANTI-UNION” LIST OF EMPLOYEES

ASEA-AFSCME misleadingly asserts that the University has a so-called “no-contact” list. The University does not. Just as every citizen who does not want to be called by telemarketers has the right to register their phone number on a no-call list, University employees who do not want to be contacted at home have a right to join a no home visit list. And just as the no-call list is neutral as to the substance of the telemarketers’ calls, the no home visit list makes no statements as to employees’ views on unionization or ASEA-AFSCME. Employees who choose to sign up for it simply do not want their dinner or weekends interrupted. It is not an “anti-union” list, and nothing the University has said suggests that it is. The University created the no home visit list as a result of numerous employees’ complaints about repeated, unwanted home visits by ASEA-AFSCME’s employees. The list advances an important University interest in protecting our employees’ privacy and carries no anti-union animus whatsoever.
ASEA-AFSCME states that the list requesting no home visits "causes employee disaffection" but provides neither a description of that disaffection nor evidence of its existence. Likewise, ASEA-AFSCME states that the list "...suggests to employees that the Respondent employer will favor employees whose names are on this special list" yet cites no evidence for this claim either. ASEA-AFSCME cites no evidence because there is no evidence. In fact, all the no home visit list does is prevents interruptions at home; it does not impede union contact with employees during work or lunch breaks. The list is maintained by a single individual with no supervisory or managerial power over those on the list, and no benefit or penalty is derived from signing the list, nor has any promise of benefit ever been made.

To further contest its argument, ASEA-AFSCME relies on two inapplicable cases, *NLRB v KEZI*, 300 NLRB 594, 599 (N.L.R.B. 1990) and *Hearst Corp.*, 281 NLRB 764 (1986). In KEZI, the NLRB dealt with an obviously anti-union petition being passed around a workplace by workers, an inverse factual situation to those alleged in the instant ULP. Here, the University made a content-neutral no home visit list available. It is important to note that, the University would provide any employee the ability to sign such a list regardless of the visitor. So if a vendor was going door to door and interrupting University employees' home lives, the University would provide employees with an opportunity to attempt to block that sort of interruption.

ASEA-AFSCME's requested remedy— inclusion of the 61 University employees who requested no home visits on a list in favor of an election—falls outside of the powers of the ALRA. Neither the University, nor ASEA-AFSCME knows whether these employees oppose or support unionization, and for either party to force their vote is disenfranchisement. The University opposes any attempt by any party to disenfranchise University staff.

**THE UNIVERSITY PROVIDED ASEA WITH THE REQUESTED LIST OF STAFF EMAILS**

This issue is moot. The University provided the requested names and email address to ASEA Local 52 on September 14, 2011 in accord with Board of Regents Policy 06.02.020.
THE "DUCK INN INCIDENT"

ASEA-AFSCME claims that Gary Turner, the Director of the Kenai Peninsula College (KPC), was observed at the Duck Inn in Soldotna at the same time as the union was conducting some sort of meeting. That is true. The union also claims that Mr. Turner "was listening" to them. ASEA Response at 7. That is false. ASEA-AFSCME failed to include some important facts in its description of this event. First, the Duck Inn is one of the most popular off-campus eating establishments for students, faculty and staff at KPC. So the likelihood of seeing a member of the KPC administration there during the lunch hour is extremely high. Second, the University questions how the union could possibly know whether Mr. Turner "was listening" to them.

If members of KPC's staff felt uneasy because they were attending a unionizing activity in a busy, popular restaurant frequented by KPC administrators, the University cannot do anything about that. But ASEA-AFSCME fails to state a single fact indicating that the University took any intentional step to create this feeling. No one is listening to staff conversations, and the University cannot and will not control the eating habits of its administrators.

COMPLAINTS ABOUT ASSOCIATE VICE CHANCELLOR DANIEL WHITE

Vice Chancellor Daniel White interacted with ASEA-AFSCME organizers twice. Both were random encounters, and neither lasted more than a few seconds. Vice Chancellor White vaguely remembers these brief events which amount to meeting an organizer in a common area of the UAF Duckering Building and asking the organizer what their business at the Northern Energy Project was. The organizer replied "nothing" and left. No University employee is monitoring ASEA-AFSCME's employees' movements on campus, nor is anyone following up with employees after union visit campus. While Mr. Kopiasz's conspiracy theories make for entertaining reading, they are fiction.

ASEA-AFSCME's complaint 4(b) is indicative of the kind of speculation that asks ALRA to engage in this ULP. This complaint reads as follows:
Mr. Kopiasz went to the Provost's Office to get information about where HR was located and talked to a secretary at the first desk. When he asked if she was interested talking about union benefits, she said she could not talk then and nothing further occurred except that the Respondent apparently believes that such a topic is prohibited among workers in its workplace. Obviously, the person at the desk has been intimidated by her supervisors in the Respondent's Provost Office.

These are serious accusations. It is worth noting that Mr. Kopiasz was trying to organize this employee during her work hours, while she was working and not on break, in violation of PERA. Moreover, he failed to provide any notice to the University that he was on campus organizing, also in violation of PERA, 8 AAC 97.200. Mr. Kopiasz speculates that the "secretary" believes that she cannot speak about unionization, but provides no indication of how he could possibly know that. He also states that "obviously" there has been University intimidation in the workplace. Again, ASEA-AFSCME makes a baseless observation of an "obvious" fact that could actually have many explanations. Perhaps the employee was busy working. Perhaps she is simply not interested in hearing about organizing. The University will not engage in the sort of speculation ASEA-AFSCME encourages, except to assert that our employees are diverse, have diverse viewpoints, and are entitled to disagree with both the ASEA and the University. So, of course, some University employees will not want to hear from an organizer during their work day. That unwillingness is not a result of University coercion.

COMPLAINTS ABOUT ACCESS TO THE UNIVERSITY CAMPUS

ASEA-AFSCME's organizer, Ryan Kopiasz conflates two policies when he complains about having to provide 48-hours' notice before reserving a room at UAA. In doing so, Mr. Kopiasz illustrates the importance of reading all of Alaska Community College's Federation of Teachers, Local No. 2404 v. University of Alaska, and not just a select piece of that case. As the University explained in its May 4, 2011 response, we ask all unions to provided 24 hours' notice before organizing on campus. ASEA-AFSCME—including Mr. Kopiasz himself—explicitly agreed to provide that notice, and the University only seeks to hold them to their word.

All parties—union or non-union—are requested to submit room scheduling requests 48 hours before renting a room on the UAA campus. That 48 hour request has nothing to do with unions or
organizing, but is simply the amount of time UAA asks groups to provide before renting a room. So, while ASEA-AFSCME is attempting to construe the 48 hour time frame as some sort of devilish constraint on our employees’ ability to organize, it is in fact a reasonable management act that advances a legitimate University interest. The policy aims to avoid double-booking rooms and to allow for the administrative processing of requests. By no means was Mr. Kopiasz barred from meeting with UAA employees outside of work hours by this policy, he was only treated like all other parties and asked to provide the room request 48 hours’ in advance of using the room.

CONCLUSION

ASEA-AFSCME’s Response presents very few verifiable facts. The few facts ASEA-AFSCME puts forward do not amount to a violation of PERA, and have are benign actions aimed at advancing legitimate business interests. As such, ASEA-AFSCME’s reliance on them as a basis for a ULP is baseless. As the University contended in its May 4, 2011 Response to ASEA-AFSCME’s ULP, dismissal of ASEA-AFSCME’s ULP is appropriate, pursuant to your authority under 8 AAC 97.245.

Do not hesitate to contact me with further questions or concerns.

Sincerely,

Michael O’Brien
Associate General Counsel
University of Alaska