ALASKA LABOR RELATIONS AGENCY
STATE OF ALASKA

UNIVERSITY OF ALASKA,

Petitioner,

and

UNIVERSITY OF ALASKA
FEDERATION OF TEACHERS, LOCAL 2404,

Respondent,

and

UNITED ACADEMICS,

Intervenor.

Case No. 08-1537-UC

PREHEARING STATEMENT
BY UNIVERSITY OF ALASKA

Pursuant to the Agency’s Notice of Prehearing Conference, dated March 4, 2010, the University of Alaska submits this Prehearing Statement.

I. STATEMENT OF THE DISPUTE

This Petition for Unit Clarification arises in the context of a disagreement between two bargaining unit representatives, the University of Alaska Federation of Teachers (“UAFT,” formerly “ACCFT”) and United Academics (“UNAC”), over the boundaries of their respective units. The University has been drawn into this dispute and believes that important public interests must be addressed in this proceeding.
In order to understand the current dispute, it is necessary to consider the circumstances that gave rise to the creation of two bargaining units representing the faculty of the University of Alaska system, the pattern and practice of unit placements, the evolution of University programs, and the arguments advanced by UNAC and UAFT regarding the proper scope of their units.

A. The development of the existing UNAC and ACCFT unit definitions.

Prior to 1987 Alaska’s community colleges were separate from the University of Alaska system. Community college faculty were represented by the Alaska Community Colleges’ Federation of Teachers (ACCFT). The University of Alaska system was separate and its faculty were not unionized. In other words, prior to 1987 there were administrative, geographic and programmatic separations between the community colleges and the University of Alaska system. Due to budget issues, however, the community colleges were merged into the University of Alaska system in 1987.

Following the 1987 merger, the University withdrew recognition of ACCFT, which represented only a fraction of the University’s post-merger faculty. In ensuing proceedings, Arbitrator Tim Bornstein found that the University had withdrawn recognition improperly and that the former community college faculty continued to represent an identifiable community of interest because, in the years immediately

1 Arbitrator Bornstein found that there were 282 members in the community college unit and approximately 600 other unrepresented faculty. Bornstein I, p. 6.
following the merger, UAFT faculty continued to teach the same classes and work from the same offices as they had pre-merger.² As a result, ACCFT continued to represent the faculty it had represented prior to the merger, i.e., faculty at the one remaining and all former community colleges, i.e., Prince William Sound Community College (PWSCC) and “Extended Sites.” Extended sites were generically defined to include educational facilities not located on the principal campuses.³

In addition to administrative consolidation, the merger eliminated the geographic distinction between the two faculty groups in Anchorage and Juneau.⁴ In Anchorage, the former Anchorage Community College (ACC) merged with the main campus of UAA. In Juneau, Juneau-Douglas Community College merged with the main campus of UAS. Post-merger, faculty at the UAA and UAS campuses worked side by side with non-represented faculty. In 1992 a new unit definition was crafted to allow former community college faculty now working at the UAA and UAS campuses to remain in

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² See, e.g. Bornstein III at pp. 54-59. It bears noting that Arbitrator Bornstein observed that although the University’s administrative changes had not materially altered ACCFT’s community of interest by the time ACCFT’s contract expired on March 31, 1989, they “may have augured significant integration in the following years.”

³ Article 2 of the UAFT CBA specifically includes as extended sites the Bristol Bay Campus, Chukchi Campus, Interior-Aleutians Campus, Kenai Peninsula College, Ketchikan Campus, Kodiak College, Kuskokwim Campus, Matanuska-Susitna College, Northwest Campus, Sitka Campus, and Tanana Valley Campus.

⁴ The merger was implemented differently in Fairbanks. Former community college faculty generally remained at extended sites, continued to report through campus directors. They are housed administratively in the College of Rural Alaska, now College of Rural and Community Development (CRCD).
ACCFT. The new definition included the following main-campus faculty in ACCFT:

- faculty on main campuses whose principal assignment is vocational-technical instruction; and
- faculty employed to teach exclusively at the lower division, with or without a single part service\(^5\) assignment.

The 1992 unit definitions did not impose workload-based limitations on UAFT faculty at extended sites because extended site faculty remained geographically separated from the non-represented University faculty.\(^6\)

After the 1987 merger and prior to the inception of UNAC in 1996, faculty employed to teach upper division academic courses on the main campuses were not represented. However, as Arbitrator Bornstein observed, “community college faculty taught upper level courses on occasion prior to July 1, 1987,” a practice which seemingly was inconsistent with the new unit definition. It was deemed desirable by both the University and ACCFT to continue this practice and, because upper division faculty were unrepresented, there was some latitude to agree that work beyond the scope of the unit definition approved by the ALRA (in particular, upper division work)

\(^5\) Per Article 5.1A. of the UAFT CBA, faculty workloads may be comprised of teaching, service and scholarly activity. Scholarly activity is rarely assigned in UAFT given the unit definition limiting main campus faculty to teaching and service. Of the approximately 356 current UAFT faculty, the University is aware of only 7 UAFT faculty members who have tripartite (teaching, service and creative/scholarly activity) workloads. Of those, 1 is located on a main campus.

\(^6\) In 1996 the ALRA found workload and other distinctions between the UAFT unit as a whole, including all extended sites, and the UNAC unit. ALRA Decision and Order No. 202.
could be assigned to main-campus UAA and UAS faculty without impacting another union’s unit. The parties negotiated Article 5.1.A (Professional Assignment) to accommodate this practice. That Article in the 1992-1994 UAFT CBA stated in part:

…The assignment of an upper division course or courses which would otherwise exclude a Faculty Member from the bargaining unit is permitted without exclusion from the bargaining unit, provided that the Faculty Member and appropriate University administrator agree to the assignment and such agreement is reduced to writing. (Emphasis added)

In 1996, the ALRA established the UNAC unit. The University had argued in favor of the formation of a single faculty bargaining unit but the ALRA instead affirmed the creation of UNAC as a second unit which contained designated faculty members not represented by UAFT. 7 Specifically, the UNAC unit excluded:

All employees who are recognized by the University of Alaska as represented by the Alaska Community Colleges’ Federation of Teachers, Local 2404, AFL-CIO who are on the faculty as follows: faculty, librarians, and counselors of a community college established by the University of Alaska Board of Regents; faculty, academic counselors, and librarians whose principal assignment is at an extended site of the University of Alaska (other than cooperative extension); faculty whose principal assignment is vocational-technical instruction; and faculty who are employed to teach exclusively at the lower division level with a single part service assignment. (Emphasis added.)

In 1997 the University and ACCFT bargained out of the CBA the language of Article 5.1 that had expressly permitted ACCFT faculty on the main campuses to teach upper division assignments while remaining in ACCFT. The language removed is shown as strike-through:

7 ALRA Decision and Order No. 202.
The assignment of an upper division course or courses which would otherwise exclude a Faculty Member from the bargaining unit is permitted without exclusion from the bargaining unit is permitted, provided that the Faculty Member and appropriate University administrator agree to the assignment and such agreement is reduced to writing (Appendix C).

Since the formation of the UNAC unit, the University has assigned faculty teaching vocational-technical course loads at the main campuses of UAA and UAS to UAFT. The University has also assigned new academic faculty at the main campuses of UAA and UAS to UAFT if they were employed to teach exclusively at the lower division level. However, while existing faculty represented by UAFT typically do teach “exclusively” lower division courses at the main campuses of UAA and UAS, some faculty members represented by UAFT continued to be assigned limited upper division courses consistent with the pre-UNAC version of Article 5.1.A., without being removed from the UAFT unit.

Since shortly after the recognition of UNAC in 1996, the two units have from time to time raised disputes with the University concerning a variety of faculty placements. Time has shown that the unit definition originally crafted in 1992 did not anticipate changing circumstances and the variety of workloads and placements that would arise in a merged and evolving statewide system of higher education. For many

8 As discussed above, few if any former community college faculty were located at the main campus of UAF, and few faculty at the UAF main campus teach exclusively at the lower division with a single part service assignment. No faculty at UAF’s main campus are considered to have vocational-technical assignments. There currently are no UAFT faculty on the main Fairbanks campus.
years, the University, UNAC, and UAFT to some degree have attempted to accommodate these new circumstances through a variety of placements that might have been at odds with a strict interpretation of the unit definitions, but which were known to and accepted by the University and both unions.

B. Prior mutual acceptance of placement of SFOS, DANRD, and SNRAS “extended site” faculty in UNAC.

Although UAFT generally represents faculty at extended sites (excluding “cooperative extension” faculty), there are a number of UNAC faculty in long-standing extended site placements administered from a main campus site. Although this placement would seem to be at odds with UAFT’s status as representative of “extended site” faculty, certain extended site programs bear close similarities to the Cooperative Extension programs whose faculty are explicitly placed in UNAC. For instance, Marine Advisory Program (MAP) faculty, who serve an “extension” function for the School of Fisheries and Ocean Sciences (SFOS), have remained in UNAC even though they work at sites off of the main campuses. Despite their geographical

9 Cooperative Extension faculty are located at extended sites but explicitly are placed in UNAC by the terms of both unit definitions.

10 SFOS is a UAF main campus bachelors and graduate degree granting academic program.

11 UNAC-placed faculty at “extended sites” include 31 SFOS faculty working at Fishery Industrial Technical Center (FITC) at Lena Point, Seward and Kodiak, 2 faculty working at Department of Alaska Native and Rural Development (DANRD) faculty, and 6 faculty working at the School of Natural Resources and Agricultural Sciences (SNRAS) in Palmer. UAFT has been or should have been aware of these status quo
location, MAP faculty - like cooperative extension faculty - have historically been placed in UNAC due to the nature of their job duties, relationship to main campus activities, and because they were not historically part of the community college system. In addition, three (3) UAF main campus faculty in CNSM, Business, and Engineering have predominantly lower division, bipartite teaching and service workloads, but have remained in UNAC because they are integrated fully with the other faculty in their programs and on the principal UAF campus, all of whom are in the UNAC unit. As with MAP faculty, these programs never were part of the community college system.

C. **Primary Main Campus Faculty in Vocational-Technical Programs.**

Vocational-technical programs historically fell under the purview of the community colleges and, therefore, UAFT. Since the merger in 1987, some traditionally vocational-technical programs have been integrated with BA, BS, or graduate degree programs. These programs include nursing, aviation, and human services. Pursuant to the unit definition and Article 9 of the CBA, the UAFT unit on the main campuses of UAA and UAS includes “faculty whose principal assignment is vocational-technical instruction.” Thus, the University has taken the view that, in the case of vocational-technical instruction on the main campuses, the predominant nature of the individual faculty member’s teaching assignment determines proper unit placement. Thus, a small number of faculty in “vocational-technical” programs have placements for more than a decade but until recently has not contested the unit placement of any of these faculty.
been placed in UNAC because their actual workload involves upper division coursework more consistent with the work performed by UNAC faculty. UAFT challenges the University’s placement these faculty in UNAC, believing them to be “vocational-technical” faculty on the basis of program history. There are three (3) faculty in this category at UAS and seven (7) at UAA. The University considers the job assignments of these faculty members to be much more closely aligned with work typically performed by UNAC faculty.

D. **Primary Main Campus “Bipartite” Faculty.**

UAFT has asserted that, for unit purposes, all “bipartite” main campus faculty should be represented by UAFT, with only “tripartite” faculty represented by UNAC.\(^\text{12}\) The distinction between bipartite faculty and tripartite faculty has been discussed in both the Bornstein decisions as well as the ALRA’s order in 1996, but never has been part of the unit definition for either group. Under the existing unit definitions, the only main campus bipartite faculty included in UAFT’s unit under current unit definitions are faculty teaching *exclusively* at the lower division, with a single part service assignment, as opposed to a multi-part service or research assignment.\(^\text{13}\) At UAA’s main campus there are 97 faculty placed in the UNAC unit with bipartite teaching and service workloads that include *upper division* teaching. There are 32 faculty in this

\(^{12}\) The three “parts” of faculty assignments may include teaching, university or community service, and research/creative activity.

\(^{13}\) Thus UAF main campus *research* faculty with exclusive lower division assignments are excluded from UAFT under the current definition.
category at UAS. The University has historically taken the position that these faculty are properly included in UNAC by the terms of the unit definitions, which exclude from UAFT any main campus faculty with research/creative assignments or with upper division teaching assignments. While the existence of a research component has been identified as one of the factors that tends to distinguish UNAC faculty from UAFT faculty, it is by no means the only distinguishing factor, and the absence of a research component does not, in and of itself, create a community of interest between main campus faculty teaching upper division course loads and community college faculty. Moving “bipartite” faculty to UAFT would not preserve former community college positions but rather would result in an expansion of UAFT’s unit into positions which bear no relation to UAFT’s existing community of interest, which is intended to include the faculty who traditionally were placed in community college programs. UAFT’s proposal would result in the unwarranted transfer of nearly 130 faculty and would disrupt a long-standing practice. The Agency should resist any attempt to insert a rote bipartite/tripartite basis into the unit definitions.

E. Primary Main Campus Faculty with Upper Division Assignments

As noted above, the UAFT unit definition excludes faculty who teach any upper division courses. This is consistent with UAFT’s historical role of representing community college faculty, who primarily taught in the lower divisions. However, as noted in Bornstein, there were occasional instances of community college faculty
teaching upper division classes prior to the merger of the two programs; these pre-merger assignments were effectively “grandfathered” after the merger.

With the exceptions noted above, the University has complied with unit definitions with respect to new hires, and attempted to change units when assignments of recently hired faculty have changed, or to avoid assignments which might result in a unit placement dispute. This strategy avoided litigation until 2007, but has created unnecessary costs and inefficiencies by constraining the University from flexibly using new faculty hired into UAFT at UAA and UAS. Currently, UAFT main campus faculty may not be assigned upper division teaching because UNAC insists that UAFT faculty may only teach “exclusively lower division” courses on the main campuses, while UAFT asserts that upper division assignments may be made without a change in placement because UAFT have a “right” to teach upper division courses, notwithstanding the clear language of UAFT’s unit definition. As a result, the University has felt constrained to restrict UAFT faculty members’ assignments to the lower division level even when the UAFT faculty members are fully capable of teaching upper division courses.

This causes the University to incur unnecessary costs if adjunct faculty must be hired to teach needed upper division courses or UNAC faculty members must be paid additional amounts for overload teaching assignments. The University has thus found itself in a “no win” situation when faced with a need to change UAFT faculty
workloads after hire/unit placement. When confronted with upcoming needed program or workload changes to a formerly “exclusively lower division” teaching assignment of a faculty member, the University has chosen to replace some departing UAFT faculty members on the main campuses with UNAC faculty members when the position turns over. This is not because the University prefers one union over the other, but because the University has greater flexibility in the teaching assignments for UNAC faculty.\textsuperscript{14} However, even the conservative approach of changing unit assignments when a position turns over upon departure of an existing UAFT faculty member has resulted in challenges.

The Dan Henry grievance, filed by UAFT in 2003, provides an example of this issue. In that grievance, UAFT insisted that main campus academic faculty in UAFT be permitted to remain in its unit even when receiving upper division assignments, and that new unit members on main campuses had a contractual right to teach upper division courses without changing their unit placement.\textsuperscript{15} Although this grievance was not pursued by UAFT through arbitration, UAFT has not indicated that it has changed

\textsuperscript{14} Over the last 10 years, and as of March 2009, the ACCFT bargaining unit has increased from 245 members to 339, a 38% increase, and the United Academics unit has gone from 642 to 948, a 47% increase.

\textsuperscript{15} As noted above, this was the practice prior to the advent of UNAC. However, the University and UAFT bargained language permitting this practice out of the UAFT CBA in 1997, after the advent of UNAC. UAFT filed a grievance when Professor Henry, a term faculty member in UAFT, voluntarily accepted a new UNAC position when his term UAFT position expired. The new position included upper division course instruction consistent with UNAC unit placement.
its position regarding issues raised in the Dan Henry grievance. UAFT also disputed
the University’s discretion to make workload changes necessitating unit changes when
there was turnover in a position formerly occupied by a UAFT faculty member. UNAC
in turn disputed the retention in UAFT of a limited number of UAA main campus
faculty teaching upper division.

From the University’s standpoint, the bottom line is that it needs the flexibility to
assign faculty to teach courses they are qualified to teach without running the gauntlet
of unfair labor practice charges or grievances. The University proposes alternative
resolutions to this dilemma below.

F. Settlement attempts have been ineffectual.

historically the unit placement of faculty teaching upper division level courses
on the main campus of UAA, and related UAFT challenges to the University’s
management rights to determine workload and proper unit placement based on
assignment at the time of hire or at the time of a later change in assignment, have been
the main disputes among the parties.16 More recently, issues also have arisen about
what constitutes a principal assignment of vocational-technical instruction for purposes
of unit placement. Further, although historically UAFT has accepted the placement of
certain UAF extended site and main campus faculty in UNAC, UAFT now seems to be
challenging that practice. Similarly, while UAFT extended site faculty have historically

16 See August 12, 2004. Letter from Beth Behner to both unions.
received upper division course assignments based on University need and the faculty member’s qualifications, UNAC recently has raised questions as to whether extended site faculty should be permitted to teach upper division courses. These disputes need resolution.

The University has long urged UNAC and UAFT to resolve these disputes collaboratively. In November 2006 UNAC reported to the University that its discussions with UAFT about resolving the unit definition dispute had failed. UNAC focused on a significant number of UAFT faculty at UAA who teach one or two upper division, academic classes at UAA each year and who have been retained in UAFT. UNAC requested that the University comply with the unit definition in its CBA and assign all main campus faculty teaching upper division courses to UNAC. UNAC subsequently asked the University to hold the November 2006 request in abeyance while it engaged in further discussions with UAFT in an effort to resolve the dispute.

On October 10, 2007 UNAC reported that its discussions about unit definition with UAFT had once again broken down, and UNAC reactivated its November 2006 request that its unit definition be enforced by the University. Following the October 10 request by UNAC, the University proposed a solution for the unit definition dispute. In its October 18, 2007, letter to both unions, the University observed that if an agreement could not be reached, it would be appropriate to jointly submit the unit definition dispute to the ALRA seeking unit clarification.
Immediately thereafter, UAFT filed its first ULP regarding faculty placement. UAFT’s second ULP asserts that an extended site unit member was improperly denied an upper division assignment on the UAA main campus. The University responded to the ULP by submitting a unit clarification petition, which was joined in by UNAC, as the appropriate means to resolve the dispute between the University and the two faculty unions, and this proceeding has ensued.

Subsequently the university has made several additional written resolution proposals to both unions. Even with AFT mediation efforts, neither union was able to suggest or agree upon a workable compromise. Only UAFT responded with a written, bilateral proposal to the University. That proposal suggested fundamental changes, including allowing all UAFT unit members to teach upper division on main campuses.

Recently, UNAC and UAFT engaged in mediation efforts in Seattle. If mediation efforts are successful as between the two unions, the University would entertain any proposed settlement and determine whether or not the proposal could represent a workable compromise and meet the University’s administrative needs.

II. STATEMENT OF THE UNIVERSITY OF ALASKA’S POSITION IN THE DISPUTE

The current unit definitions of UAFT and UNAC were established in 1992 and 1996 respectively. The unit definitions require clarification in the light of changed circumstances on the main campuses of UAA and UAS, and the need to accommodate
historically-permitted practices and exceptions at UAF. The units should be clarified to resolve the ongoing and intractable disputes that have interfered with the ability of the University to serve the public interest, as well as the rights under PERA of labor organizations and employees to organize into appropriate units.

This dispute is complex, with each of the parties having its own view of what is in dispute and how such disputes should be resolved. Moreover, UNAC and UAFT seemingly have changed their positions over time. The multiplicity and the fundamental nature of the disputes indicate that clarification is necessary and appropriate. Stated simply, and from the University’s perspective, the University is seeking:

A. Clarification regarding the proper unit placement of faculty on the main campuses of UAA and UAS;

B. Confirmation that essentially all UAF main campus faculty have been and should remain placed in UNAC;

C. Confirmation that faculty in the SFOS, DANRD, and SNRAS programs properly have been, and should remain, placed in UNAC; and

D. Confirmation that the appropriate unit placement of other former community college faculty at extended sites and at Prince William Sound Community
College\textsuperscript{17} historically has been and should remain in UAFT.

\section*{A. Faculty On The Main Campuses of UAA and UAS}

As was discussed in more detail above, a portion of former community college faculty were merged onto the main campuses of UAA and UAS in 1987. The question before the ALRA in 1996, when the UNAC unit was established as a separate unit from UAFT, was whether all former community college faculty, including faculty who remained at PWSCC and the other former community campuses, retained a community of interest separate from the proposed United Academics unit. The questions presented by the three parties to the current dispute in some respects are more limited. The University does not question that there continues to exist a community of interest for UAFT to represent. However, there is a question as to the correct unit placement of faculty on the main campuses, and whether, \textit{on those campuses}, the two units remain distinct.

UAFT likely will argue that its main campus academic faculty at UAA and UAS may teach upper division without being transferred to UNAC; that main campus faculty in the UNAC unit who have bipartite workloads, i.e., who teach a mixture of upper and lower division with a service assignment but no research component, should be placed in UAFT; and that all certificate and associates degree program faculty, and all faculty of former vocational-technical programs, have “principal assignments” of vocational-technical faculty.

\textsuperscript{17} One area that appears not to be in dispute is UAFT’s representation of community college faculty, now consisting of faculty at Prince William Sound Community College.
technical instruction and thus are in UAFT’s unit, regardless of upper division teaching assignments or integration into academic programs. UAFT’s position completely disregards the existing unit definitions and current circumstances, and would result in dramatic changes in unit placement. The existence of a dispute over the boundaries of the two units does not warrant the wholesale revision of unit definitions urged by UAFT. Not surprisingly, UNAC takes the opposite position from UAFT on these issues.

The main campus unit definitions currently distinguish between units on the basis of upper and lower division teaching, bipartite teaching and service (versus other bipartite or tripartite assignments), and principal assignments in vocational-technical instruction. Thus, when the issues raised are compared to the current unit definitions, it is clear that UAFT itself challenges the fundamental nature of the unit distinctions at the main campuses of UAA and UAS.

The University believes that the differences between these two faculty groups at the UAA and UAS main campuses have blurred or disappeared. The evidence will demonstrate that: (1) a number of UAFT faculty at the UAA main campus teach upper division classes, and that a number of additional UAFT faculty could teach such classes but for the existence of this unit dispute; (2) significant numbers of UNAC unit members at the UAA main campus have bipartite assignments with mixed upper and lower teaching components; (3) main campus faculty members themselves perceive
little if any functional difference between the work performed by the UNAC and UAFT units; and (4) there are few if any fundamental differences between certain main campus faculty who teach in programs formerly considered vocational-technical and other main campus faculty teaching in related academic programs.

Prior to 1992 the ACCFT unit definition did not contain the term vocational-technical instruction because unit membership was place-based. At the time of the 1987 merger everyone knew who the former community college vocational-technical faculty were; there was no need to elaborate on what was meant by “vocational-technical” faculty. Over the ensuing two decades, however, the ability to identify vocational-technical faculty by reference to history has diminished as new faculty were hired. In addition, vocational-technical programs have evolved. Certain “vocational-technical” programs that formerly were purely job preparation certificate or AA/AS programs, and which, significantly, required a differently credentialed teacher, now have been integrated with BA, BS, or graduate degree programs. They may include content that requires the same credentials, and involves the same type of academic presentation that is routinely required of non-vocational-technical faculty. These programs include nursing, aviation, and human services. A number of the faculty teaching in those programs have credentials more closely aligned with UNAC faculty, and teach upper level classes that would be typical of UNAC faculty. In these cases, the fact that a faculty member teaches in a “vocational-technical” program is meaningful than the type
of work actually performed. It is the case that a small number of faculty at UAA teach in programs that are not part of traditional academic programs. These include programs such as developmental education, adult basic education and auto-diesel technology (ADT). However, with the exception of ADT, their qualifications and the nature of the teaching work is similar to that of UNAC faculty.

Other distinctions between UAFT and UNAC faculty at UAA and UAS main campuses have eroded as well. At UAA and UAS, main campus faculty are well integrated regardless of their placement in UNAC or UAFT. UNAC and UAFT faculty have similar terminal degree requirements and evaluation standards. Although different peer committees are used in the initial phase of evaluation processes, subsequent phases and standards are identical. In some cases faculty assigned to the two units work in the same departments, teach identical classes and perform identical duties, yet are subject to different collective bargaining agreements. UAA bases compensation for newly hired UNAC unit members on the OSU\textsuperscript{18} salary study, but with new UAFT members prepares salary work-ups starting with the College and University Professional Association (CUPA) Salary Survey of two year community colleges and considers OSU. UAS bases UAFT salaries on CUPA and UNAC salaries on OSU. At UAS there are only three UAFT faculty on the main campus. Though their compensation is based on a different salary survey (CUPA) than the UNAC faculty (OSU), that is the result of

\textsuperscript{18}Oklahoma State University salary survey of faculty at four year land grant institutions.
placement in UAFT, and does not necessarily reflect different markets or qualifications.

For the UAFT and UNAC faculty at the main campuses of UAA and UAS, placement based solely on the upper division/lower division distinction has become an increasingly clumsy and inaccurate means of identifying a community of interest. To begin with, there is the fact that while community college faculty generally were limited to lower division coursework, faculty on the main campuses always taught a mix of upper division and lower division courses, and, in some cases (such as new faculty who might take some time to grow into teaching upper division courses) might at times teach primarily lower division courses. Thus, while teaching upper division courses is largely inconsistent with UAFT’s traditional role as representing community college faculty, teaching lower division courses is not inconsistent with UNAC’s role as representing faculty on the main administrative units.

The faculty members themselves do not appear to recognize any differences based on this distinction, beyond the awareness that they were hired into different units, have different initial peer committees for evaluation, and different union affiliations. The University needs the ability to freely assign faculty to workloads and teaching assignments for which they are eligible and qualified. The University’s goal is to meet student and program needs without being hampered by stilted and outdated unit definitions (or by unreasonable interpretations of such definitions). As programs continue to evolve, the University may not have sufficient exclusively lower division
workloads for tenured faculty in the UAFT unit. Without a redefined unit, this would result in a misplaced and inefficient use of resources until those UAFT faculty members who are inefficiently assigned can be replaced with UNAC faculty who can teach both upper and lower division courses.

At a minimum, the University seeks clarification that would permit routine workload and unit assignment decisions without continual challenge. Solutions to disputes on the UAA and UAS main campuses could potentially include:

(1) enforcing the existing unit definitions, and

(a) clarifying that when the University hires UAA and UAS main campus faculty who teach, or reasonably are anticipated to teach, upper division coursework, those faculty properly are assigned to UNAC as opposed to UAFT;

(b) clarifying that the University may change workloads to meet program needs and make any resulting changes in unit assignments;

(c) clarifying that the UAFT unit does not include any faculty on the main campuses who teach upper division classes, and clarifying the nature of the main campus vocational-technical instruction exclusion from the United Academics unit so that it does not artificially divide academic work, e.g., treat as vocational-technical those faculty whose workload involves only job preparation instruction that is not integrated into an
academic program that grants a bachelors or other advanced degree. For example, faculty teaching as part of an associates degree program that is fully integrated into an academic program, such as nursing, would NOT be considered vocational-technical faculty; or

(2) finding that there is a community of interest between faculty on the main campuses of UAA and UAS and merging the two units.

Each of these possible solutions carries advantages and drawbacks from an administrative perspective.

B. **UAF Main Campus Faculty.**

Because of the separate existence of the CRCD campus, which was in many ways the successor to the community college program, the unit issues at the UAF main campus are significantly different from those at UAA and UAS. Over the years UAFT has had virtually no presence on the main UAF campus. Recently UAFT has claimed that its unit properly contains academic faculty on the main campus of UAF who have bipartite teaching and research workloads, as well as a few UAF main campus faculty in the College of Natural Sciences and Mathematics (CNSM), School of Business, and School of Engineering who have lower division, bipartite (teaching and service) workloads. These programs never were part of the community college program and these UAF main campus faculty have never been represented by ACCFT. They have remained in UNAC since 1996 because they share a community of interest with all
other faculty in the respective programs and on the entire UAF campus, who also are in UNAC. The University seeks confirmation that essentially all UAF main campus faculty properly have been, and should remain, placed in UNAC.

C. **UAF Faculty at Extended Sites.**

A handful of UAF faculty are based at extended sites, but historically are part of and report through main campus academic programs rather than extended site campus directors. These faculty have been and should remain placed in UNAC. Marine Advisory Program (MAP) faculty perform an “extension” function for the UAF main campus School of Fisheries and Ocean Sciences (SFOS), but work at extended sites; like main campus SFOS faculty, the MAP faculty properly are placed in UNAC. Similarly situated faculty include SFOS Fisheries Industry Technology faculty, faculty at the SFOS Juneau Center at Lena Point; UAF CRCD’s Department of Alaska Native and Rural Development (DANRD) faculty, and UAF’s School of Natural Resources and Agricultural Sciences (SNRAS) faculty in Palmer.

None of these groups are former community college or vocational-technical faculty. They instead play integral roles in implementing extension, research, and academic missions of main campus programs at remote sites-work typically considered

19 A small number of developmental education faculty located on the UAF main campus and who have multi-part service and lower division teaching workloads have remained in UAFT, and should be treated as an exclusion from the United Academics unit.

20 Note that similarly situated Cooperative Extension faculty who are based at extended sites are placed in UNAC by the terms of both unit definitions.
consistent with a UNAC placement. UAFT has or should have been aware of these placements for more than a decade, and until recently has not contested the unit placement of any of these faculty. There is no reason to change this practice.

Extended site faculty who are part of main campus academic or extension programs properly should be placed in the UNAC unit. They have never been part of the community college unit. Instead, they are integrated into main campus and state-wide programs, and share qualifications, compensation and evaluation standards and processes with their main campus colleagues with whom they share a community of interest.

D. Former Community College Faculty at Extended Sites

UNAC recently has suggested that faculty at extended sites who teach upper division courses should be part of its unit. This is not consistent with the existing unit definition or historical practice. While distinctions between extended site and main campus faculty at UAA and UAS are blurring,\(^21\) that is not the case with UAF and its extended sites. In addition, all extended site faculty report to and are supervised by campus directors at their extended site. The University recognizes that a time may come when community of interest factors indicate that separate faculty bargaining units for extended site and main campus faculty are no longer warranted. However, based on current factors of separate recruitment, compensation, evaluation practices, location-

\(^{21}\) It is the case at UAA and UAS, that these faculty are integrated into main campus departments, and are recruited and evaluated using the same standards.
based working conditions/collieal relations and historical practices, the University
believes it is appropriate for former community college faculty at extended sites and at
Prince William Sound Community College to remain in the UAFT unit.

III. LIST OF FACTUAL ISSUES IN DISPUTE

The University sets forth the following statement of factual issues in dispute.

1. Is there a single community of interest on the UAA and UAS campuses or
are there two separate communities of interest which warrant the existence of separate
bargaining units on those campuses? If there are two communities of interest, what
distinguishes them?

2. Is there a single community of interest on the UAF main campus? If
there are two communities of interest, how are they to be divided? If there are two
communities of interest, what distinguishes them?

3. Do faculty at extended sites and those at the main campuses have a single
or separate community of interest? If there are two communities of interest, what
distinguishes them?

IV. LEGAL ISSUES IN DISPUTE

The University of Alaska sets forth the following concise statement of the legal
issues in this matter. Principally, these issues are:

A. The Unit Clarification Petition is not untimely and there is no “contract
bar” to these proceedings.

UAFT is expected to argue that unit clarification is barred on the grounds of
timeliness, and/or because it was filed shortly after the parties agreed in a new CBA to a
description of the UAFT bargaining unit contrary to the description sought in the
Petition. This issue has been briefed by the University in its Brief on Pending Matters
Related to the Unit Clarification Proceeding, dated February 23, 2009. There is no
merit to UAFT’s argument, which is directly contrary to its prior agreement with the
University that entry into a new collective bargaining agreement did not preclude these
issues from being presented to the ALRA.

The Petition for Unit Clarification was filed by the University on August 14,
2008. The Petition replaced an earlier Petition on the same subject matter which had
been filed by the University on November 2, 2007. The earlier Petition (08-1523UC),
which also sought clarification of the definitions of the UAFT and UNAC bargaining
units, was pending when the new collective bargaining agreement was entered into with
UAFT in 2008.

When the University and UAFT entered into the new CBA in 2008, they
specifically acknowledged the Petition for Unit Clarification and the ULP’s pending
before the ALRA, and they agreed in writing (see Exhibit A) that neither party waived
their respective positions before the ALRA by entering into the new CBA.

It is thus incorrect for UAFT to argue that the Petition for Unit Clarification is
barred by the new CBA. The parties specifically agreed that the new CBA is not a bar
to having the ALRA consider and decide the unit clarification issue.
UAFT also argues that the new CBA contains a description of the bargaining unit that is contrary to the scope of clarifications sought in the Petition. However, Article 9.1 -- “Recognition” of UAFT’s CBA contains the same language that it has contained since 2000. At that time the parties changed the criteria for unit membership from 60 percent of a full time workload assignment to “more than 50% of a full time workload assignment.” This illustrates that both parties are aware of how to make changes to the unit definition. In any event, and as discussed previously, the parties specifically agreed that maintaining the status quo on disputed CBA provisions so as to allow an agreement on a successor CBA while the dispute was resolved by the ALRA would not bar these proceedings. UAFT’s argument to the contrary is in bad faith.

UAFT further argues that Article 5.1 – “Professional Assignment,” expands its unit definition and trumps the UNAC unit definition. That position ignores several sections of CBA language, including the language of Article 5.1 itself. Since it was amended in the 1997 CBA, Article 5.1 no longer addresses unit placement. Article 5.1 is a workload provision and contains permissive language requiring the agreement of the University for upper division assignments. Such permissive language is inconsistent with typical unit definition language, and in any event it would not by its terms require the University to do anything. There is nothing in the UAFT CBA that precludes the clarification sought in the Petition.
Finally, this Agency’s decision in *Alaska Vocational Technical Education Center Teachers’ Association v. State of Alaska*, ("AVTECA"), Decision and Order No. 262, dated February 19, 2003, specifically rejects the notion of a contract bar in the circumstances presented here. In *AVTECA*, the ALRA noted that the Agency has accepted and processed hundreds of unit clarification petitions that have been filed while contracts were in effect. The ALRA noted that there is no contract bar to unit clarification petitions.

**B. The University does not seek to impermissibly reclassify members from one unit to the other.**

UAFT may argue that the Petition for Unit Clarification should be dismissed because it seeks to clarify unit placement of faculty positions that have historically been excluded from a particular bargaining unit. Again, this issue was briefed by the University in its February 23, 2009 brief, and there is no merit to UAFT’s argument on this issue.

The University’s goal in its Petition is not to move employees to a unit from which they have historically been excluded. To the contrary, it is UAFT which seeks to upset the status quo. Main campus academic faculty have not historically been included in UAFT. The University’s goal is to have the ALRA resolve a dispute between two bargaining units about the parameters of their respective unit definitions. The unit clarification proceeding is an appropriate vehicle for the resolution of such a dispute.
In Northwest Arctic Education Assoc., NEA/Alaska v. Northwest Arctic Borough School District (“NAEA”), Decision and Order No. 162, dated June 30, 1993, the ALRA held that a bargaining unit may be clarified when there is confusion over the contours of a unit or the parties dispute whether a particular position belongs in the unit. This exactly describes the situation in the present case. The parties are involved in a long-running dispute regarding the contours of the two units and about where particular positions belong. It is critical that this dispute be resolved in a forum, like a unit clarification proceeding, where all interested parties can be present and participate in presenting their differing views. There is no effective alternative since grievance arbitrations would not involve all necessary parties and would expose the University to multiple proceedings with potentially inconsistent results.

C. “Changed circumstances” warrant a unit clarification.

UAFT is expected to argue that the Petition for Unit Clarification should be dismissed because there are no “changed circumstances” that justify the Petition. UAFT’s argument is incorrect. 8 AAC 97.050(a)(1) provides that a public employer may file a petition seeking clarification of an existing bargaining unit, where no question concerning representation exists, in order to resolve a question of unit composition raised by changed circumstances since certification.

In the present case there is no question raised concerning representation, but questions about the unit composition of both UAFT and UNAC have been raised by the
two bargaining units. A dispute has arisen between the two units as to the proper placement of faculty members. Such circumstances warrant a unit clarification proceeding under the regulation.

In *Lower Kuskokwim Education Association, NEA/Alaska v. Lower Kuskokwim School District* (“LKEA”), Decision and Order No. 172, dated March 2, 1994, the ALRA noted that the unit clarification regulation referenced a question of unit composition raised by changed circumstances since certification. In *LKEA* there were no changed circumstances that justified adding the position of coordinator of library/media services to the certified teachers’ bargaining unit. Consequently, the Petition for Unit Clarification was dismissed.

The situation in the present case is quite different from that in *LKEA*. In this case, following the certification of UAFT, a second bargaining unit was certified at the University by the ALRA, and the second unit was created as a mirror-image of the first unit. Further, following the certification of the two bargaining units a dispute has arisen as to the interpretation of the definitions of the two units. Further, vocational programs have evolved, main campus UAF faculty have continued to perform or initiated work at extended sites that was not anticipated when unit definitions were developed, faculty at UAA and UAS have been further integrated, and the unions, particularly UAFT, now obviously see their units differently. As Arbitrator Bornstein predicted when he noted that the merger of the programs “augured significant integration in the following years”
the traditional boundaries between UNAC and UAFT have blurred, and certain assumptions underlying the original unit definitions are no longer correct. This presents a “changed circumstance” and is exactly the sort of dispute that is best handled in a unit clarification proceeding.

Indeed, Hearing Officer Jean Ward reviewed the Petition for Unit Clarification for sufficiency and concluded that the Petition satisfied the requirements set forth in 8 AAC 97.050. See letter from Jean Ward, dated September 23, 2008, attached as Exhibit B. The current dispute between the two units as to the composition of the bargaining units thus presents “changed circumstances” which make a unit clarification proceeding appropriate.

V. PRELIMINARY WITNESS LIST

The Preliminary Witness List of the University of Alaska includes the following individuals:

1. Beth Behner
   Chief Human Resources Officer
   University of Alaska, Fairbanks
   Fairbanks, AK

   Ms. Behner will testify about the dispute between UAFT and UNAC as to the parameters of the two bargaining units and as to the placement of faculty members. She will testify about the provisions of the two CBAs as well as about the University’s efforts to resolve the dispute between the units. Ms. Behner is expected to testify in person.
2. Michael Driscoll, Ph.D.
   Provost
   University of Alaska, Anchorage
   Anchorage, AK

   Dr. Driscoll will testify about faculty positions at UAA, and about the various communities of interest and faculty placements at UAA. Dr. Driscoll is expected to testify in person.

3. Susan Henrichs, Ph.D.
   Provost
   University of Alaska, Fairbanks
   Fairbanks, AK

   Dr. Henrichs will testify about faculty positions at UAF, and about the various communities of interest and faculty placements at UAF. Dr. Henrichs is expected to testify in person.

4. Roberta Stell, Ph.D.
   Provost
   University of Alaska, Southeast
   Juneau, AK

   Dr. Stell will testify about faculty positions at UAS, and about the various communities of interest and faculty placements at UAS. Dr. Stell is expected to testify either in person or telephonically depending on the timing of the hearing.

5. Jackie Pflaum, Ph.D.
   Associate Vice Provost for Health Issues
   University of Alaska Anchorage
Dr. Pflaum is expected to testify about faculty placements and the communities of interest in various University programs. Dr. Pflaum is expected to testify telephonically.

6. John Bhend  
   Senior Human Resources Consultant  
   University of Alaska, Anchorage  

Mr. Bhend is expected to testify about Communities of interest at UAA. Mr. Bhend is expected to testify in person.

7. Barbara Tullis  
   Former Faculty Services Manager  
   University of Alaska Anchorage  

Ms. Tullis is expected to testify about faculty placements and the communities of interest in various University programs. Ms. Tullis is expected to testify telephonically.

8. Rhonda Ooms  
   Coordinator, Labor and Employee Relations  
   University of Alaska, Fairbanks  

Ms. Ooms is expected to testify about faculty placements and the communities of interest in various University programs. Ms. Ooms is expected to testify telephonically.

9. Faculty members from UAA and UAS to discuss community of interest to be identified later.

10. Rebuttal witnesses if necessary to address issues raised by other parties that warrant a University response.

11. Witnesses listed on other parties witness lists.
VI. REMEDY SOUGHT

The University of Alaska seeks an order from the Agency that clarifies the respective bargaining unit definitions of UAFT and UNAC so that the placement of faculty members is clear to all parties and addresses the specific needs of the University. Such an order would ideally address and clarify the following, as is more fully described in Part II of this brief:

A. Clarification regarding the proper unit placement of faculty on the main campuses of UAA and UAS;

B. Confirmation that essentially all UAF main campus faculty have been and should remain placed in UNAC;

C. Confirmation that faculty in the SFOS, DANRD, and SNRAS programs properly have been, and should remain, placed in UNAC; and

D. Confirmation that the appropriate unit placement of other former community college faculty at extended sites and at Prince William Sound Community College historically has been and should remain in UAFT.

VII. TIME NEEDED BY UNIVERSITY OF ALASKA TO PRESENT ITS CASE

The University estimates that its case will require approximately three to four days to present.

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One area that appears not to be in dispute is UAFT’s representation of community college faculty, now consisting of faculty at Prince William Sound Community College.
Respectfully submitted this 12th day of March 2010.

ASHBURN & MASON, P.C.
Attorneys for Petitioner, University of Alaska

DATED:_________________  By:_________________________________
Mark E. Ashburn
Alaska Bar No. 7405017
Thomas V. Wang, Jr.
Alaska Bar No. 9806035

CERTIFICATE OF SERVICE
I certify that a copy of the foregoing was ☐ hand delivered ☐ faxed ☐ mailed on the _____ day of March, 2010 to:

Alaska Labor Relations Agency
1016 West 6th Avenue, Suite 403
Anchorage, AK 99501-1963
Fax No. 907-269-4898
(Original and 4 copies to follow)

Clifford Freed
Frank Freed Subit & Thomas, LLP
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ASHBURN & MASON
By:_____________________
Jennifer Witaschek