May 4, 2011

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

Dear Ms. Ward,

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

Legal Standard

ASEA-AFSCME claims that the University violates AS 23.40.11(a)(1). To prove a violation of that statute, it must prove three things.

First, it must show that the University’s conduct “reasonably tends to interfere with the free exercise of employees’ rights.” 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)).

Second, the Alaska Supreme Court has held that “[e]ven 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)).

Third, ASEA-AFSCME must “demonstrate...some anti-union motive on the part of the University.” Id.

Thus, ASEA-AFSCME has to show that the University’s behavior interferes with employees’ rights, does not advance a substantial and legitimate University interest, and is based on anti-union motives. It is important to note as a facial issue that ASEA-AFSCME’s complaint fails to even allege anti-union motives and makes no case for demonstrating them. Additionally, the Alaska Administrative Code mandates that an unfair labor practice complaint must contain...the date or dates of the alleged violation, and if possible, the name, address, and telephone and facsimile machine numbers of each person who is alleged to have committed the violation. 8 AAC 97.220(b)(2) (emphasis
added). The ALRA's own unfair labor practice form states that the union must provide this information. (http://labor.state.ak.us/labor/forms/ULP03brochure.pdf). For those two reasons, this ULP should be dismissed out of hand, as ASEA-AFSCME's decision not to include this required information—names, dates—makes fully replying to their accusations impossible.

ASEA-AFSCME's Allegations

ASEA-AFSCME numbered its allegations from 6-20, and in the interest of clarity the University will respond using that same numbering system. The University has provided the text, in italics, of ASEA-AFSCME's complaints as well.

6. Section 110 (unfair labor practices) of PERA prohibits Respondent UA or its agents from engaging in activities that interfere with, restrain, or coerce an employee in the exercise of the employee's rights guaranteed in AS 23.40.080.

The University agrees with this allegation.

7. ASEA has requested UA to provide the email addresses of the employees who were identified by UA as being part of the nonsupervisory bargaining unit that are under direction and control of Respondent UA. Respondent denied providing this list in a usable format.

The document ASEA-AFSCME requested does not exist.

The University notified ASEA-AFSCME that the document it requested did not exist on January 19, 2011. See University Exhibit A/ASEA-AFSCME Exhibit 2, January 19, 2011 Letter from Beth Behner to Jim Duncan.

Article VII, section 2 of the Alaska Constitution creates the University of Alaska. Article VII, section 3 mandates that the University be governed by a board of regents which shall "formulate policy and appoint the president of the university." Thus, the University is legally bound by Board of Regents Policy. Pursuant to Board of Regents Policy P06.02.060 (a), "The University is not required to compile or summarize its public records or to create new records in response to a request for public records." See University Exhibit B, Board of Regents Policy P06.02.060 (emphasis added).

Even though the specific email list ASEA-AFSCME requested does not exist, the University bent over backwards to help ASEA-AFSCME and provided a list that actually exceeded their request. See University Exhibit A. The provided list included all University employees, and included their a) name, b) classification, c) bargaining unit designation, d) full or part time status, e) pay grade, f) pay step, g) date of hire, h) department or division, i) city, and j) major administrative unit (MAU). That information was gathered using proprietary software, which Board of Regents' Policy exempts from public records requests. P06.02.020(A). Thus, the University did not provide the exact document ASEA-AFSCME requested because it does not exist, and the University is under no obligation to create documents; however, the University provided all of the information ASEA-AFSCME sought. This allegation is moot.
8. Respondent UA has interposed its HR office as a screening agent for employees who have questions about ASEA-AFSCME.

ASEA-AFSCME has refused to speak directly with UA employees.

University staff gave ASEA-AFSCME the opportunity to speak directly to them, and the University did nothing to prohibit that communication. The University's Exhibit C and D speak for themselves—University staff directly asked ASEA-AFSCME multiple times for their position on issues but received only silence in return. See University Exhibit C and D, October 1, 2010 email from Statewide Administrative Assembly President Lisa Sporleder to ASEA-AFSCME representative Skye McRoberts; October 22, 2010 Email to UA staff from Staff Administrative Assembly president Lisa Sporleder. In these examples, University staff gave ASEA-AFSCME an opportunity to speak to them and ASEA-AFSCME declined, so their current allegation that the University is preventing such contact is somewhat mind-boggling. ASEA-AFSCME's responsiveness to direct University employee requests has been poor. See University Exhibit E, September 7, 2010 Email from UAA Classified Council President Megan Carlson to Jenny Grieve regarding difficulties getting a response from ASEA-AFSCME.

ASEA-AFSCME has taken some University-afforded opportunities to speak with staff; various campuses have hosted forums for both ASEA-AFSCME and the University. ASEA-AFSCME and the University were provided equal access to employees' questions before these forums. Afterwards, the University posted both ASEA-AFSCME and the University's answers to employees' questions online. Those answers are available as University Exhibit F, Statewide Administrative Alliance Brown Bag Forum, September 3, 2010. As one will note by looking at Exhibit F, both ASEA-AFSCME and the University's answers to questions are presented in an even-handed format.

The University of Alaska Statewide Office of Labor and Employee Relations is not standing between University staff and ASEA-AFSCME, it is fulfilling its responsibilities as dictated by Board of Regents' Policy.

Board of Regents Policy P02.02.040 establishes the position of Chief Human Resources Officer. That position is held by Chief Human Resources Officer Beth E. Behner. Pursuant to P02.02.040(A), Ms. Behner and her staff are charged with "administer[ing] the university human resource program including employee relations, [and] labor-management relations..." (emphasis added). Accordingly, it is legally appropriate under Board of Regents' policy for Ms. Behner's office to be the University's point of contact regarding labor issues.

One of the important roles played by the University's Labor Relations department is to provide and clarify facts pertaining to University employment. For example, at the public question and answer session on September 3, 2010, ASEA-AFSCME Business Manager Jim Duncan told UA employees that ASEA-AFSCME would try to "negotiate reduced tuition for family to attend UA." Video of this statement is available at http://vimeo.com/14835018. In fact, the University already provides our employees with a full tuition waiver. In that setting, it was appropriate for Ms. Behner to be "interposed" for the purpose of correcting misinformation provided by ASEA-AFSCME.

Similarly, in the spring of 2010, ASEA-AFSCME published several "wage comparisons" that used out of date and inaccurate data. See University Exhibit G, "ASEA for UA, Comparison: UA Staff
Wages vs. ASEA Negotiated Wages for State Employees”. Because ASEA-AFSCME’s published comparisons with inaccurate numbers, Ms. Behner sent a letter to employees to clear the records. See University Exhibit H, May 18, 2010 Letter from Beth E. Behner to University employees. UA Labor Relations also posted answers to the many employee questions that flowed in as a result of ASEA-AFSCME’s misinformation. See University Exhibit I, April 27, 2010 Frequently Asked Questions Regarding Union Campaign Efforts at the University of Alaska. When any group posts misleading or inaccurate information about the University, the University will step forward and correct the record.

This allegation fails to provide event dates and the names of persons involved. As such, it violates 8 AAC 97.220(b)(2)’s requirements, and the University should be provided with an extended opportunity to respond to it after receiving this information.

9. Respondent UA publishes questions and answers without notifying Petitioner of the questions, identifying the person posing the question, or allowing ASEA an equal opportunity to respond to the question.

University staff provided ASEA-AFSCME with a list of questions and an opportunity to respond directly—ASEA-AFSCME refused to participate.

First, the University has no legal duty, and ASEA-AFSCME fails to cite any, to notify anyone before we speak with employees. But as University Exhibit C and D clearly show, ASEA-AFSCME has been notified about questions and was given an equal opportunity to respond to employees’ questions and refused to participate. ASEA-AFSCME’s failure to take advantage of opportunities to speak with employees cannot be foisted onto the University now. Moreover, ASEA-AFSCME has access to UA employees’ email accounts and sent out mass emails and mailings without University intervention. And the University has no intention of inhibiting ASEA-AFSCME’s ability to send emails to employees.

Moreover, and as was discussed above, ASEA-AFSCME was given the opportunity to speak at UAF in a staff-sponsored forum. They were provided with staff questions before the forum, and their answers were provided to all staff afterwards. See University Exhibit F. So the claim that “Respondent UA publishes questions and answers without notifying Petitioner of the questions, identifying the person posing the question, or allowing ASEA-AFSCME an equal opportunity to respond to the questions” is baseless.

ASEA-AFSCME has its own website where it posts information; the University has no ability to post information there. The University email system and web pages are University property and not public forums; we do not grant outside entities access to institutional web pages. The United States Supreme Court has consistently upheld employers’ rights to limit union access to private property; provided organizers have a legitimate method of contacting employees outside of that property. Lechmere, Inc. v. NLRB, 502 U.S. 527 (1992); Labor Board v. Babcock & Wilcox Co., 351 U.S. 105 (1956). The numerous and varied examples of ASEA-AFSCME’s ability to contact University employees during their 2010 and 2011 campaigns illustrates clearly that they have effective means of communicating with University staff.
10. Respondent UA allows the anonymous questions to be posed so as to negatively affect union organizing efforts.

ASEA-AFSCME cannot have it both ways—they claim that the University should not publish staff names in allegation 16 and claim that the University should publish them in allegation 10.

In allegation 16 of this ULP, the union ominously (and baselessly) claims that by asking for a list of the names of employees who do not want to be contacted by ASEA-AFSCME, the University “discourages employees from signing cards as they might be on the employer’s ‘other’ list.” Yet here, in allegation 10, the union claims that by allowing employees to ask organizing questions anonymously the University “negatively affect[s] union organizing efforts.” Thus, ASEA-AFSCME claims that sometimes it is good to know employees’ names, but other times it is bad. Based on the reasoning in allegation 16, a reasonable person would assume that if the University demanded that employees first declare their names before criticizing their employer, using names would have a chilling effect on participation.

FAQ’s are an important part of University culture and communication. Each campus uses them to answer questions regarding a wide range of subjects that affect employees, from power outages to sports information to policy changes. They are useful because they allow individual employees to anonymously critique their employer or to bring up issues that are troubling them. Forcing employees to submit their names along with questions would have a chilling effect on the use of this important tool.

No University employee puts their employment at risk by exercising their right to free speech, and the University does not want any employee to feel that they might. Therefore, the University allows employees to criticize both unions and the University freely and anonymously.

11. For instance, one question-and-answer “FAQ” effectively isolates individuals wearing a union button to work from “his” co-workers. (Ex. 3).

This allegation is nonsensical, as ASEA-AFSCME’s Exhibit 3 makes no mention of buttons whatsoever.

The University points to University Exhibit J/ASEA-AFSCME Exhibit 4, “Frequently Asked Questions, Union and Employee Organizing Activities On and Off Campus.” First, one will note by reading this page that there is an equal number of what could be perceived as “pro-union” or “anti-union” themed employee questions. Second, these two questions and answers should be noted because they do discuss wearing union buttons:

Q. My supervisor said I wouldn’t be allowed to wear a pro-union button and that I’d be fired if I vote for a union. Do I have recourse?

A. Yes. Supervisors and managers may not prevent employees from wearing union buttons, nor may they urge or recommend that employees oppose unionization. Threats of discipline toward any employee based on a supervisor’s anti-union position are not permitted and should be reported to Labor Relations.
Q. One of my co-workers wears a pro-union button every day, and the rest of us don't want to see that during the workday. Can our supervisor make him stop?

A. No. Every employee has the right to wear buttons in the workplace that express his or her views on unionization.

No reasonable person could read these answers and come away feeling that the University is “negatively affect[ing] union organizing efforts.” In fact, both questions aim at protecting pro-union employees’ rights to free speech in the workplace.

12. The Respondent publishes other question-and-answer scenarios designed to discourage union participation. These are attached as Exhibit 4 and set up on a webpage that the union is not permitted to access or to respond. The Respondent continues to send email to its employees with the website address while refusing to provide the union with these email addresses that are uniquely under control of Respondent.

No reasonable person can read the nine FAQ’s in ASEA-AFSCME’s Exhibit 4 and believe that they are “designed” to discourage union participation.

For clarity’s sake, the University will address each question and answer individually:

Q. Are unions allowed to set up tables in the building where I work?

A. The university has allowed union organizers to set up tables to distribute information in public areas of University buildings. They are not allowed to set up tables in non-public or working areas, or if the foot traffic would be impeded by the presence of a table and individuals gathering in the area.

This question is neutral, neither anti- nor pro-union. The answer to this question sets out the display policy the University worked out with ASEA-AFSCME and that we use with all groups—unions or otherwise—on campus. The University has a legitimate safety interest in not allowing tables to be set up in areas that would impede foot traffic.

Q. A union organizer asked if she could come by my office to talk about a few things. I said she could. My supervisor saw her there with her union pamphlets and asked her to leave. Don’t I get to decide whether it is OK for a union organizer to stop by my work area?

A. No. The supervisor acted appropriately. The university restricts union organizers who are not university employees from being in non-public work areas.

The above question would reasonably be construed as coming from a pro-union employee. The answer to this question provides the University’s accurate summary of 9 AAC 97.200, which prohibits organizing during work hours in work space.
Q. I asked my supervisor for her views of the union and she said she wasn’t willing to discuss this with me. Why was that her response?

A. The university has given guidance to supervisors that they should not make statements that could be interpreted as trying to influence any employee to support or not support union representation.

The above question is neutral. The answer to this question reminds employees of AS 23.40.11(a)(1)’s requirements and provides a warning that supervisors may not “interfere with the free exercise of employees’ rights to organize.”

Q. My supervisor said I wouldn’t be allowed to wear a pro-union button and that I’d be fired if I vote for a union. Do I have any recourse?

A. Yes. Supervisors and management may not prevent employees from wearing union buttons, nor may they urge or recommend that employees oppose unionization. Threats of discipline toward any employee based on a supervisor’s anti-union position are not permitted and should be reported to Labor Relations.

The above question would reasonably be construed as coming from a pro-union employee. This question and answer set is particularly telling, in that the University’s response immediately underscores the employee’s rights to free speech.

Q. One of my co-workers wears a pro-union button every day, and the rest of us don’t want to see that during the workday. Can our supervisor make him stop?

A. No. Every employee has the right to wear buttons in the workplace that express his or her views on unionization.

The above question would reasonably be construed as coming from an anti-union employee. However, the response makes clear that his pro-union co-worker has every right to express his pro-union views.

Q. My co-worker insists on handing me information about unionizing while I’m working and doesn’t take my hints that I need to get my work done. Does she have the right to do this?

A. No. Distribution of union materials is not allowed in work areas, while the distributor is supposed to be working or while you are working. Ask your supervisor to address this.

The above question would reasonably be construed as neutral—the employee does not want to be disturbed at work, regardless of the interrupting message. The University’s response is to accurately summarize 9 AAC 97.200, which prohibits union organizing in the work area during work hours.
Q. A co-worker has pro-union pamphlets strewn across his desk. Is that OK?

A. As we said above, unions cannot distribute information in the workplace while you are working. If you cannot interact with that co-worker without confronting these materials, let your supervisor know.

The above question would reasonably be construed as coming from a neutral employee—he or she is questioning facts, not criticizing a particular position. Again, the University's response is to accurately summarize 9 AAC 97.200, which prohibits union organizing in the work area during work hours.

Q. I received work-related email from a UAF employee, and it had a pro-union tag on the bottom of his university email account message. Is this OK?

A. Some university employees place personalized “tags”—usually pictures or quotes—on the bottom of their emails, and the University allows this personal statement. The university will continue to allow employees to personalize their emails as long as the words and images neither constitute distributing union materials during the work day nor confuse the email’s recipient regarding the University’s mission.

The above question would reasonably be construed as coming from a neutral employee—he or she is questioning policy, not taking a position. The University's answer clearly defends the pro-union employee's rights to free speech, but balances that right with 9 AAC 97.200's requirement that unionizing not be done in the workplace or during work hours.

Q. Union organizers have stopped by my home to discuss union issues. How do the unions know where I live?

A. The University of Alaska provided a copy of the roster created for the Alaska Labor Relations Agency (ALRA) to Alaska State Employees Association (ASEA). In addition to this roster, mailing addresses are also available on the internet.

This question is neutral. The University’s response merely provides the factual answer to the question.

Of the nine questions presented in this FAQ, six of the questions are neutral, two are pro-union, and one is anti-union. That fairly even distribution actually favors the pro-union stance. However, it is vital to note that even the one anti-union themed question is met with a quick rebuke from the University. In fact, all of the questions’ answers aim at protecting employees’ rights to organize. So characterizing the University’s presentation of FAQ’s as “designed to discourage union participation” is meritless.

13. The Respondent has also threatened disciplinary action against employees who talk about union organizing in the workplace by directing co-workers to report them to supervisors. (Ex. 5).

The University does not threaten disciplinary action against employees who talk about union organizing. If we became aware of such behavior, we would take immediate corrective action.
The University made it very clear in University Exhibit J/ASEA-AFSCME Exhibit 4, that Supervisors and management may not prevent employees from wearing union buttons, nor may they urge or recommend that employees oppose unionization. Threats of discipline toward any employee based on a supervisor’s anti-union position are not permitted and should be reported to Labor Relations.

ASEA-AFSCME’s Exhibit 5 does not even support their allegation—it actually shows University support for employees’ constitutional rights to free speech and their right to support unionization. See University Exhibit K, Frequently Asked Questions/ASEA-AFSCME Exhibit 5. It is frivolous to argue that ASEA-AFSCME’s Exhibit 5 supports this allegation.

14. On April 11, 2011, Respondent sent the attached email to all prospective employees who would be part of the non-supervisory unit subject to ASEA’s organizing effort. (Ex. 6) On April 13, 2011, Petitioner ASEA requested an electronic list of all employees who received the email so that ASEA-AFSCME could correct the interference intended by the email. (Ex. 7) Petitioner has received no response to date.

This allegation is moot.

In compliance with Alaska law, AS 40.25.110(f) and Board of Regents Policy P06.02.060, on April 29, 2011 the University provided the document ASEA-AFSCME requested in a timely manner. See University Exhibit L, May 4, 2011 Letter from Beth E. Behner to Jim Duncan.

15. The April 11th email characterizes unnamed people as being “upset” with ASEA organizers and pronounces its version of “the law” inferring [sic] the ASEA organizing was a disruption in the workplace. In the same paragraph, Respondent pronounces that the organizers are NOT PERMITTED in work areas. In the same paragraph discussing “the law” the Respondent emailed its employees that “Unions are required to notify the university 24 hours before being on campus.” This blatantly discriminates against ASEA by singling it out from all other members of the public who go on campus. It also intimidates employees who now believe that when a union organizer is talking to them, the employer must know and be watching since the movements of the organizers must be reported to Respondent whenever and wherever they move.

This allegation has a number of parts, and the University will answer them individually:

The University is Responding to Employee Concerns

The University received and continues to receive complaints from upset employees because ASEA-AFSCME interrupted their work in the workplace during work hours. For example, UAF received the following anonymous complaint on April 13, 2010.

I understand there are rules for union organizing on campus and that the unions are permitted to contact staff, but in my department the actions of the union representatives have started to border on harassment. My supervisor has told them to leave if they don’t make an appointment and has reminded them of the rules they must follow, but this hasn’t helped. What can we do?
The Law Regarding Unionization Activities is Clear

The Alaska Administrative Code is clear regarding when employees may be contacted regarding unionization.

8 AAC 97.200 Organizational activities. A labor or employee organization may organize employees only during the employees’ lunch break, relief period, or before or after the employees’ working hours. A labor or employee organization shall notify a public employer that it is on the public employer’s premises before conducting organizing activities. A labor or employee organization that fulfills the requirements of this section may not be denied the right to conduct organizational activity by the public employer.

Interrupting an employee during their work in the workplace is a clear violation of 8 AAC 97.200, and the University may inform its employees of this fact. Two unions, APEA and ASEA-AFSCME, are currently organizing University staff, and two other unions were also trying to organize other University personnel. So to claim that the University “sing[led]” out ASEA-AFSCME is untrue, as the University told those other unions exactly the same thing. See University Exhibit M, February 10, 2010 Letter from Beth E. Behner to Bruce E. Senkow, President of APEA; see University Exhibit N, June 4, 2010 Email from UA Statewide Labor Relations to Rob Cox, President of PSEA; see University Exhibit O, March 30, 2011 Letter from Beth E. Behner to Jim Duncan, ASEA-AFSCME Business Manager. The law requires these union groups to provide the University notice before organizing on campus, and unions usually amicably agree to provide the University with 24 hour notice so that supervisors can be notified that organizers will be present the next day.

ASEA-AFSCME Agreed to Provide the University with Twenty-Four Hours’ Notice Before Organizing

The University is relying on ASEA-AFSCME’s staffs’ assurances to the University regarding 24 hour notice:

a. Ryan Kopiacz—On February 19, 2010, ASEA-AFSCME organizer Ryan Kopiacz told the University that all notifications for organizing will “have 24 hour notice.” See University Exhibit O, February 19, 2010 Email from Ryan Kopiacz to University of Alaska Labor Relations.

b. Skye McRoberts—On March 17, 2010, ASEA-AFSCME organizer Sky McRoberts told the University that “Emily and the other organizers in Fairbanks have been reminded about the importance of giving you 24 hours notice of all meetings and on campus activity.” See University Exhibit P, March 17, 2010 Email from Skye Rubideau [a.k.a. McRoberts] to University Statewide Labor Relations.

c. Emily Gosnell—On April 14, 2010, ASEA-AFSCME organizer Emily Gosnell told the University, “[i]t is my understanding that we are to notify you after we schedule a meeting on campus and at least 24 hours before the meeting is held.” See University Exhibit Q, April 14, 2010 Email from Emily Gosnell to University Statewide Labor Relations.
d. Jim Duncan—On September 10, 2010 at 5:03 p.m., ASEA-AFSCME business manager Jim Duncan agreed to provide the University with “a day's notice” before organizing. See University Exhibit R, September 10, 2010 Email from Associate General Counsel Michael O'Brien to Mike Robbins, Esq., Business Manager Jim Duncan, and ASEA-AFSCME for UA coordinator Skye McRoberts.

The University reasonably relied on these assurances and simply represented them to University employees. In fact, ASEA-AFSCME organizers—including Mr. Kopiæcz, Ms. McRoberts, and Ms. Gosnell—have failed often to provide any notice at all, a track record of failure detailed more fully below.

The University Treats All Members of the Public Equally

No “member of the public” is allowed to freely enter employees’ work spaces. These are not public areas. The Alaska Supreme Court has stated that “the University of Alaska can enforce reasonable regulations that are connected with running the university and maintaining order on campus.” Prentzel v. State, 1988 WL 1511365 *3 (Alaska 1988). ASEA-AFSCME has had the same access to the University’s campus as any other non-University group. For many reasons—security, confidential student data, confidential employee data, productivity—the University has a “substantial and legitimate... interest” in preventing non-employees from entering employee work space during periods of work. Alaska Community College’s Federation of Teachers, Local No. 2404 v. University of Alaska, 669 P.2d 1299, 1308 n. 8 (Alaska 1983) (citing R. Gorman, LABOR LAW at 133 (1976)).

The University Has Done Nothing to Create Suspicion—ASEA-AFSCME Has

ASEA-AFSCME claims that there are University employees “...who now believe that when a union organizer is talking to them, the employer must know and be watching since the movements of the organizers must be reported to Respondent whenever and wherever they move.”

The University disputes the veracity of this claim and cannot respond to speculation. ASEA-AFSCME’s failure to provide dates and names as required by 9 AAC 97.220 makes fully responding to this allegation impossible.

However, because ASEA-AFSCME organizers have recently tried to enter a locked University mailroom and other off limits areas under false pretenses, the University is worried by ASEA-AFSCME’s organizing tactics. These specific, documented instances are examples of ASEA-AFSCME’s inability to conform to Alaska and federal law.

a. On April 13, 2011 ASEA-AFSCME organizer Penny Beiler tried to gain access to the University of Alaska Southeast mailroom. This is not a public area, or even an area where University employees have general access. When she was stopped, she claimed that “[UA Chief Human Resources Officer] Beth Behner gave her permission to enter the UAS mailroom.” No such permission has ever been given to any employee of any organization. This is troubling for a few reasons. First, this organizer was on campus without giving the University any notice. Second, she was attempting to enter a workspace during work hours, which is counter to 8 AAC 97.220. Third, this workspace contains sensitive and confidential University documents that are not even accessible to all University employees. Fourth, the excuse provided to enter the mailroom is false.
b. On May 2, 2011, a second ASEA-AFSCME organizer, Sam Rhodes, again tried to gain access to the University of Alaska Southeast mailroom. He told UAS staff that notification to statewide Labor Relations was not necessary. That statement is incorrect and it violates both ASEA-AFSCME’s ongoing promises to the University as well as 8 AAC 97.200.

c. On February 23, 2010, ASEA-AFSCME organizer Tim Burch snuck past a receptionist in the UAA Chancellor’s suite and, after being escorted out, claimed he “just wanted to look around.” See University Exhibit T, February 24, 2010 Email from UA Provost Michael Driscoll to Beth E. Behner.

The University documented these incidents and can provide supporting affidavits upon ALRA’s request. Because of ASEA-AFSCME’s recent attempts to get into the University’s mail rooms, the University must underscore that the United States Supreme Court has held that unions may not use an educational institution’s internal mail system to communicate with employees it is seeking to organize. Regents of University of California v. Public Employment Relations Bd., 108 S.Ct. 1404, 1412-1413 (1988).

16. The Respondent then tells its employees that it is maintaining a “no contact” list as though it is a service. This intimidates and discourages employees from signing cards as they might be on the employer’s “other” list. The Respondent then sets itself up as the agent for employees in the organizing effort, a role that interferes with the employees’ statutory right to self-organize, or engage in concerted activities free from the influence of Respondent. (Ex. 6).

The University created a “no contact” list as a service for the many employees who did not want to be contacted by union organizers at home.

In response to a chorus of employee complaints that ASEA-AFSCME repeatedly contacted them at their homes and repeatedly visited after being told to not come back, the University provided employees a formal opportunity to be put on a list of employees who do not wish to be contacted by union organizers at home. See ASEA-AFSCME University Exhibit U/ASEA-AFSCME Exhibit 6, Letter from Beth Behner to University Employees. It is a service to our employees who wish to use it. The University informed employees that the University had no legal ability to make ASEA-AFSCME honor their wishes. And ASEA-AFSCME has not honored that list, contacting employees who affirmatively asked not to be contacted at home. Furthermore, the list does not preclude ASEA-AFSCME from contacting employees during break periods, lunch, or before or after work, in public areas of campus, and with proper notice.

There is no “other” employee list, as ASEA-AFSCME claims. If such a list exists, it is a public record. The University encourages ASEA-AFSCME to request the record before falsely claiming its existence.
17. Respondent then tells the employees that ASEA is failing to comply with the law. While ALRA or the court system may have the right to determine who is failing to comply with the law, for Respondent to set itself up as the judicial tribunal on labor law is a method of coercion and interference.

Again, the law regarding organizing activities is clear, and it states,

A labor or employee organization may organize employees only during the employees' lunch break, relief period, or before or after the employees' working hours. A labor or employee organization shall notify a public employer that it is on the public employer's premises before conducting organizing activities.

8 AAC 97.200 (emphasis added). The following documented incidents are of great concern to the University, as they show ASEA-AFSCME’s flagrant disregard for this law:

a. On March 27, 2010, ASEA-AFSCME organizer Ryan Kopiasz organized at the UAF Wood Center, disrupting employees during work hours. He provided no notice of being on campus.

b. On February 11, 2010, ASEA-AFSCME organizer Ryan Kopiasz organized at the UAF Provost's office without providing notice that he would be on campus.

c. On February 12, 2010, ASEA-AFSCME organizer George Zuke organized at the UAF Rasmussen Library without providing notice that he would be on campus.

d. On February 16, 2010 ASEA-AFSCME organizer George Zuke organized at UAA without providing notice to the University.

e. On February 25, 2010 ASEA-AFSCME organizers entered work areas during work hours, disrupting employees.

f. On March 2, 2010, ASEA-AFSCME organizer Skye McRoberts organized at UAA without providing notice to the University.

g. On March 15, 2010, ASEA-AFSCME organizer Skye McRoberts organized at the UAF Geophysical Institute without providing notice to the University.

h. On March 18, 2010, ASEA-AFSCME organizer Skye McRoberts organized at the UA Bragaw Building without providing notice to the University.

i. On March 19, 2010, ASEA-AFSCME organizers entered work areas at UAF TVC/CTC, claiming that they “were authorized to speak with employees during work hours.” See University Exhibit V, March 19, 2010 email from Christine Christopher to then-Director Rick Caulfield.
j. On April 13, 2010, ASEA-AFSCME organizers refused to leave work areas when requested, instead moving from work area to work area.

k. On May 12, 2010, ASEA-AFSCME organizer Skye McRoberts organized on UA campus without first notifying the University.

l. On June 24, 2010, ASEA-AFSCME organizer Emily Gosnell organized on UA campus without first notifying the University.

m. On August 30, 2010 ASEA-AFSCME organizers organized on the UA campus without first notifying the University.

n. On September 9, 2010, ASEA-AFSCME organizer Skye McRoberts organized on the UAS campus without first notifying the University.

o. On March 13, 2011 ASEA-AFSCME organizer Penny Beiler tried to gain access to the University of Alaska Southeast mailroom by falsely claiming that UA Chief Human Resources Officer Beth Behner gave her permission to do so. She had not provided notice to the University that she would be on the University’s premises.

p. On March 28, 2011 ASEA-AFSCME organizer Dick Farris organized at the University of Alaska Fairbanks campus without notifying the University. He disrupted employees in their work areas while they were working.

q. On April 13, 2011 ASEA-AFSCME organizer Penny Beiler tried to gain access to the University of Alaska Southeast mailroom. She was on campus without giving the University any notice.

r. On May 2, 2011, ASEA-AFSCME organizer, Sam Rhodes, tried to gain access to the University of Alaska Southeast mailroom. He told UAS staff that notification to statewide Labor Relations was not necessary. That statement is incorrect and it violates both ASEA-AFSCME’s ongoing promises to the University as well as 8 AAC 97.200.

The University is not required to wait for a judicial determination before letting its employees know that certain actions are clearly barred by law. The University has a constitutionally protected right to freely express itself. Nurre v. Whitehead, 130 S.Ct. 1937, 1938-1939 (2010), quoting Pleasant Grove City v. Summum, 555 S.Ct. 1125, 1131 (2009) (“When a public school administration speaks for itself and takes public responsibility for its speech, it may say what it wishes without violating the First Amendment’s guarantee of freedom of speech); (cited in Alaska v. EEOC, 564 F.3d 1062, 1070-1071 (9th Cir. 2009)). Informing University employees that they do not have to put up with disruption in the workplace during the workday is well within the University’s right, as is informing employees that ASEA-AFSCME must give the University notice before organizing on University property.
18. Respondent defames ASEA by associating it with criminal activities of two people who are not employees of ASEA. One ceased her employment in November 2010; the other was an Assistant Attorney General. The Respondent sets itself up as the employees’ protector from criminal actions that it attributes to ASEA by association. Again, the respondent fails to list names of any employee who “expressed concern” but engages in the gossip and defamation nonetheless. This interferes with the rights of these employees to organize free of this type of interference by the Respondent, including the right to bargain collectively with a representative of their own choosing.

True statements cannot be defamatory.


Ms. Skye McRoberts was the face of “ASEA for UA” during their failed 2010 campaign, and court records indicate that she was convicted of theft on February 23, 2011 in case 3AN-15-1487 CR. She was ASEA-AFSCME’s lead organizer in their 2009-2010 campaign to organize University staff. She spoke to staff in their workplaces, she testified before the Board of Regents, she spoke on behalf of ASEA-AFSCME at University organized forums, and she appeared for ASEA-AFSCME before the Alaska Labor Relations Agency.

During ASEA-AFSCME’s campaign, the University received staff reports that their ASEA-AFSCME interest cards were forged. After ASEA-AFSCME abruptly withdrew its petition to organize University staff, numerous University staff members came forward with additional forgery claims. The University understands that the Alaska State Troopers are investigating these forgeries, and the University has directed all employees claiming that their interest cards were forged to speak with the Troopers directly. Other than keeping apprised of the status of this investigation, the University has no role in it. While the University is very concerned that the unionization process overseen by Ms. McRoberts was tampered with illegally, the University has never alleged that Ms. McRoberts had anything to do with the forgeries.

Like most Alaskans, the University found out that Ms. McRoberts was charged with felony theft on February 11, 2011 from the newspaper. See University Exhibit W, Casey Grove, Anchorage Daily News, February 11, 2011 “State labor lawyer charged with theft of shoes from store”. The story indicated that Ms. McRoberts acted in concert with assistant attorney general for the Labor and State Affairs section, Erin Pohland.

Ms. Erin Pohland was an assistant attorney general working on labor issues for the State of Alaska; she is currently set to change her plea in theft case 3AN-11-00835 CR on June 3, 2011. The Labor and State Affairs section advises the ALRA, the same body that Ms. McRoberts was appearing before as a representative of ASEA-AFSCME. See May 24, 2010 Memorandum, State of Alaska Labor Relations Agency, (… and Skye McRoberts were present for ASEA-AFSCME…”) University Exhibit X. So the University was troubled when it read in the paper that Ms. Pohland was not only associating with Ms. McRoberts, but was allegedly acting in concert with her to commit a crime.

The University was even more troubled to learn that Ms. Pohland took official action in her capacity as an attorney general that involved ASEA-AFSCME’s organizing campaign. Like the forgery issues, the University considers this action to be part of a criminal investigation and forwarded all
evidence of Ms. Pohland's official actions to the Alaska State Troopers. Once again, other than keeping apprised of the status of this investigation, the University has no role in it whatsoever.

University staff members were legitimately concerned when it was reported that Ms. McRoberts was arrested. ASEA-AFSCME associated themselves with Ms. McRoberts when they hired her as an employee. And the University was very concerned when it found that a labor attorney working for the State of Alaska was allegedly committing crimes with ASEA-AFSCME's chief organizer, especially when it came to light that that attorney had taken official action in ASEA-AFSCME's case. It was completely appropriate for the University to tell staff that neither Ms. McRoberts nor Ms. Pohland was still involved in this organizing campaign to assuage fears as this process moves forward.

ASEA-AFSCME criticizes the University for not publishing a list of the employees that are worried about forgery and the disclosure of confidential information. The University will not publish the names of employees who feel they are victims of a crime until we are told to do so by the Alaska State Troopers.

19. The Respondent then lists its exclusive webpage which is uniquely controlled by the Respondent and inaccessible to ASEA. At the same time the Respondent continues its email blitz of its captive employee audience but refuses to allow ASEA to have equal access so that the employees can hear the rest of the story and the record can be corrected.

The University provided ASEA-AFSCME with a complete list of employees, and their emails, that the University contacted with its April 11, 2011 letter.

Over the course of both the current organizing campaign and the one ASEA-AFSCME aborted in 2010, ASEA-AFSCME has sent six mass emails and at least eight mailings to University staff. Adding those two, ASEA-AFSCME has sent a mass communication 14 times. The University has sent 13 emails and three mailings. Adding those two, the University has sent a mass communication 16 times. So the implication in ASEA-AFSCME's claim that the University is engaged in a disproportionate "blitz" of its employees does not hold water. ASEA-AFSCME has had a roughly equal amount of contact with University employees, even before taking into account ASEA-AFSCME's many one-on-one visits with employees at their homes, in the workplace, and on campus.

The University email system and web pages are University property and not public forums. Like every other instrumentality of the State of Alaska, the University does not grant outside entities access to institutional web pages. The United States Supreme Court has consistently upheld employers' rights to limit union access to private property, provided employees have a legitimate method of contacting employees outside of that property. Lechmere, Inc. v. NLRB, 502 U.S. 527 (1992); Labor Board v. Babcock & Wilcox Co., 351 U.S. 105 (1956). The numerous and varied examples of ASEA-AFSCME's ability to contact University employees during their 2010 and 2011 campaigns illustrates clearly that they have legitimate and effective means of communicating with University staff.

20. The actions or the Respondent collectively and separately violate AS 23.40.110(1) and are unfair labor practices that interfere with, restrain or coerce these employees in exercising their rights guaranteed in PERA including the right to choose their bargaining representative for bargaining purposes.

For the reasons expressed in responses 6-19, the University denies all allegations in this ULP. Turning back to the case that the University began its response with, Alaska Community College's
Federation of Teachers, Local No. 2404 v. University of Alaska, 669 P.2d 1299, 1307-1308 (Alaska 1983), ASEA-AFSCME bears the burden of showing the University's behavior interferes with employees' rights, does not advance a substantial and legitimate University interest, and is based on anti-union motives. As a facial issue, ASEA-AFSCME failed to present any evidence that "demonstrate[s]... some anti-union motive on the part of the University." Id. After analyzing each of their allegations, one quickly concludes that the University has done nothing to interfere with employees' rights to organize. In fact, the University has done its best within the law to provide ASEA-AFSCME with the materials it requires to conduct its campaign. When the University has restricted ASEA-AFSCME's conduct—asking for notice before coming onto campus, disallowing ASEA-AFSCME organizers the use of University mail rooms and websites—the action has been well within the University's rights under the law. ASEA-AFSCME's claims that they have not had sufficient access to University employees does not bear weight under scrutiny; they were given an equal opportunity to voice their opinions and frequently failed to take the opportunities staff provided.

For these reasons, 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

CC: Jim Duncan, ASEA-AFSCME Business Manager