THE STATE OF ALASKA  
BEFORE THE ALASKA LABOR RELATIONS AGENCY  

UNIVERSITY OF ALASKA,  

Petitioner,  

v.  

UNIVERSITY OF ALASKA FEDERATION  
of TEACHERS, LOCAL 2404, APEA/AFT  
(UAFT),  

Respondent, and  

UNITED ACADEMICS-AAUP/AFT,  
AFL-CIO,  

Intervenor.  

Case No. 08-1537-UC  
TRIAL BRIEF OF UNITED  
ACADEMICS-AAUP/AFT, AFL-  
CIO  

On March 25, 2010, the Alaska Labor Relations Agency issued an order directing the parties to submit Trial Briefs concerning the above Unit Clarification petition. Prehearing Order and Notice of Hearing (March 25, 2010). This is the written submission of United Academics-AAUP/AFT, AFL-CIO (“UNAC” or “United Academics”).

I. INTRODUCTION

This dispute centers upon the appropriate unit placement of certain faculty members, librarians, and counselors employed by the University of Alaska (“University”). These faculty members are represented either by United Academics or the University of Alaska Federation of Teachers (“UAFT”). The University filed a unit clarification petition to establish the proper placement of: (1) UAFT-placed faculty desiring to teach upper division courses; (2) UNAC-placed faculty located at remote sites affiliated with SFOS, SNRAS, & DANRD; and (3)
UNAC and UAFT-placed faculty in vocational technical programs which have evolved to include upper division instruction.

The collective bargaining agreements of both UAFT and United Academics control placement of faculty teaching upper division. The specific language of both unit definitions excludes from UAFT faculty members teaching upper division on the main campuses and places them in United Academics. In the absence of any ambiguity, the University’s petition is properly characterized as one for contract enforcement rather than unit clarification. See 8 AAC 97.510. By contract, the ALRA must place faculty teaching a mix of upper and lower division courses in United Academics.

Ambiguities and inconsistencies in the unit definition and past practice warrant unit clarification by the ALRA concerning the remaining two broad classifications: main-campus sponsored programs in remote locations and the evolving vocational-technical programs.

After the University filed its petition, all three parties advanced additional claims for relief: (1) the University and United Academics sought merger of the two bargaining units on the UAA and UAS campuses; (2) UAFT moved to sever a group of 155 “bipartite” faculty members historically represented by United Academics; and (3) United Academics argued for the transfer of 34 UAFT faculty members teaching upper division coursework on extended sites who have been historically represented by UAFT. The University filed a motion to dismiss. United Academics does not oppose the University’s motion.

However, the University’s motion does not go far enough. There is no ambiguity in the terms of the two unit definitions or alleged “confusion over the contours of both units.” See University’s Motion for Partial Dismissal at 2, Case No. 08-1537-UC (March 26, 2010). Because there is no dispute regarding upper division teaching requiring “clarification” the ALRA should simply enforce the present contract language and direct the parties to follow the contract language regarding upper division teaching. 8 AAC 97.510
II. STATEMENT OF THE CASE

In 1974, the Alaska Labor Relations Agency certified the Alaska Community College Federation of Teachers ("ACCFT") as the bargaining representative of a unit of instructional staff at the fourteen community colleges. The 1976 CBA recognized ACCFT as the representative of community college faculty statewide. At the time of certification, the faculty members teaching on what is today the University of Alaska Fairbanks ("UAF"), University of Alaska Anchorage ("UAA"), and the University of Alaska Southeast ("UAS") were intentionally excluded from the ACCFT unit.

In 1987 the Board of Regents reorganized the community college and four-year university faculty into one combined University of Alaska system. This system was to be administered through three major administrative units ("MAUs") at UAF, UAA, and UAS. Subsequently, the University withdrew its recognition of ACCFT and attempted to "rehire" the same faculty through its regional university system to complete the same work. This resulted in ongoing conflict and litigation from 1987 to 1991. Through a series of decisions referred to as the Bornstein Arbitrations, ACCFT prevailed in large part. The union secured University recognition and damages. The Bornstein decisions recognized the continuing existence of a community of interest among former faculty members of the community college system.

In 1992, the University and ACCFT negotiated a CBA defining the bargaining unit as including faculty, librarians, and counselors at the community colleges; faculty, academic counselors, and librarians whose principal assignment was at an extended site; faculty whose principal assignment was vocational-technical instruction; faculty employed to "teach exclusively" at the lower division level, defined as 200 level or below; and faculty employed to "teach exclusively" at the lower division with a single part service assignment. Professional assignment to one of the delineated work locations or job duties determined unit membership.
Notwithstanding the ACCFT unit definition, administrators at the main campuses occasionally invited qualified members of the ACCFT bargaining unit to teach courses at the 300 level or above. Both parties recognized that an ACCFT member teaching any upper division courses on the main campuses was no longer “teaching exclusively” lower division courses and therefore, by definition, was no longer a member of ACCFT. In order to preserve unit membership, the parties negotiated a provision allowing individual ACCFT members to teach upper division courses on a case-by-case basis with the consent of both the University administration and the individual faculty member, without being otherwise disqualified from the unit. Art. 5.1(A); Art. 9.1 UAFT CBA. United Academics had not yet been certified. It was not a party to the agreement between the University and ACCFT regarding case-by-case upper division teaching.

In 1996, the ALRA established the bargaining unit represented by UNAC. United Academics, AAUP/AFT, AFL-CIO, et al. v. University of Alaska, Dec. No. 202 (April 29, 1996) (‘‘Decision 202’’). The ALRA affirmed the creation of UNAC as the mirror image of the UAFT bargaining unit. Id. at 2. That is, UNAC would represent all regular faculty not represented by ACCFT/UAFT. Id. at 1. The UNAC unit definition adopted by the ALRA incorporated the ACCFT unit recognition clause and specifically excluded these faculty members from the new United Academics unit.¹

¹ United Academics bargaining unit specifically excluded ACCFT/UAFT members, whom the ALRA described as follows:

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When the ALRA certified United Academics in 1996, ACCFT/UAFT asserted no interest in teaching upper division courses and no such right was recognized. Dec 202. Nor was any such right acknowledged in the earlier Bornstein arbitrations. Instead, the ALRA approved the parties’ proposed recognition clause, which divided the units on the main campus cleanly between those who teach “exclusively lower division” and those who do not. Dec. 202 at 2. This bright line rule — placing faculty who teach exclusively lower division courses in UAFT and placing faculty teaching a mix of upper and lower division courses in UNAC — was codified into the parties’ respective collective bargaining agreement and has remained unchanged.

This natural separation of work jurisdiction between upper and lower division teaching reflects the history and mission of the two bargaining units. UAFT members on the main campuses serve the traditional community college mission of teaching lower-division courses exclusively and conducting vocational-technical instruction. The community college mission is to provide education leading to an associate of arts or sciences (A.A. or A.A.S.) degree or to career objectives not requiring a degree at all.

United Academics unit members have typically attained a Ph.D. or other terminal degree in their discipline and teach a mix of lower and upper division and graduate level courses in support of the larger four-year university mission of teaching, research and creative
activity, and service. That mission is to provide baccalaureate and masters degree programs, graduate degree programs, and continuing education in support of professional programs. By function of their mirror image recognition clauses, membership in UAFT is specific and limited while United Academics includes all regular faculty not falling within the UAFT unit definition.

United Academics ratified its first collective bargaining agreement with the University in 1998. After receiving isolated complaints from union members, United Academics discovered that the University was occasionally assigning upper division courses to ACCFT/UAFT members despite the clear recognition clause language excluding upper division teaching from the ACCFT/UAFT unit. In 2002, United Academics began questioning the University’s practice of assigning its upper division coursework to ACCFT members. United Academics discovered that UAFT claimed its members had a “right” to teach upper division courses based on past practice in direct conflict with the collective bargaining agreements of both unions. UAFT’s position ignored negotiated changes to its CBA and the certification of United Academics as the bargaining unit representing faculty teaching a mix of upper and lower division courses.

The conflict boiled over in 2003 when UAFT filed the Dan Henry grievance. 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 teaching. In its 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 the main campus had a contractual right to teach upper division courses without changing their unit placement. UAFT did not pursue its grievance to arbitration.
After considerable effort and negotiation, United Academics formally requested that the University comply with its collective bargaining agreement by placing in its bargaining unit those faculty members assigned to teach upper division courses at the main campuses. Finally, in August 2004, the University notified both unions that it would honor United Academics’ request to represent the group of faculty members assigned to teach upper division courses on the main campuses in light of the CBA between the University and United Academics. The University has since comported with the UNAC collective bargaining agreement by (1) assigning new faculty teaching upper division courses not at an extended site to UNAC; and (2) declining to make new upper division assignments to UAFT faculty where the class will not be taught at an extended site. These practices do not conflict with either union’s collective bargaining agreement.

Today, United Academics faculty members are active at all three campuses (Fairbanks, Anchorage, and Southeast) of the University of Alaska and related locations. Among UNAC’s 970 members, 184 faculty members are primarily researchers, 786 faculty members teach a mixture of upper (300 level and above) and lower division courses, and of these approximately 155 faculty members do not have research assignments.

UAFT represents approximately 356 faculty members. Today UAFT/ACCFT continues to represent the interests of those faculty members teaching in educational facilities not located on the principal campuses (i.e. “extended sites”) as well as those few former community college faculty members teaching on the main campuses. Approximately 157 UAFT-place faculty members currently teach on the main campuses in the following roles: (1) vocational education instructors; (2) faculty teaching exclusively lower division courses; and (3) approximately 16 faculty members who have historically taught a mixture of upper and lower division courses.
A. Upper Division Teaching

ALRA Investigator Ward has already recognized the clear language of the UAFT and United Academics unit definitions, which place faculty who teach upper division coursework in United Academics. UAFT has no contractual right to teach upper division courses. Notice of Partial Dismissal, at 28-29, 31, Case No. 07-1514-ULP (April 28, 2009); Notice of Partial Dismissal, at 17-18, Case No. 08-1536-ULP (Feb. 19, 2009). There is no basis for a hearing in the context of this unit clarification on the alleged “right” of UAFT-placed faculty to teach courses in the work jurisdiction of United Academics.

Notwithstanding the clear rejection of UAFT’s contractual arguments, a dispute remains concerning the proper placement of UAFT main campus faculty who have a history of teaching upper division coursework outside the scope of their unit. Settlement negotiations since 2003 centered upon the proposed transfer of approximately 47 UAFT faculty members who teach one or two upper division courses each academic year. Over the years of negotiation, an informal “grandfathering” system developed under which the University continued to assign upper division courses to certain UAFT faculty members with a history of teaching upper division courses.

Today, there are approximately 16 UAFT faculty members who regularly teach upper division courses on the main campuses. By the specific terms of the collective bargaining agreement, these individuals must be transferred to United Academics. UAFT is expected to argue that past practice permitting these faculty to teach outside the scope of their unit triggered either a waiver by United Academics or an “ambiguity” requiring unit clarification. Neither is the case.

UAFT’s recognition clause limits its representation of main campus faculty members to those “employed to teach exclusively at the lower division level,” Art. 9.1 UAFT CBA. The
agreement also includes a provision permitting out-of-bargaining unit work on a case-by-case basis. Art. 5.1 UAFT CBA (1992). However, Article 5.1 does not bind United Academics or alter the nature of the work covered by its collective bargaining agreement, as black letter law dictates that United Academics cannot be bound by agreements to which it is not a party.

United Academics has sought a resolution of the present dispute since 2002. That effort has led to final resolution before the ALRA in this hearing. United Academics has consistently asserted its right to represent faculty teaching upper division courses since ACCFT first pressed the issue in 2003. Today, there are 16 UAFT-placed faculty who must transfer to United Academics if they do not wish to teach exclusively lower division courses. As a demonstration of comity and cooperation, United Academics has not demanded that these 16 UAFT colleagues cease teaching upper division courses while negotiations continued. United Academics has by no means agreed that UAFT members may teach upper division work without transferring to United Academics.

However, this past practice of assigning out of unit work to ACCFT/UAFT members does not create any ambiguity in the contract language, which cleanly divides the main campus faculty units between those who teach “exclusively lower division” and those who do not. Dec. 202 at 2. See Elkouri & Elkouri, How Arbitration Works 627-29 (6th ed. 2003), quoting Phelps Dodge Copper Prods. Corp., 16 LA 229, 233 (Justin, 1951) (“Prior acts cannot be used to change the explicit terms of a contract.”). The remaining UAFT faculty teaching upper division courses must either stop teaching these courses or transfer to United Academics.

The ALRA has the authority to direct the transfer of bargaining unit members when the members of one unit assume job duties encompassed by the work jurisdiction of another unit. Alaska State Employees Assoc. v. Alaska Public Employees Assoc. and State of Alaska, Dec. No. 123 (August 24, 1989). It will be appropriate for the ALRA to direct the University to

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enforce the unit definitions as written and to direct the 16 “grandfathered” UAFT members to transfer units or cease conducting United Academics work.

B. Evolving Vocational-Technical Instruction

On the UAA and UAS main campuses there are a number of baccalaureate and graduate level programs which have historic roots as vocational training or community college programs. These programs include programs in nursing, aviation, geomatics, physical education, human services, and computer science.

The University has placed a growing number of UNAC members into these programs to meet student needs for upper division coursework in newly developed baccalaureate and graduate degree programs. These faculty members teach a mixture of lower and upper division courses. Some of these faculty members conduct research or other creative activities. Faculty witnesses from the nursing, aviation, geomatics, human services, and computer science programs will describe their working conditions and express their desire to remain in United Academics units because they view their work as closely aligned with the four-year university mission.

UAFT apparently asserts that any course with historic roots in vocational, technical, or community college programs must remain frozen in time and remain the exclusive work jurisdiction of UAFT despite the development of baccalaureate programs. This argument raises questions about the meaning of “faculty whose principal assignment is vocational-technical instruction” within the UAFT recognition clause. This language is intended to assign to UAFT all faculty with principal assignments in associate degree and non-degree occupational certification programs. With the increase in baccalaureate and graduate degree programs, changed circumstances now create an ambiguity concerning appropriate placement of faculty.
teaching upper division courses in programs with historic roots in vocational-technical instruction.

The ALRA has the authority to determine the appropriate unit for collective bargaining. *Northwest Arctic Education Assoc./NEA-Alaska v. Northwest Arctic Borough School Dist.*, Dec. No. 162 (June 30, 1993). A unit clarification is appropriate where, as here, “circumstances have changed in the ownership or operations of the employer” such as reorganization, consolidation, or the creation of new positions, and those changed circumstances create ambiguity and “confusion over the contours of the unit.” *Id.* at 4. To support a petition for unit clarification, changes to the factors relevant to unit determination must be shown, including community of interest. *Lower Kuskokwim Education Assoc./NEA-Alaska* at 6.

AS 23.40.090 authorizes the ALRA to determine the unit appropriate for the purposes of collective bargaining:

The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS 23.40.070 - 23.40.260, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided.

AS 23.40.090. Considerations relevant to determining the community of interest include similarity in employment benefits, hours of work, work performed, qualifications, skills and training of the employees. *Northwest Arctic Education Assoc./NEA-Alaska* at 6, quoting *N.L.R.B. v. Saint Francis College*, 562 F.2d 246, 249, 96 L.R.R.M. (BNA) 2134, 2136 (3d Cir. 1977). Unlike the cases determined under the NLRA, AS 23.40.090 also instructs the ALRA to avoid unnecessary fragmentation. This means that cases decided by the NLRB are not always instructive.
An employee whose work is an integral part of the bargaining unit work of one unit should be placed in that unit. *Alaska Vocational Technical Education Center Teachers' Assoc. v. NEA-Alaska v. State of Alaska et al.*, Dec. No. 262 (Feb. 19, 2003) ("AVTECTA"). In that case, a training specialist teaching in an educational institution shared a greater community of interest with the teachers in AVTECTA than with the other training specialists in the general governmental unit because the training specialist taught classes that were an "integral part of AVTEC's curriculum" and which were required in order to achieve an AVTEC certificate. *Id.* at 21. Similarly, faculty teaching upper division courses, even in new baccalaureate or graduate departments, teach courses which are integral to the mission of the four-year university, including creative and research activities. This work is and has always been within the United Academics bargaining unit.

A vocational program is, by definition, one that prepares a student for a career not requiring a baccalaureate degree. *Ex. 210 at 174*. UAFT is the appropriate representative of vocational-technical instructors. However, as programs grow into academic baccalaureate and graduate degree programs fully integrated within the wider University departments, they necessarily lose their vocational-technical patina. The rigorous nature of upper division courses in any department requires faculty with advanced training, and typically a terminal degree, in the field or discipline. United Academics is the appropriate union for all faculty teaching upper division courses regardless of the historic roots of any particular program.

In addition, UAFT faculty members in certain vocational-technical programs have recently been asked to teach some upper division courses. For the same reasons, these faculty members should be moved to United Academics.
C. Extended Site Faculty

It is the longstanding practice of the University to assign certain faculty working outside of the main campuses to UNAC. These faculty include (1) cooperative extension faculty and agents (these faculty are specifically included within the UNAC unit definition per Art. 3); and (2) faculty connected to the University of Alaska Fairbanks ("UAF") who work outside of the main campus. UAFT has recently questioned the appropriateness of these UAF assignments.

There are 39 United Academics members currently working outside of the main Fairbanks campus. None of these faculty members work in programs historically associated with UAFT. In fact, many of these programs have existed for decades and have been historically and intentionally excluded from UAFT. These faculty members teach in the School of Fisheries and Ocean Sciences ("SFOS"), the School of Natural Resources and Agricultural Sciences ("SNRAS"), and the Department of Alaska and Native Rural Development ("DANRD").

These programs are fully integrated within the Fairbanks campus departments. Each faculty member is supervised and receives direction from the corresponding department on the main Fairbanks campus. Many of the offsite Fairbanks faculty members have research duties. Most hold a Ph.D. or other terminal degree.

UAFT has claimed that a practice of issuing letters of assignment through the Fairbanks campus for work offsite is a "fiction." Witness testimony will establish that there is no fiction. These witnesses fully participate in the four-year university mission and are properly placed in United Academics.

Positions intentionally and historically excluded from a bargaining unit may not be added to the unit through a unit clarification proceeding. *Northwest Arctic Education Assoc./NEA-Alaska* at 6. Such a case presents a genuine question of representation. *Id.*
UAFT seeks is to sever this group of 39 longtime faculty members from their bargaining unit. See 8 AAC 97.025; Alaska State Employees Assoc., Dec. No. 223 (Aug. 7, 1997). Given the long placement of these faculty members in United Academics and witness testimony, which will establish no desire to be removed from United Academics, UAFT’s claim to represent these faculty members should be dismissed. In the alternative, witness testimony will satisfy the ALRA that the Fairbanks faculty located in remote sites shares a community of interest with United Academics.

D. Matters Subject to the University’s Motion to Dismiss

The University has filed a motion to dismiss three disputes as not properly before the ALRA in this unit clarification petition. If granted, the University’s motion will substantially narrow the present dispute. However, United Academics is prepared to offer evidence addressing the matters set forth below.

1. Bipartite faculty placed in United Academics

Membership in United Academics is defined by the teaching of both upper and lower division courses in the baccalaureate and graduate degree programs. Since 1996, the ALRA has divided faculty on the main campuses cleanly between those who teach “exclusively lower division” and those who do not. Dec. 202 at 2. Yet, UAFT claims that certain faculty should be assigned to their unit because they either carry a two-part (“bipartite”) workload or because they only occasionally teach upper division courses.

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2 Historically, “bipartite” faculty members carried a teaching and service workload while “tripartite” faculty members had teaching, service, and research/creative activity assignments. Today a bipartite workload may include teaching/research or research/service assignments as well. While UAFT may cite the Bornstein opinions, these opinions circa 1991 do not contemplate the existence of United Academics and do not speak to the division between the unions.
These faculty members are placed in United Academics because they teach upper
division courses. The teaching of upper division courses on the main campuses falls squarely
within the work jurisdiction of United Academics under the applicable contractual language.
Faculty members teaching upper division courses have not historically been represented by
UAFT nor do they share a community of interest with the community college mission of
UAFT. There exists a clear dividing line between the “exclusive lower division” teaching of
UAFT faculty and the mix of upper and lower division coursework typical among United
Academics members.

The Bornstein decisions do not change this historic division between upper and lower
division teaching. Arbitrator Bornstein recognized the continued existence of a community of
interest among former faculty members of the community college system that existed in 1991.
That community of interest does not extend to newly hired bipartite faculty members teaching
upper division classes on main campuses. See Notice of Preliminary Finding of Probable
Cause and Partial Dismissal, Case No. 07-1514 ULP at 6, citing to Bornstein II. Faculty at the
main campuses with any upper division teaching are and always have been excluded from
UAFT’s unit under the existing unit definitions and there is no practice of placing upper
division faculty into UAFT when hired. If granted, UAFT’s petition would shift approximately
155 faculty members into UAFT’s unit, increasing its size by over 40%. There is no precedent
for a unit clarification to result in such a drastic change in representation.

 Witnesses will testify that upper and lower division teaching requires separate skills and
unique preparation. Not only does upper division teaching generally require a terminal degree,
such courses also require an in-depth knowledge of the subject matter necessary to teach
undergraduate and graduate students in the major. Current research or familiarity with research
principles is a necessity for faculty teaching in these upper level undergraduate and graduate
courses. These skills are also necessary when supervising graduate students. United Academics represents the community of interest of faculty engaged directly or indirectly in research and research principles.

Many faculty members have fluctuated between upper division and lower division teaching loads as dictated by the needs of the University. Still others have transitioned between research and non-research positions to accommodate personal interests or University requirements. Faculty members with a bipartite non-research assignment view themselves as equal partners in the four-year university mission. They do not wish to be transferred to UAFT.

The National Labor Relations Board is reluctant to disturb longstanding bargaining units, and will dismiss a petition that attempts to place employees in a unit from which they have historically been excluded. See Desert Palace, Inc., 209 N.L.R.B. 950, 85 L.R.R.M. (BNA) 1594 (1974); Washington Post Co., 256 N.L.R.B. 1243, 107 L.R.R.M. (BNA) 1441 (1981). Specifically, when employees have been historically excluded from a bargaining unit, they cannot be added to the unit via unit clarification petition because to do so would violate the employee’s freedom of choice to vote on their bargaining representative and negotiate the terms of any collective bargaining agreement. NLRB v. Mississippi Power & Light Co., 769 F.2d 276 (5th Cir. 1985).

In Northwest Arctic Education Association, the ALRA followed the National Labor Relations Board in denying a unit clarification petition seeking to consolidate a unit of vocational instructors and a unit of professional certified teachers. Dec. No. 162, at 7. The ALRA found that the vocational instructors had been historically excluded from the professional certified teachers’ unit and that therefore the case presented a “genuine question of representation” which could not be properly resolved by unit clarification. Id. See also
Copperweld Speciality Steel Co., 204 NLRB 46 (1973) (even where exclusion may have been in error, absent changed circumstances, unit clarification is improper and election is required).

Faculty members teaching upper division courses on main campuses were unrepresented prior to UNAC’s 1996 certification, and they are explicitly excluded by the language of UAFT’s recognition clause because they teach upper division courses. They have never been included in UAFT’s bargaining unit, and based on that historical exclusion UAFT’s petition to transfer those UNAC members to UAFT should be denied.

Properly framed, UAFT proposes not a unit clarification but a petition for severance governed by 8 AAC 97.025(b) and (c). See Alaska State Employees Assoc. v. State, Dec. No. 223 (Aug. 7, 1997). UAFT cannot meet the requirements of severance petition. UNAC’s faculty members teaching upper division are central to UNAC’s bargaining unit, have traditionally been in a unit containing faculty teaching upper division courses on main campuses, and, due to the commonality of teaching upper division courses and the ensuing terms and conditions of employment, share a community of interest with other members of the UNAC unit. In addition, there is no evidence, and UAFT has not alleged, that a minimum of 30 percent of the employees in the proposed unit prefer to be represented by UAFT, another required element under 8 AAC 97.025(c). UAFT’s objective is not to clarify a unit definition but to sever a group of 155 UNAC faculty members who have been historically excluded from

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3 A petition for severance is appropriately granted when the petitioner can demonstrate (1) why employees are not receiving adequate representation in their existing unit; (2) whether the employees in the proposed unit are employed in jobs that have traditionally been represented in the same unit; (3) why the employees in the proposed unit have a community of interest that is not identical with that of the employees in the existing unit; (4) how long the employees in the proposed bargaining unit have been represented as part of the existing unit; and (5) why the grant of the petition will not result in excessive fragmentation of the existing bargaining unit. 8 AAC 97.025(b).
UAFT’s unit. A unit clarification is not the proper procedure to obtain the remedy UAFT seeks. United Academics joins in the University’s motion for partial dismissal.

Alternatively, even if the ALRA reviews the community of interest factors with respect to bipartite faculty teaching on the main campus, United Academics remains the most appropriate unit for faculty teaching any amount of upper division coursework. Faculty teaching upper division courses share common employment requirements and benefits, and do common types of work. Generally, they must have a terminal degree in their discipline, must comply with a common tenure system, teach baccalaureate or graduate-level students, and work in departments with other United Academics members.

2. **A single main campus union**

On the main campuses the distinctions, if any, that remain between the UAFT and UNAC faculty are nearly undetectable. There exists a great fluidity in work assignments on the main campuses, with matters such as research assignment, bipartite/tripartite assignments, and course loads in year-to-year flux. It is apparent that some UAFT faculty members would prefer to teach occasional upper division courses if permitted to do so. Many UAFT members would choose to join UNAC if permitted to do so.

In particular, the distinctions between the two unions at the Anchorage and Southeast campuses have blurred to such a degree (with the possible exception of certain vocational-technical certificate programs) that it makes little sense to maintain two separate unions at these campuses. The 547 faculty members at the Fairbanks campus are already represented exclusively by United Academics. United Academics has long called for the merger of the two unions. Those merger efforts have not succeeded. Now, the University has suggested that the ALRA order the creation of one combined union for the Anchorage and Southeast main
campuses, as exists in reality at the Fairbanks campus, by recognizing a “single community of interest.” See University Prehearing Statement at 20, 23-24.

United Academics will present witnesses establishing that there no longer remains a distinction worth preserving at UAA and UAS. A “wall-to-wall” bargaining unit represented by United Academics at all three main campuses is appropriate. The ALRA has held that consolidation of two existing bargaining units is generally outside the scope of a unit clarification petition and must instead be resolved by representation petition and election. Northwest Arctic Education Assoc., NEA-Alaska at 6. Before a consolidation election can be ordered, however, the Agency must first determine that the unit that would be created is an appropriate one. Id. Anticipating the filing of a representation petition, the ALRA in Northwest Arctic Education Assoc., NEA-Alaska evaluated whether there was sufficient community of interest between instructors at a vocational facility and a unit of professional certificated staff, finding that similarities in “wages, benefits, educational background, and teaching responsibilities” supported the conclusion that the consolidated unit would be appropriate. Id. at 6-7. Similarly, the ALRA could find that sufficient community of interest exists among the faculty at UAA and UAS as to merit a consolidation election and allow United Academics to move forward with a representation petition.

3. **UAFT-placed faculty teaching upper division**

Over time, baccalaureate and even graduate degree programs have developed in the extended sites outside of the main campuses. In the context of a unit clarification petition in which the community of interest for each faculty member is subject to review, it is the view of United Academics that those UAFT faculty members teaching upper division courses at extended sites share a greater community of interest with other faculty teaching in
baccalaureate and graduate degree programs located on the main campuses. Consequently, United Academics seeks the reassignment of these faculty members to its union.

The development of new baccalaureate and graduate programs at the extended sites has created a change in circumstances relevant to unit determination which, despite the historical exclusion of extended faculty from UNAC’s unit, supports their inclusion now. See Lower Kuskokwim Education Assoc. at 6. Like faculty teaching upper division courses on the main campuses, faculty teaching upper division courses on extended sites generally must hold terminal degrees in their discipline, teach baccalaureate and graduate students, and engage in a deeper level of academic discourse than faculty teaching vocational or exclusively lower division courses. As a result, UNAC is the appropriate unit for these faculty members.

Alternatively, the ALRA may find a representation petition more appropriate. In that event, a unit of faculty teaching upper division courses at both main campuses and extended sites represented by United Academics is appropriate according to the factors defined in Northwest Arctic Education Assoc., NEA-Alaska and those faculty should be allowed to choose UNAC as their bargaining representative via election.

III. REMEDY SOUGHT

United Academics seeks an order from the ALRA:

(1) Reaffirming the composition of the United Academics bargaining unit as composed of faculty members teaching a mix of lower and upper division and graduate level courses in support of the larger university mission of teaching baccalaureate and graduate degree students, research and creative activity, and service;

(2) Directing that faculty teaching upper division courses in baccalaureate, masters, or graduate degree programs, or continuing education in support of professional programs throughout the University of Alaska system be assigned to United Academics; and

(3) Reaffirming the composition of the UAFT bargaining unit as composed of faculty members teaching exclusively lower-division and/or technical/vocational
courses throughout the University of Alaska system, or, in the alternative, directing the merger of faculty members at the Fairbanks, Anchorage, and Juneau main campuses into one unit to be represented by United Academics, or, in the alternative, directing the election by faculty members at the Fairbanks, Anchorage, and Juneau main campuses, who may elect to be represented by United Academics in one unit.

RESPECTFULLY SUBMITTED this 1st day of April, 2010.

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