

STATE OF ALASKA

SARAH PALIN, GOVERNOR

1016 WEST 6th AVENUE, SUITE 403
ANCHORAGE, ALASKA 99501-1963
PHONE: (907) 269-4895
FAX: (907) 269-4898

Email: mark.torgerson@alaska.gov

ALASKA LABOR RELATIONS AGENCY

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September 23, 2008

Kris Racina, Director SW Labor Relations
University of Alaska
910 Yukon Drive, Suite 211
Fairbanks, Alaska 99775

RE: University of Alaska vs. University of Alaska Federation of Teachers, AFT
Local 2404, AFL-CIO (UAFT) and United Academics-AAUP/AFT/AFL-CIO
(UNAC), Case No. 08-1537-UC

Dear Ms. Racina:

This letter responds to the unit clarification petition the University filed on August 15, 2008, and its request to convert the two pending unfair labor practice charges, Case Nos. 07-1514-ULP and 08-1536-ULP, into unit clarification petitions (UC's). While the unfair labor practice charges do raise a unit clarification issue, because the UAFT has not agreed to convert them to a ULP, they will be examined to see if there is probable cause to support the allegations that the University has committed an unfair labor practice. It is the Agency's goal to have the two unfair labor practice charge investigations completed at the same time as the unit clarification petition moves forward so any matters requiring a hearing can be heard at the same time. If probable cause is found, whether the cases should be consolidated is a decision that will be reserved for later in the process.

The Agency has reviewed the University's petition for unit clarification. The petitioner asserts that the unit should be clarified in order to resolve a unit dispute over "faculty members who teach upper division" courses.¹ This dispute involves both the University of Alaska Federation of Teachers' bargaining unit and the United Academics' bargaining unit.

¹On its petition, the University listed the affected positions as "Faculty members at main campus who teach upper division courses." In discussing this matter with the University, the University identified the affected positions as "faculty members who teach upper division." E-mail from K. Racina to J. Ward (9-22-08).



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In its petition, the University requested relaxation or waiver of the questionnaire requirement in 8 AAC 97.050(f)(2)(C). The University stated "... the general questionnaire is designed to elicit broad information that appears to be unrelated to specific issues raised in UAFT's 6/18/08 ULP and the University's petition. . . . it does not appear that information obtained from the questionnaire will be helpful to deciding the instant issue."

I have considered this request and concur with the University's assessment. I agree that the General Questionnaire Regarding Duties would not provide the information needed to resolve this dispute, which concerns the appropriate boundaries for two bargaining units. There is no provision in the regulation to modify the questionnaire to solicit the type of information that could be more relevant to this dispute. Even if such a provision existed, a question remains about which employees would be required to complete the questionnaire. For example, would everyone in both units be required to complete it; would only those faculty who are currently teaching a mix of lower and upper division courses be required to complete it; or would those faculty who have taught a mix of upper and lower division courses in the past, but who are not currently teaching a mix of upper and lower division courses, also be required to complete it.

Generally, the questionnaire is intended to help the Agency with its investigation of a unit clarification petition. Many unit clarification petitions, especially those that involve single positions, can be resolved through investigation and by allowing the parties an opportunity to respond to the information gathered in the investigation, without conducting a hearing. However, the dispute that the University's petition raises is complex. It is one the parties themselves have been unable to resolve for the last ten years, despite several attempts to do so. It does not appear to be the type of dispute that can be resolved through investigation, without a hearing. Because this petition will need to proceed to hearing, and the Agency's general questionnaire likely will not provide pertinent information, under 8 AAC 97.480, the University's request is granted to waive having the questionnaire required in 8 AAC 97.050(f)(2)(C) completed.

The University also asked the Agency to relax the posting requirements, and it proposed that posting occur, using the following methods, in the following locations: (1) posting on the University Statewide Labor and Employee Relations website; (2) mailing a copy to approximately 36 UAFT faculty members who have historically taught an upper division course on a main University campus; (3) mailing a copy to both UAFT and UNAC and asking them to make it available on their union bulletin boards and their websites; and (4) by advising the University's administrators that the document is available on the Labor Relations web site for faculty members who may inquire.

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Because the dispute involves the boundaries for two bargaining units, the Agency believes that each bargaining unit member in both bargaining units should have notice of the unit clarification petition. To insure that adequate notice is given to these two groups of employees, the Agency will require notice to all employees in both bargaining units. The University will be permitted to substitute posting on employer bulletin boards with an e-mail to each faculty member in both units. Of course, the University is permitted to both post on the employer bulletin boards, and send e-mails to all faculty members in both bargaining units, if it desires to take both actions. The Agency has enclosed a Notice of Petition for posting or e-mail transmission, and this document will be transmitted to the University by e-mail as well.

The University of Alaska's request to relax the service requirements in 8 AAC 97.050(c) under 8 AAC 97.480 is granted as modified below:

- The University will e-mail a copy of the Notice of Petition to each employee in the UAFT and UNAC bargaining units and provide an affidavit to the Agency and both labor organizations confirming that the e-mails have been sent;
- The University will post the Notice of Petition on the University Statewide Labor and Employee Relations website;
- The University will mail a copy of the Notice of Petition to UAFT and UNAC and ask each bargaining representative to make the document available on its union bulletin boards in the workplace and on the union's websites (UAFT and UNAC representatives can contact the Agency at 269-4895 to have a copy of the Notice of Petition e-mailed to them to facilitate posting on their websites); and
- The University will communicate to University administrators that the Notice of Petition is available on the Labor Relations website so they may inform any faculty members who inquire of the Notice of Petition's availability.

The petition has been reviewed for sufficiency under 8 AAC 97.050, and it is accepted for filing. Enclosed is a copy of the petition, and the Notice of Petition. The Notice of Petition provides a deadline for interested parties to object to the petition. After the Notice of Petition has been posted on the University's website and e-mailed to each employee in both bargaining units, this Agency will arrange a telephonic prehearing conference to discuss the petition and to schedule a hearing, since it appears that a hearing will be necessary, unless the parties are able to resolve this dispute themselves. An Agency staff member is available to serve as a mediator if the parties request mediation in a final attempt to resolve the matter without a hearing.

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The person who posts the Notice of Petition and sends the Notice of Petition by e-mail must complete the enclosed Affidavit of Posting by providing his or her name, job title, dates of posting or e-mail transmissions, the exact posting locations (if posted on bulletin boards), and by signing it before a notary. If there is no notary at the job site where the posting and e-mail transmission occurs, posting personnel can have a witness sign the posting affidavit, confirming that posting or e-mail transmission has occurred. A Master Affidavit of Posting has also been provided in case the University has a posting representative who will supervise the e-mailing. To meet the service requirements of 8 AAC 97.015, the University must provide the list of names and e-mail addresses for the employees in the two units who received the Notice of Petition by e-mail, and the proof of service must be sent to UAFT and United Academics as well as to the Agency. If any of the notices sent by e-mail are returned as undeliverable, the Agency asks the University to mail a copy of the Notice of Petition to any such affected bargaining unit members.

The Notice of Petition must remain posted on the University's website for at least 15 calendar days from the date of posting. If the University cannot post the Notice of Petition on its website and complete all of the e-mail transmissions on the same day, the last date of posting will be used to determine when the 15-day objection period begins and ends. For example, if the Notices of Petition are posted, transmitted, or mailed on Aug 26, 27, and Sept 3, the 3rd will be considered the date of posting, and the 15 day objection period will end on September 18, 2008. Since the University is asking the two labor organizations to post the Notice of Petition on their websites as a supplement to the University's notice to each employee, the University's actions are the ones that will determine the last date of posting. The University should serve a copy of the completed posting affidavit on both labor organizations, provide proof of service, and return the completed master affidavit of posting, along with any individual posting affidavits, to this office at its earliest convenience.

Thank you for your cooperation. If you have any questions, please call me.

Very truly yours,



Jean Ward
Hearing Officer

cc: Patricia Jenkins, UAFT (and legal counsel in Seattle)
Dr. Carl Shepro, UNAC