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UNIVERSITY OF ALASKA,)
)
 Petitioner,)
)
 vs.)
)
 UNIVERSITY OF ALASKA)
 FEDERATION OF TEACHERS,)
 LOCAL 2404, AFT/AFL-CIO,)
)
 Respondent,)
 and)
)
 UNITED ACADEMICS,)
 AAUP/AFT, AFL-CIO,)
)
 Intervenor.)

CASE NO. 08-1537-UC

ORDER ON UAFT'S MOTION FOR RECONSIDERATION

On Thursday, September 24, 2009, we reviewed the Motion for Reconsideration filed on September 9, 2009, by the University of Alaska Federation of Teachers (UAFT), and the September 21, 2009, response filed by the University of Alaska (University). We received no response from United Academics. In the motion, UAFT asked for reconsideration of the August 25, 2009, Order that placed two unfair labor practice complaints in abeyance (case numbers 07-1514-ULP and 08-1536-ULP), found that the unit clarification in case number 08-1537-UC was served adequately pursuant to 8 AAC 97.050(c), and found the unit clarification petition sufficient under 8 AAC 97.050(b).

Among other arguments presented in its response, the University suggests we should deny the motion because it contends there is no regulatory provision allowing the Agency to reconsider an order. While the Agency has exercised its discretion and reconsidered final decision and orders pursuant to AS

44.62.540 of the Administrative Procedure Act, the Agency has never been requested to reconsider one of its preliminary orders, which are, as a rule, interlocutory in nature. The Order issued on August 25th is a preliminary, interlocutory order. Nevertheless, we will consider UAFT's request for reconsideration under the "Motions" regulation in 8 AAC 97.390. This Order supplements the August 25th Order.

In its motion, UAFT argues that in the event it prevails in its unfair labor practice charges, "there is substantial risk that the [unit clarification] decision would need to be set aside, resulting in costly, duplicative and fruitless litigation." (UAFT Motion for Reconsideration at 4). We disagree. This Agency has never faced a scenario in which we were required to set aside a unit clarification decision because a party prevailed in a subsequent, related unfair labor practice proceeding. We cannot at this time anticipate a factual scenario that in an unfair labor practice proceeding would mandate altering the boundaries of a bargaining unit determined in a recent unit clarification proceeding. While it is always possible that there may be some duplication of effort, we do not foresee the duplication UAFT suggests would occur. Assuming the unit clarification determination or other factors do not resolve the ULP matters, the parties can stipulate to facts determined in the unit clarification proceeding to enhance the efficiency of any subsequent ULP proceeding.¹ Further, if we determine that the unit boundary is ambiguous or otherwise unclear, any related disputes (such as an unfair labor practice) should not be determined anyway until the boundary issue is resolved. We reject UAFT's argument and deny this part of its motion.

UAFT also asserts: "Consolidating the UC petition and the ULP charges in a single hearing promotes stability in labor relations by providing a coherent resolution of related labor disputes and by preventing discordant treatment of faculty members regarding their terms and conditions of employment and their bargaining representative." (UAFT Motion for Reconsideration at 8). We reject this assertion as well. There is more than one path leading to stability in labor relations. Consolidation is not always the only means of promoting an efficient process. While the path we outlined in the August 25th Order may not be the only path, or even the most efficient path (although we believe it is) to resolution of the parties' disputes, it is the path that we believe works best for the parties here.

UAFT contends that consolidation is important because:

In cases where unlawful unilateral changes have been implemented, in addition to ordering the employer to bargain on the matters in issue, ALRA and the national Labor Relations Board will usually return the parties to the *status quo* ante existing before the illegal conduct and order that employeess be made whole for any benefits that the employer has unilaterally discontinued." (citations omitted). UAFT goes on to assert:

Under this well-established rule, if UAFT ultimately prevails on its ULP charges, then the University would be ordered to restore to UAFT from UNAC all faculty members whose

¹ It is also possible that the parties may settle their differences after a decision and order is issued on the unit clarification petition. In any unfair labor practice hearings, the parties themselves can enhance efficiency by stipulating to facts in order to reduce hearing testimony and time.

unlawful placement in UNAC resulted from UA's unilateral changes, including formerly-UAFB faculty members teaching upper division courses, faculty members with a bipartite workload and those who teach in a vocational technical program.

If the unit clarification petition is heard separately from and prior to the ULPs, any delineation of the boundaries between the UAFB and UNAC bargaining units resulting from the UC that diverges from the *status quo ante* may last only long enough for the ULPs to be decided, at which point the UC resolution could be nullified and replaced.

(UAFB Motion for Reconsideration at 8-9).

The University contends that the cases cited by UAFB for support of its *status quo ante* argument are "inapposite." The University adds:

The present dispute is about unit boundaries, not about an attempt to initiate unlawful unilateral changes towards one bargaining unit. The unit clarification proceeding will define the boundaries of the two bargaining units. . . In fact, because UAFB interprets its definition more broadly than either the University or United Academics, the unit clarification is essential.

(University Response at 5).

We essentially agree. The cases cited to support the *status quo ante* argument do not persuade us that we should either hear the ULP cases first or consolidate the ULPs with the unit clarification. In fact, we find the University's assertion telling that there is a disagreement over the interpretation of the boundary between the two bargaining units. Also telling is the fact that UAFB disputes the University's unit placement of at least 116 positions. (See chart submitted by UAFB, attached to Notice of Preliminary Finding of Probable Cause and Partial Dismissal in case no. 07-1514-ULP).

If there is an ambiguity in the description of the bargaining units, it must be clarified before we can determine if an unfair labor practice occurred. Since UAFB contends the University assigned employees to the wrong bargaining unit, we must make sure that the unit boundary is clear, before we determine whether a party committed a prohibited act.

Failure to first clarify the unit boundaries could result in an unstable labor relations environment, as it could cause employees to be moved between units unnecessarily. We must therefore proceed first with the hearing on the unit clarification. We reject UAFB's argument and deny this part of the motion.

In a footnote of its motion for reconsideration, UAFB further contends:

ALRA has found that the UC petition meets the procedural requirements of 8 AAC 97.050(b) and (c), but did not, in its Orders, make a finding or determination of reasonable cause to believe a question of unit clarification exists." Hearing Officer Ward did not conduct an investigation or make a finding of reasonable cause. See, 9/23/09 letter from Ms. Ward to Kris Racina, Director SW Labor Relations. Notwithstanding the absence of a finding of reasonable cause, the Order directs the parties to schedule a UC hearing.

(UAFT Motion for Reconsideration, p. 4, note 4).

In our review of the records of the unit clarification petition and the unfair labor practice petitions, we found it clear that a question of unit clarification exists. We would not have issued the order to proceed to hearing if that were not so. We have re-reviewed the unit clarification record and the unfair labor practice records in light of the assertions made by UAFT. We find again that there is substantial analysis of the unit clarification issue by Hearing Officer Jean Ward in the two unfair labor practice Notices of Preliminary Finding of Probable Cause and Partial Dismissal. It is clear, contrary to UAFT's assertion, that Ward spent considerable time investigating the unit clarification petition and the unfair labor practice complaints. After a substantial investigation that resulted in a 44-page Notice of Preliminary Finding of Probable Cause and Partial Dismissal (case number 07-1514-ULP) and a separate 20-page Notice of Preliminary Finding of Probable Cause and Partial Dismissal (case number 08-1536-ULP), Ward concluded, among other things, that a unit clarification hearing must precede or at most coincide with an unfair labor practice hearing because there is a boundary unit dispute between UAFT and United Academics. The two unfair labor practice findings each contain a relatively lengthy discussion and analysis of a unit clarification issue.

For example, in Case number 07-1514-ULP, the Finding states in part:

The investigation shows that the University has been treating some UAFT faculty members who have a long history of teaching one or more upper division courses as "grandfathered" to teach these courses, maintaining their positions in the bargaining unit represented by UAFT, but it has been assigning newly hired faculty, or UAFT faculty who have no history of teaching upper division courses, to the bargaining unit represented by United Academics if the faculty member teaches one or more upper division courses.

In its response to the charge, the University asked the Agency to treat the charge as a unit clarification matter instead of an unfair labor practice charge because it involves a dispute between two unions, UAFT and United Academics, over unit definitions. As such, its resolution requires the participation of both unions and the University. According to the University, United Academics joins it in requesting that the unfair labor practice charge be converted to a unit clarification proceeding. The University submitted a copy of

a letter signed by the United Academics' president confirming this position. UAFT is not willing to have its unfair labor practice charge heard as a unit clarification petition, and it is unwilling to file a unit clarification petition over the boundary dispute. However, the University has since filed a unit clarification petition to have the unit boundary dispute resolved.

At a late date in the investigation, UAFT provided additional information about some of the allegations in its charge, and it raised some new issues, all of which pertain to the on-going unit dispute between UAFT and United Academics. UAFT says it was unable to provide the information sooner because the University was slow to respond to its information requests, and once the documents were received, it took time to review them to determine areas where problems exist with the bargaining unit assignments the University has made. Overall, from the 05-06, 06-07, and 07-08 time periods, UAFT identified the following groups of faculty members it felt should have been placed in its bargaining unit: twenty-five people it categorized as main campus faculty with exclusively lower division workloads; two faculty members at extended sites; forty-one main campus bipartite faculty members with limited upper division courses; four College of Rural and Community Development faculty members; five vocational/technical faculty members; fourteen faculty members who are teaching in former community college programs; twenty-two fisheries faculty members at extended sites; and two faculty members on the main campus that have been mischaracterized as tripartite. UAFT provided some workload information for these faculty members. *For the most part, the information provided confirms the existence of a broad unit dispute that is best resolved through a unit clarification proceeding, with the full participation of both affected labor organizations and the University. Accordingly, I recommend that all of the positions identified by UAFT on its nine-page chart entitled "Faculty Assigned To UNAC Bargaining Unit Who Should Have Been Assigned To UAFT," be considered as part of the pending unit clarification petition, which was filed by the University of Alaska, unless all three parties to this dispute agree in writing prior to the hearing (1) that the unit placement for the affected positions is no longer disputed, and (2) that they have been able to resolve the underlying disputes so that the same types of issues do not continue to arise.*

UAFT's chart is attached to this finding. A courtesy copy of this finding will be provided to United Academics, since parts of the finding/recommendation could impact United Academics as well as UAFT and the University. It is not possible to determine with certainty as part of this investigation whether any of the positions on this chart were placed in the incorrect bargaining unit. That determination must be made as part of a unit clarification proceeding.

(Notice of Preliminary Finding of Probable Cause and Partial Dismissal, 07-1514-ULP, at 2-3) (emphasis added).

Additional analysis on the unit clarification occurred in this same document:

Even though it was filed as an unfair labor practice charge, the underlying issue involves a unit dispute over the unit boundaries for the ACCFT/UAFB unit and the United Academics' bargaining unit. Both labor organizations claim the right to represent certain faculty members who teach at least one upper division course. Also, the location at which some faculty members are employed and its effect on bargaining unit placement is contested. Because the underlying dispute involves a unit clarification issue, the dispute cannot be resolved without the participation of both affected labor organizations and the University.

The present bargaining unit dispute has evolved over time. It has been twenty-one years since the community college system was merged into the four-year University program. When no other faculty members were represented for collective bargaining purposes, there was no dispute over the bargaining unit placement for the UAFB faculty member who taught an occasional upper division course. The method the University and UAFB agreed upon in Section 5.1A. of the CBA to allow UAFB bargaining unit members to teach the upper division course or courses met both parties' needs.

The University indicates that UAFB knew historically that teaching an upper division course would affect the unit placement of employees. It refers to a provision in the 1992-1994 collective bargaining agreement as support for this claim. The relevant part of Article 5.1A. of that agreement states that,

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

The University claims that this provision was modified in 1997, after United Academics was certified. Article 5.1 now states that, "The assignment of an upper division course or courses is permitted, provided that the Faculty Member and appropriate University administrator agree to the assignment and such agreement is reduced to writing." (P. 3, University response to charge.)

The UAFB/University agreement permitting UAFB represented individuals to teach one or more upper division courses has not worked as well since United Academics was certified, although the two unions have been able to resolve some of the disputes on an individual basis as they arose. The unit boundaries for some faculty who are qualified to

teach both lower and upper division courses are disputed by ACCFT/UAFB and United Academics. An example of the dispute over which unit is appropriate occurs when a faculty member is employed at one of the main campuses and teaches three lower division classes, one upper division class, and has one service assignment. UAFB claims the faculty member should be allowed to teach the one upper division class and remain in the bargaining unit it represents, even though its agreement with the University says, among other things, that UAFB faculty teach exclusively at the lower division level. United Academics believes that assignment of one or more upper division courses means that the position belongs in the United Academics' bargaining unit. The two unions have tried to resolve this dispute themselves, without success.

(Notice of Preliminary Finding of Probable Cause and Partial Dismissal, 07-1514-ULP, at 20-21. See also, e.g., pp. 33, 35, and 43).

Ward conducted a lengthy investigation that included both the exploration of the unfair labor practice issues and the unit clarification issue. We find the investigation was thorough. The citations above are an example of the diligent investigation.

Admittedly, there is no specific statement or finding in the record that a question of unit clarification exists. However, there is ample evidence supporting such a finding. We now find that the record clearly shows that a question of unit clarification has existed under 8 AAC 97.050(c), and we have determined there is reasonable cause to believe that a question of unit clarification exists. In our August 25th Order, we stated that "[t]he Board finds that the unit clarification petition is sufficient under 8 AAC 97.050(b), and that it has been served adequately under 8 AAC 97.050(c)." We reiterate that it is appropriate to hear and decide the unit clarification issues prior to convening any hearing on the unfair labor practice charge issues. The two unfair labor practice charges remain in abeyance, and the parties shall proceed to hearing on the unit clarification issues.

In the August 25, 2009, Order, we stated: "The issues raised by the parties, including but not limited to the timeliness of the petition and whether there has been a change of circumstances that justifies granting all or part of the petition, will be addressed at the hearing in this matter." UAFB seems to suggest in its Motion for Reconsideration that "the issues raised by the parties" includes the issues related to the two unfair labor practices. That is not so. To clarify, we meant that the issues to be addressed at the unit clarification proceeding will be those that are related to the unit clarification petition. The unfair labor practice complaints and the issues related to those complaints have been placed in abeyance.

In summary, we reviewed the records in the unit clarification petition and unfair labor practice complaints and concluded, in our discretion, that the better course of action would be to proceed first with the unit clarification petition and place the unfair labor practice complaints in abeyance. UAFB's Motion for Reconsideration has provided no persuasive argument to change our minds. We deny the motion.

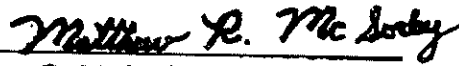
We order the parties to proceed to a prehearing conference regarding the unit clarification petition for the purpose of scheduling a hearing. The Agency directs the parties to provide their email addresses to expedite the scheduling of a prehearing conference. The parties may send their email addresses to mark.torgerson@alaska.gov or call the Agency at 907-269-4895. Once the Agency receives the email addresses, a prehearing conference will be scheduled after determining an available date and time for all parties. The parties will receive notice of the prehearing conference with instructions on items to include in prehearing conference statements. At the prehearing conference, a hearing date will be scheduled.

Dated: October 6, 2009.

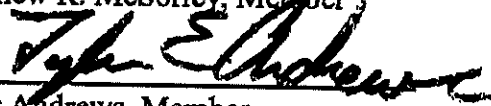
ALASKA LABOR RELATIONS AGENCY



Gary P. Bader, Chair



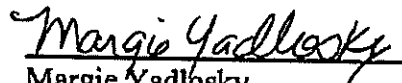
Matthew R. McSorley, Member



Tyler Andrews, Member

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the *Order on Motion for Reconsideration* in the matter of, *University of Alaska vs. University of Alaska Federation of Teachers, Local 2404, and United Academics AAUP/AFT/AFL-CIO*, Case No. 08-1537-UC, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 6th day of October, 2009.



Margie Yadloosky

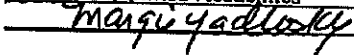
Human Resource Specialist I

This is to certify that on the 6th day of October, 2009, a true and correct copy of the foregoing was faxed and mailed, postage prepaid to

Mark E. Ashburn, U of A

Kathleen Barnard, UAFT

Cliff Freed, United Academics



October 6, 2009

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