

Oct 17 2007 16:13

ACCFT, Local 2404

(907) 786-4095

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FAXED
OCT 17 2007
BY: TKB/Barnard

ALASKA LABOR RELATIONS AGENCY
1016 WEST 6th AVENUE, SUITE 403
ANCHORAGE, ALASKA 99501-1963
(907) 269-4895 Fax (907) 269-4898

Office use only		CHARGE AGAINST EMPLOYER	
Case No	ULP	Date Filed	Date Amended
SEE ATTACHED INSTRUCTIONS and FILING REQUIREMENTS			
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT (Respondent)			
a. Name of Employer <u>University of ALASKA</u>	b. Employer Representative to contact <u>Kris Racina</u>	d. Telephone Number <u>(907) 450-8230</u> Facsimile Number <u>(907) 450-8231</u>	
c. Address (street, city, state, and ZIP code) <u>211 Batrovich Bldg, PO Box 5514 Fairbanks, AK 99775-5140</u>			
2a. Full name of party filing charge (if labor organization, give full name, including local name and number) <u>ALASKA Community Colleges' Federation of Teachers, Local 2404</u>			
2b. Address (street, city, state, and ZIP code) <u>3211 Providence Drive, PSB-214 Anchorage, AK 99508-4670</u>		2c. Telephone Number <u>(907) 562-2660</u> Facsimile Number <u>(907) 786-4095</u>	
2d. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) <u>American Federation of Teachers, AFL-CIO</u>			
3. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of AS 23.40.110(PERA) or AS 42.40.760 (Railroad). The employer has committed the practice described in			
<input checked="" type="checkbox"/> 23.40.110(a)(1) - or 42.40.760(a)(1) Interference, coercion, restraining exercise of rights guaranteed in AS 23.40.080 or AS 42.40.720			
<input checked="" type="checkbox"/> 23.40.110(a)(2) - or 42.40.760(a)(2) Domination or interference with formation, existence or administration of union.			
<input checked="" type="checkbox"/> 23.40.110(a)(3) - or 42.40.760(a)(3) Discrimination in hire or tenure or employee or terms of employment to discourage or encourage union membership.			
<input type="checkbox"/> 23.40.110(a)(4) - or 42.40.760(a)(4) Discharge or discrimination against employee for participating in proceedings under P.E.R.A.			
<input checked="" type="checkbox"/> 23.40.110(a)(5) - or 42.40.760(a)(5) Refusal to bargain in good faith.			
4. Collective Bargaining Agreement Indicate one:			
<input type="checkbox"/> There has never been a collective bargaining agreement covering the parties involved			
<input checked="" type="checkbox"/> A copy of the current (or most recent) applicable collective bargaining agreement is attached.			

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5 Status of Grievance Proceedings (check all that apply)

- a A grievance has been filed and a copy is attached of each grievance step filing and all employer responses
- b A copy of the grievance filed at each step and the employer's response(s) is being furnished for investigative purposes only (Service on employer not required)
- c Arbitration is scheduled for _____
- d An arbitration award has been issued and is attached, or will be provided when received
- e A grievance was not filed because: *CSA has expired, and this is ULP.*

6 Statement of Facts

Clear and concise statements of the facts claimed by the party filing this charge to constitute the unfair labor practice(s) (including times, dates, places, occurrences, and participants in occurrences) are set forth in numbered paragraphs on separate sheets of paper attached to each copy of this charge.

7 Remedy Requested

The remedies requested for the claimed unfair labor practices are set forth on separate sheets of paper attached to each copy of this charge.

8 DECLARATION

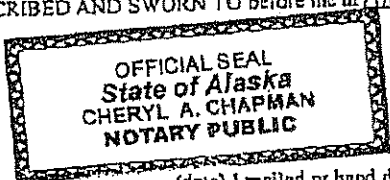
Patricia M Jenkins

I, _____, say on oath or affirm that I have read the foregoing document and believe that all statements made in the document are true.

By *Patricia M Jenkins*
(Signature of representative or person making charge)

Co-president, ACCFT
(Title or office, if any)

SUBSCRIBED AND SWORN TO before me at *Anchorage* Alaska, this *17th* day of *October*, 2007



Cheryl A Chapman
Notary Public in and for Alaska
My Commission Expires: *22 June 2009*

I certify that on _____ (date) I mailed or hand delivered (circle one) a true and correct copy of this charge, to (include employer representative and, if the state is the employer, include the Attorney General and the Commissioner of Administration) Enter the name and address of person(s) served in the space provided below:

Signature

STATEMENT OF FACTS

Background

1. Alaska Community Colleges' Federation of Teachers, Local 2404 ("ACCFT") represents teachers employed by the University of Alaska and is party to a collective bargaining agreement that expired June 30, 2007, a copy of which is attached to this Charge as Exhibit A.. ACCFT is the exclusive bargaining representative for all faculty teaching at extension sites and vocational-technical institutions, regardless of workload. ACCFT is also the exclusive bargaining representative for faculty at other University of Alaska locations who carry a bipartite teaching load.
2. The ACCFT unit was certified in 1973. At that time the unit was a statewide unit that included all faculty at Alaska's several community colleges. As the State created more community colleges, the faculty at those colleges came into the bargaining unit. See Ex. B, *ACCFT, Local 2404 and University of Alaska, Decision and Award (Bornstein, 1988)* at 6-7 (hereinafter "*Bornstein, Phase I (1988)*")¹
3. In 1987 all the community colleges, but one, were absorbed into the University of Alaska as extended sites. Many ACCFT-represented faculty remained at the extended campuses, but some transferred or were hired to work at the University's preexisting campuses ("main campuses"). Prior to the merger,

¹ The ACCFT and the University participated in a three-phased arbitration concerning ACCFT's bargaining unit. That arbitration is pertinent here and will be cited with reference to phase and page number. The Phase I, II and III *Bornstein* decisions are attached as Exhibits B, C and D, respectively.

faculty teaching at the main campuses were not represented for collective bargaining purposes.

4. Upon announcement of the merger, the University initially withdrew recognition of ACCFT, but following the *Bornstein Phase II* (1990) decision, the University resumed recognition of ACCFT as the representative of all faculty teaching at the extended campuses and of all faculty teaching on the main campuses who had a bipartite workload. *See Ex. C, Bornstein, Phase II*, at 6-9.²
5. Although the University contended in the *Bornstein Phase II* (1990) arbitration that the bipartite/tripartite distinction between ACCFT-represented faculty and the unrepresented faculty no longer was material, the Arbitrator found that the distinction continued in existence and continued to be material in defining the boundary between the ACCFT bargaining unit and the other, at that time, unrepresented faculty employed by the University. *See Ex. D, Bornstein, Phase III* (1991), at 53-57, 59.
6. Significantly, both prior to and after the merger of the community colleges into the University system, ACCFT faculty occasionally taught upper division classes. *See Bornstein, Phase III* (1991), at 57 and footnote 1. *See also Bornstein, Phase II*, at p. 9.
7. In 1992, after the *Bornstein, Phase III* (1991) decision, the parties were engaged in negotiations for a successor collective bargaining agreement, the first such agreement negotiated after the merger. In May 1992, that contract went into

² A bipartite workload consists of teaching and service. A tripartite workload consists of teaching, research, and service or other components. ACCFT members' bipartite workload typically consists of four parts teaching, one part service. Tripartite workloads typically consist of three parts teaching, one part service or other duty, and one part research. *See*, discussion in *Bornstein Phase II* (1990) at pp. 7-9, 11 and in *Bornstein Phase III* (1991), at p. 54). *See also*, Ex. A at 15, ACCFT-UA CBA Art. 5.1.B&C.

effect and contained the following recognition language, which has remained in all successor agreements. In the most recent contract, the language is found in Sections 9.1 and 5.1. Section 9.1 provides in material part that the University recognizes ACCFT as the exclusive bargaining representative for "faculty, librarians and counselors of a community college, ... faculty, academic counselors and librarians whose principal assignment is at an extended site of the University, ... faculty who are employed to teach exclusively at the lower division level, ... excluding ... other persons not employed as instructional personnel or counselors as described above for more than fifty (50) percent of a full-time workload assignment." Section 5.1 authorizes bargaining unit employees to be assigned upper division courses upon written agreement and some have historically taught upper division courses. *See Ex. A at 38, 15, 60.*

8. Also in May 1992, the Alaska Labor Relations Agency entered an order that the unit described by stipulation of the parties (in language identical to the 1992 agreement's recognition clause and the most recent agreement's Art. 9.1) was appropriate for collective bargaining. That order is attached as Exhibit E.
9. In 1996 faculty outside the ACCFT bargaining unit organized and United Academics-AAUP/AFT, AFL-CIO ("UnAc") was certified as that unit's collective bargaining representative. The scope of the bargaining unit for UnAc was litigated. Again, the key factor in the boundary between the ACCFT and UnAc units was the bipartite/tripartite workload difference. *See United Academics-UUAP/AFT vs. University of Alaska, Decision and Order 202, at ¶ 13* ("these differences in the workload of the two faculty groups are significant and

have a substantial impact on how the faculty view themselves and their community of interest”) and ¶ 26 (“The presence or absence of a research requirement is a key difference between the two faculty groups.”)

10. That decision resulted in a certification of the unit UnAc requested, which specifically excluded “[a]ll employees who are recognized by the University of Alaska as represented by the Alaska Community Colleges’ Federation of Teachers, Local 2402 (sic)... who are on the faculty as follows” The description that followed was identical to the language of the then current ACCFT collective bargaining agreement that is now found in Art. 9.1. Attached as Exhibit F is a copy of UnAc’s certification.
11. The language in Article 5.1 authorizing ACCFT bargaining unit members to be assigned upper division courses came into existence in 1992 along with the language now found in Article 9.1 and was in existence well before UnAc, the other faculty union, was in existence. After 1996, when UnAc was recognized, the University of Alaska negotiated four successor contracts with ACCFT that to this day continue to authorize ACCFT bargaining unit members to be assigned upper division courses. Under Article 5.1 and Appendix C (the form for written agreement to teach upper division classes), ACCFT unit members have a long history of teaching upper division classes when there is a departmental need and when they are qualified.
12. In late 2003 UnAc asked the University to assign all faculty teaching any upper division classes to its bargaining unit. In 2004 the University threatened to take unilateral action to do so. ACCFT protested and stated that it would seek

injunctive relief and file unfair labor practice charges if the University carried out its threat. The University did not take such action.

13. In 2006 ACCFT asked the University to agree to a contract extension so that it could engage in discussions with UnAc prior to negotiating for a successor agreement. The University stated that its agreement would be conditioned upon UnAc also asking for an extension. UnAc did not ask for an extension, and the University refused to extend the contract beyond its original expiration date of June 2007. ACCFT and the University began negotiations for a successor contract.

14. In November 2006, UnAc again demanded that the University transfer all faculty teaching upper division classes, whether on main or extended campuses and regardless of whether the faculty member carried a bipartite or tripartite workload, to its bargaining unit. Again the ACCFT informed the University that if it attempted such unilateral action, it would file unfair labor practice charges. The University stated that it would await the outcome of discussions between the two unions.

Unfair Labor Practice

15. In September 2007, the University again threatened to move any ACCFT faculty teaching any upper division courses to the UnAc bargaining unit. ACCFT responded that it viewed any such action by the University as violating the law.

16. Despite the University's implication that it has not already taken action to move faculty from the ACCFT unit to that UnAc unit, the ACCFT has learned that such action has already occurred in certain instances.

17. During the fall semester of 2007, the University did take action. In August 2007, the University hired three new faculty members with bipartite assignments, teaching more than 50% lower division classes, to teach in the two-year degree Nursing Program. Though hired to teach in the two-year degree Nursing Program, which was originally an Anchorage Community College program, each faculty member was also given a teaching assignment to teach one class in the four-year degree Nursing Program. The University placed these new Faculty Members into the United Academics bargaining unit because the assignment included an upper division class, ignoring the provision of Article 5.1A. (Note: All other faculty members in the two-year degree Nursing Program are ACCFT faculty members, even those who teach upper division classes.) Their letters of appointment and workload agreements setting forth their terms and conditions of employment and their union representation are attached as Exhibit G. Similarly, the University has hired a faculty member to teach lower division classes with a bipartite workload, then assigned him one upper division class, and then informed him that he would therefore be in the UnAc, and not the ACCFT bargaining unit.
18. ACCFT has also discovered that the University has attempted to circumvent that scope of the ACCFT unit by the fiction of appointing faculty at extended campuses through letters of appointment from the Fairbanks main campus. These faculty teach and live at extended campuses, but the University has sent them appointment letters placing them in the UnAc bargaining unit.
19. Based on this information received, ACCFT believes that the University has assigned other new faculty members, employed with a bipartite work load and

employed primarily to teach lower division courses, to teach an upper division class for the purpose of keeping them out of the ACCFT bargaining unit and violated the Act by assigning them to the United Academics bargaining unit.

20. By its actions the University has interfered with the rights of its employees to be represented by the labor organization that it has previously recognized as their representative, has interfered with the internal affairs – membership rights – of ACCFT, has discriminated in hiring to discourage union membership and violated its obligation to bargain in good faith by unilaterally changing the wages, hours and working conditions of its employees.

REQUESTED REMEDY

The University of Alaska should also be directed to place all faculty members who teach a bipartite workload with more than 50% lower division teaching into the ACCFT bargaining unit, and the agency should order the University to post notices that it will assign workers to the proper bargaining unit in the future. The University should be ordered to reimburse ACCFT for its loss in dues and initiation fees caused by the University's violation and any other remedies to which the ACCFT is entitled and which the Agency deems appropriate.

3174-001

AMENDED CERTIFICATE OF SERVICE

I hereby certify that on the 18th of October, 2007, I caused the Charge Against Employer to be filed with the Alaska Labor Relations Agency via facsimile, and a copy to be sent via facsimile to Kris Racina at the University of Alaska.

On this 18th day of October, 2007, I placed the original Charge Against Employer plus four copies in the US First Class mail, addressed to:

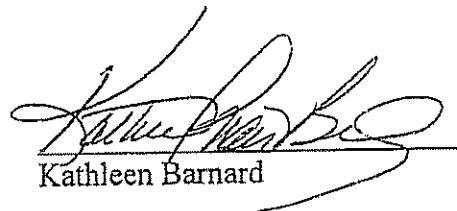
Alaska Labor Relations Agency
1016 W 6th Avenue, Suite 403
Anchorage, AK 99501-4898

And a true and correct copy of the same to placed in the US First Class mail addressed to:

University of Alaska
Attn: Kris Racina
P.O. Box 755140
Fairbanks, AK 99775

Annette Keritzer
10th Fl. State Office Building
P.O. Box 110200
Juneau, AK 99811

Alaska Attorney General
Alaska Department of Law – Civil Division
1031 W 4th Avenue, Suite 200
Anchorage, AK 99501-1994


Kathleen Barnard