

INTRODUCTION

1. The University of Alaska Federation of Teachers (UAFT), formerly known as Alaska Community Colleges' Federation of Teachers, Local 2404 ("ACCFT") has filed an unfair labor practice charge ("ULP") against the University of Alaska ("University"). The recent ULP is dated June 18, 2008. UAFT also filed an unfair labor practice on the same or similar unit clarification issues dated October 17, 2007. This pleading is both a response to the June 18, 2008 ULP and also a request that the two pending ULPs filed by UAFT be converted into a Petition for Unit Clarification pursuant to 8 AAC 97.050. A request for relaxation or waiver of the questionnaire requirements contained in 8 AAC 97.050 (f)(C) accompanies this response.

The dispute underlying the ULP is in fact a dispute between two bargaining units, UAFT and United Academics (UNAC), over the boundaries of each of the units. UNAC, which is a necessary party in this dispute over unit boundaries, joins the University in the request to convert the ULPs into a Unit Clarification proceeding.

BACKGROUND

2. The bargaining unit represented by UAFT includes: faculty, librarians and counselors of community colleges; faculty, academic counselors, and librarians whose principal assignment is at an extended site; faculty whose principal assignment is vocational-technical instruction; and faculty who are employed to teach exclusively at the lower

division level, that is 200 level courses or below, or are employed to teach exclusively at the lower division level with a single part service assignment. . .¹

3. Prior to the establishment of the faculty bargaining unit represented by UNAC, UAFT was the only faculty bargaining unit at the University of Alaska. As a result, prior to the inception of UNAC, the University and UAFT had latitude to agree that work beyond the unit definition approved by the ALRA could be assigned to faculty without affecting the unit status of such employees. The parties negotiated Article 5.1.A (Professional Assignment). That Article in the 1992-1994 UAFT CBA stated in part:

...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.²
(Emphasis added)

4. In 1996 the bargaining unit represented by UNAC was established by the ALRA. In a formal Decision, the ALRA rejected the formation of a single faculty bargaining unit as urged by the University. The ALRA instead affirmed the creation of UNAC as a mirror image of the UAFT unit.³ Both unions participated in the administrative proceeding and both supported the proposed definition of UNAC that was adopted.

5. UNAC was defined by the ALRA as representing faculty in various ranks, but excluding:

¹ ACCFT CBA, Article 9.1.A. The 2007-2010CBA is attached as Exhibit A.

² “Faculty Member” is a term used in the UAFT CBA to mean an employee of the UAFT bargaining unit.

³ See ALRA Decision and Order No. 202, attached as Exhibit B.

All employees who are recognized by the University of Alaska as represented by the Alaska Community Colleges' Federation of Teachers, Local 2404, AFL-CIO who are on the faculty as follows: faculty, librarians, and counselors of a community college established by the University of Alaska Board of Regents; faculty, academic counselors, and librarians whose principal assignment is at an extended site of the University of Alaska (other than cooperative extension); faculty whose principal assignment is vocations-technical instruction; and *faculty who are employed to teach exclusively at the lower division level with a single part service assignment.*⁴ (Emphasis added)

6. In 1997, the portion of Article 5.1 in the UAFT CBA that permitted retention in the UAFT unit, despite disqualifying upper division assignments, was bargained out of the UAFT CBA. Since that time, Article 5.1 has stated:

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.

7. Since the formation of the bargaining unit represented by UNAC, the University has assigned new faculty at the three main campuses⁵ to UAFT if they were employed to teach exclusively at the lower division level.⁶ A limited group of existing faculty represented by UAFT have taught upper division courses at the main campuses, and the practice of allowing “grandfathered” UAFT faculty members to teach upper division courses has continued to some extent. This “grandfathered” group contains

⁴ ALRA Decision and Order No. 202 (Exhibit B), at 2. The United Academics CBA sets forth this same exclusion in Article 3.2. See UNAC CBA, attached as Exhibit C.

⁵ The unit distinction between faculty teaching exclusively lower division and those teaching both upper and lower division courses has effect only on the main campuses of the three major administrative units (“MAUs”).

⁶ Faculty would also be assigned to UAFT if their principal assignment is vocational-technical instruction.

approximately 33-36 individuals who have historically had an upper division component in their workload.

8. Though issues regarding unit placement have been raised by one or the other union since 1998, both UAFT and UNAC have been aware of the historical grandfathering approach involving upper division course assignments to UAFT Faculty Members. However, for a period extending over the last several years, both UAFT and UNAC have threatened that they will insist on strict enforcement of unit definitions based on their interpretation of CBA language if no satisfactory resolution of the dispute is reached. The University has requested that the two unions work together to formulate a recommendation for UA's consideration. Since 2004 the University has also participated in informal meetings with the separate unions to discuss possible resolutions.⁷
9. UAFT has argued from time to time that, by virtue of Article 5.1, the placement of UAFT faculty at main campuses could not be changed to the UNAC unit when new and voluntary assignments included upper division courses. UAFT pressed this contention even though the faculty were initially hired after the advent of UNAC. UAFT has also argued during 2007 contract negotiations that the University negotiated the unit definition for UNAC and that the definition failed to recognize UAFT's upper division "rights" under Article 5.1 of the UAFT CBA. The University did not negotiate the recognition clause with UNAC.

⁷ See letter from University, dated August 12, 2004, attached as Exhibit D.

10. In November 2006 UNAC reported to the University that its discussions with UAFT about resolving the unit definition dispute had failed. UNAC requested that the University comply with the unit definition in their CBA and place in the UNAC unit those faculty teaching upper division courses.⁸ UNAC subsequently asked the University to hold the November 2006 request in abeyance while it engaged in further discussions with UAFT in an effort to reach a consensus.
11. On October 10, 2007 UNAC reported that its discussions about unit definitions with UAFT were not successful, and UNAC reactivated its November 2006 request that its CBA be enforced by the University regarding the teaching of upper division courses.⁹
12. Following the October 10 request by UNAC, the University proposed a solution for the unit definition dispute. That proposal was as follows:
1. To retain in UAFT:
 - Counselors currently placed in UAFT, who were hired before July 1, 2007, and who work on the Main Campuses;
 - Faculty currently placed in UAFT, who were hired before July 1, 2007, who work on the Main Campuses, and who have a history of regularly teaching upper and lower division courses, and who may be assigned mixed upper and lower division classes from time to time, provided they wish to remain in UAFT.
 2. Faculty currently placed in UAFT who either have no recent history of regularly teaching upper and lower division courses, or who were hired after July 1, 2007, and who work on the Main Campuses, whose principal assignment is other than vocational-technical instruction, would be transferred to UNAC upon accepting an assignment of an upper division course or courses;
 3. To retain in UNAC:

⁸ See letter from United Academics, dated November 7, 2006, attached as Exhibit E.

⁹ See letters from United Academics, dated October 10, 2007, attached as Exhibit F.

- UAF School of Education faculty in the College of Rural Alaska;
 - UAF SFOS faculty.
4. To otherwise enforce current unit definitions, including retaining in UAFT faculty at extended sites who teach upper division courses.¹⁰

13. On October 18, 2007 the University received a copy of the ULP filed by UAFT.

Following the receipt of that ULP, the University wrote to the unions inviting both unions again to join the University in a petition to convert the ULP into a Unit Clarification.¹¹ UNAC expressed its willingness to participate in such a petition.¹² UAFT declined to join such a petition.¹³

14. On July 1, 2008, the University received a copy of the instant ULP filed by UAFT regarding the assignment of nursing faculty member Carol Klamser.

15. In early spring and summer 2008, University representatives met with both unions to discuss resolution ideas. On August 14, 2008, the University wrote to both UAFT and UNAC updating its previous proposal. UAFT and UNAC have not yet responded to this proposal. See Exhibit K attached.

ANALYSIS

16. The dispute which underlies this ULP and the prior ULP is a unit definition dispute between two unions and the employer that is most appropriately treated as a Unit Clarification matter. Such treatment will afford both unions the opportunity to address

¹⁰ See letter from University, dated October 18, 2007, attached as Exhibit G.

¹¹ See letter from University, dated October 24, 2007 attached as Exhibit H.

¹² See letter from United Academics, dated October 31, 2007, attached as Exhibit I.

¹³ See letter from ACCFT, dated October 26, 2007, attached as Exhibit J.

the matter before the ALRA, and such a treatment will ensure that all parties of interest meaningfully participate in this matter and that any resolution will bind all parties. The University will analyze the unit definition issue first. Following such an analysis, the University will respond to the specific allegations set forth by UAFT in the July 18, 2008 ULP. The unit definition analysis is also set forth in the October 18, 2007 letter which is Exhibit G.

The Meaning of Article 5.1 of UAFT CBA.

17. At the time it was originally bargained, Article 5.1 of the UAFT CBA was a permissive subject of bargaining. Article 5.1 conditions upper division assignments on course by course agreements between individual Faculty Members and individual University administrators. By the terms of the provision, the University may not insist that a UAFT Faculty Member teach upper division. Additionally, there is no CBA provision that permits UAFT or individual Faculty Members to insist on receiving upper division assignments. Though UAFT argues that Article 5.1 is part of and expands its unit definition, expansion of a unit definition would not be phrased in terms of discretion of the employer and employee, thus this language is not consistent with an intent to expand UAFT's unit definition.

18. Moreover, agreements with UAFT Faculty Members to teach upper division courses could occur without affecting unit placement or conflicting with unit definitions in Article 9.1 of the CBA, i.e., at extended sites, at a community college, or in vocational-technical instruction. This is the case because such faculty are excluded from the unit represented by UNAC, regardless of teaching level.

19. As a result, the plain language of Article 5.1 cannot be read to reflect an agreement between UAFT and the University to alter or augment UAFT's unit definition at the expense of UNAC. It can only be read to do what the parties legally could do at the times, i.e., permit upper division assignments to UAFT Faculty Members where unit placement is not affected by the assignment, and allow the University to determine when to offer such upper division assignments.
20. Bargaining history shows that after the advent of UNAC, UAFT and the University recognized that they could not permit retention of Faculty Members in UAFT when upper division courses were assigned which would otherwise exclude a Faculty Member from the bargaining unit. The parties bargained significant changes to Article 5.1 in the 1997 UAFT CBA. That CBA was the first new CBA with UAFT after establishment of the UNAC unit. In that CBA, UAFT and the University removed the language in Article 5.1 which had expressly permitted retention in the UAFT unit despite the assignment of a disqualifying upper division course. As a result, the current Article 5.1 cannot be construed as authorizing, much less requiring, retention in UAFT when assignment of an upper division course would otherwise place the Faculty Member in UNAC.
21. During 2007 contract negotiations, the University proposed that Article 5.1 language regarding upper division be deleted from the UAFT CBA. However, for the reasons already discussed, this does not reflect any need or desire to adjust UAFT's unit definition. On the other hand, retention of the current language should not be viewed as University acceptance of UAFT's interpretation of this provision or as an intention

to continue any past practice. That is not the case. The University believes the language is permissive and cannot be bargained to impasse by UAFT at any rate. However, to bring contract negotiations to closure, the University agreed that the current language could remain until an ALRA decision on the upper division issues is reached either through ULP determination or unit clarification petition.

ALRA ESTABLISHMENT OF UNAC

22. As noted above, the unit definition of UNAC was determined by the ALRA, with full participation by UAFT. UAFT did not assert, and the ALRA did not recognize, expanded unit rights for UAFT under Article 5.1. The University did not bargain unit definitions with either union to alter the definitions established by ALRA.

UPPER DIVISION TEACHING NOT LIMITED TO UNAC

23. Consistent with the current language of Article 5.1 of the UAFT CBA and both unit definitions, certain Faculty Members may teach upper division courses and remain in UAFT. UAFT's unit definition includes the following faculty, without regard to upper or lower division teaching:

Faculty of community colleges;
Faculty whose principal assignment is vocational-technical instruction; and
Faculty whose principal assignment is at an extended site of the University of Alaska (other than cooperative extension).

Neither unit definition contains any indication that these alternative bases for membership in UAFT are conditioned on exclusive lower division teaching. Each is written as an independent basis for membership in UAFT or for exclusion from UNAC.

24. A review limited to the UNAC and UAFT unit definitions would compel the conclusion that faculty who do fall outside the three categories referenced above, and who teach any upper division courses, are in the UNAC bargaining unit. However, given the pattern and practice of acquiescence in a different application of unit definitions, a solution is needed that will address or correct the variance in practice from the strict terms of unit definitions in each CBA.
25. Here all three parties have long permitted UAFT faculty who were in place and accustomed to teaching a mix of upper and lower division classes at the time UNAC was recognized to continue this teaching and remain in UAFT. Similarly, all three parties have acquiesced in the chosen unit placement of counselors and UAF School of Education faculty who are assigned to extended sites but whose reporting line is through the MAU School.
26. A strict reading of unit definitions would be possible but this seems undesirable from numerous perspectives. It would compel inter-unit transfers of faculty long accustomed to their present unit. Such transfers would disrupt distinct compensation mechanisms, and in some cases, the mechanisms for evaluation and administration. In addition, strict adherence has the potential to disrupt University operations to the extent that some UAFT Faculty Members who are currently relied upon to teach upper division classes at main campuses would object to such assignments if the result were a change in unit. This could produce conflict between deans and Faculty Members as well as morale problems. If the University chose not to continue the upper division assignments so as to permit the UAFT Faculty Members to remain in the UAFT unit, it

potentially would leave UAFT faculty without adequate workloads, and at the same time, insufficient faculty to teach upper division classes. Given such circumstances, the solution to the unit definition dispute set forth above in paragraph 15 makes sense.

University Response to Specific Charges by UAFT

27. The specific charges set forth by UAFT in the ULP demonstrate why this matter should be a Unit Clarification proceeding. The charges directly involve the unit definition for UNAC as well as the definition for UAFT, and the charges directly reflect the efforts by the University to carefully observe both unit definitions. This dispute cannot be adequately addressed or resolved without the active participation of all three interested parties – UAFT, UNAC, and the University.

28. In Paragraph 1, UAFT alleges that it is the exclusive bargaining representative for faculty at other University of Alaska locations who carry a bipartite teaching load. In Footnote 1, UAFT describes a bipartite work load as consisting of “teaching and service.”

The University agrees that a bipartite workload may consist of lower division teaching + service; however, it may also consist of upper division teaching + service, or upper + lower division teaching + research or service. There are also faculty members in UNAC who have a bi-partite assignment of research and service with no teaching duties. The University disputes that a bipartite workload consisting of upper division teaching + service or research or that a bipartite workload consisting of research + service is in the UAFT bargaining unit under the terms of its current recognition clause. The CBA does not make any reference to a bipartite workload as

the basis for unit membership. The UAFT includes faculty “employed to teach exclusively at the lower division level, that is 200 level courses or below, or are employed to teach exclusively at the lower division level with a single part service assignment...”

29. In Paragraphs 2-8, UAFT recites background on Carol Klamser’s particular upper division assignment issue. Even if UAFT’s allegations are true, they do not constitute a ULP, UAFT Faculty Members have no rights to upper division assignments.

The University retains the right to assign work in both bargaining units. In the workload determination process, Faculty Members may propose particular assignments which may or may not be ultimately assigned by the department administration. Considerations governing the workload process for UAFT are contained in Article 5.1.A. Under the CBA, Faculty Members are not guaranteed that their workload proposals will be accepted. In the Klamser case, the University determined that the appropriate course of action was to not assign an upper division class to Klamser that was not being taught at the extended site.

30. In Paragraph 10, UAFT asserts that Klamser may be assigned upper division classes at Kachemak Bay campus. The University agrees and has never disputed that UAFT faculty assigned to extended sites may teach upper division if assigned and taught at the extended site. This position is consistent with the recognition clause. UAFT’s assertion concerning the assignment of upper division courses to be taught at Kachemak Bay are not relevant to the facts here as the University declined to assign Klamser an upper division course to be taught in Anchorage.

31. In Paragraphs 11-14, UAFT recites Klamser's efforts to persuade administrators to assign an upper division class to her.
32. In Paragraph 15, UAFT recites Klamser's request that she be allowed to apply to teach in the graduate (upper division) program. UAFT does not state that administrators approached Klamser to request that she change bargaining units.
33. In Paragraph 16, UAFT asserts that their recited facts lead to the conclusion that the University has a policy of refusing to allow any faculty member who is in UAFT to teach any upper-division courses unless he or she is willing to give up UAFT bargaining unit membership. The factual recitations do not support this conclusion. Moreover, the University is not asking faculty members to change bargaining units. The University is complying with both unit definitions by declining to make new upper division assignments to UAFT faculty members where the class will not be taught at an extended site. However, where a UAFT member is assigned to an extended campus and that campus is offering upper division classes, the University continues to assign upper division to those UAFT members, consistent with the recognition clause. Under the CBA, Faculty Members are not guaranteed that their workload proposals will be accepted.
34. The University denies the assertions contained in Paragraph 17 and asserts that the conclusion does not flow from the facts recited by UAFT in its June 18, 2008 ULP.

REQUESTED ACTION

The University requests that the ULP charge filed by UAFT be converted to a Unit Clarification proceeding with the full participation of UAFT, UNAC, and the University. The University further requests that the ALRA clarify the respective bargaining unit definitions of UAFT and UNAC so that the current dispute is fully resolved.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August 2008 I caused the foregoing Response to Charge Against Employer dated June 18, 2008, and Petition for Unit Clarification to be filed with the Alaska Labor Relations Agency via email, and two originals, plus two copies to be delivered via U.S. First Class mail, addressed to:

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

And a true and correct copy of the same to be delivered via U.S. First Class mail addressed to:

University of Alaska Federation of Teachers, Local 2404
3211 Providence Drive, PSB-214
Anchorage, Alaska 99508

United Academics
3211 Providence Drive, PSB-202
Anchorage, Alaska 99508



Kris Racina