

DEPARTMENT OF LABOR

ALASKA LABOR RELATIONS AGENCY

UNITED ACADEMICS -
AAUP/AFT, LOCAL 4996,

Complainant,

UNIVERSITY OF ALASKA,

Respondent.

Case No. 22-1779 ULP

RESPONSE TO COMPLAINT FOR UNFAIR LABOR PRACTICE

The University of Alaska (“University”), through counsel Perkins Coie LLP, hereby submits the following Response to United Academics AAUP/AFT Local 4996 (“United Academics”)’s Complaint for Unfair Labor Practice dated August 29, 2022 (the “ULP”).

PARTIES: The University is represented by Michael O’Brien and Sara Davey, Perkins Coie LLP, 1029 West Third Avenue, Suite 300, Anchorage, Alaska 99501 whose phone number is (907) 263-6947.

United Academics is represented by Ryan Stuart, Jermain, Dunnagan & Owens, P.C., 3000 A Street, Suite 300, Anchorage, Alaska 99403 who phone number is (907) 563-8844.

I. OVERVIEW

United Academics’ claims with respect to the University engaging in unfair labor

practices are baseless and can be summarily dismissed.¹ Despite United Academics' claims to the contrary, the parties' bargaining history demonstrates that from the outset, United Academics was the obstructionist party—not the University—and they continually deployed tactics aimed at impeding reaching a mutual agreement with respect to a new CBA.² The University set out from the start of negotiations with the goal of providing salary increases to United Academics' members by the next fiscal year, strangely, United Academics actively worked against it.

The parties' bargaining history demonstrates that the University bargained in good faith and meaningfully participated in the negotiations—despite United Academics' outlandish, unsubstantiated, and, sometimes, illegal demands.³ After 42 bargaining sessions over the course of eight months, it was obvious that the parties remained far apart and were unwilling to move from their respective positions on Articles 15 and 16—pay and benefits—two of the most critical pieces of any CBA. Accordingly, the University lawfully declared impasse after reaching deadlock and exhausting mediation efforts and implemented the terms of their best and final offer (the “BAFO”), which actually improved the terms and conditions of United Academics' members' employment by providing salary increases.⁴ University President Pitney exercised the

¹ The ULP claims such conduct is in violation of AS 23.40.080, AS 23.40.110(a)(1), AS 23.40.110(a)(2), and AS 23.40.110(a)(5)

² See the University's ULP Charge filed against United Academics on September 29, 2022.

³ See *id.*

⁴ The BAFO provided for salary increases for United Academics' members; however, due to the parties' inability to reach an agreement prior to the end of the legislature session, funding for such raises could not be appropriated. Thus, such raises ultimately could not be implemented. See Exhibit A (BAFO). The BAFO also provided increased compensation and benefits for unrepresented faculty.

University's right to speak throughout negotiations by publishing non-coercive, factual communications directly to the entire University community. Her speech was legally appropriate, within the University's rights, and not in violation of the Alaska Labor Relations Act ("ALRA").

II. FACTS

The University and United Academics via their respective negotiation teams began bargaining the prior Collective Bargaining Agreement ("CBA") that was set to expire on December 31, 2021.

A. The Parties' Bargaining History.

The parties' bargaining history is telling, and United Academics' misleading, and overly simplistic summary could not be further from the truth—the University meaningfully participated in negotiations in good faith until the parties had reached a standstill with respect to two of the most critical provisions of the CBA—Articles 15 and 16.⁵ The University presents the **full** picture of the parties' lengthy bargaining history below.⁶

⁵ This response focuses on Articles 15 and 16 in light of the allegations in United Academics' ULP. However, United Academics' tunnel vision with respect to these articles is a red herring. Of course, the ultimate goal in contract negotiation is to reach a final agreement on the CBA in its totality and not just individual articles. The parties also remained far apart on several other articles; however, the parties remained significantly and quantifiably far apart Articles 15 and 16, which are two of the most critical provisions, as of the date the University declared impasse.

⁶ See also Exhibit B, which is a chart summarizing the dates on which the parties met, the length of the parties' negotiations, whether they exchanged or discussed proposals, whether the parties made any substantive movement with respect to their proposals, and whether the parties reached any tentative agreements with respect to certain articles.

i. Ground Rules.

United Academics refused to meaningfully bargain ground rules by presenting a whole new set of rules two months after ground rules negotiations first began—a troubling start to the bargaining process but a foreshadowing of the obstructionist conduct to come.

In May 2021, well before negotiations were set to begin, the University began negotiation preparations. The University sought input on improvements to the bargaining agreement from key stakeholders and reached out to the Alaska Department of Administration for their input and stance on participation as required by AS 23.40.212(b). It also began collecting and examining data, including, but not limited to, wage history, employee performance statistics, and the Alaska economy. Additionally, the team reviewed comparable CBAs, studied the University’s budget, studied University and peer institution metrics (around such areas as student enrollment, graduation rates, faculty-to-student ratios), and began drafting proposals.

In May 2021, the University also reached out to United Academics to arrange to meet to discuss the ground rules and other logistics related to the upcoming bargaining session. The parties’ initial meeting occurred on June 14, 2021, and the University presented United Academics with proposed ground rules at that initial meeting. With the benefit of hindsight, it is now apparent from this very first meeting that United Academics was never interested in bargaining in a collaborative manner or with the goal of reaching a full and comprehensive agreement. For example, United Academics was adamant that no member of either bargaining team be allowed to attend negotiation meetings virtually, even though that had become the nationwide norm in bargaining during the COVID pandemic. On August 11, 2021 (six weeks

after receiving the initial draft ground rules), United Academics abruptly changed direction and finally agreed to virtual attendance. In fact, United Academics notified the University on the eve of the first bargaining session that they would be attending the first two bargaining sessions (on August 30 and 31) virtually due to rising COVID conditions. This sort of intransigence and capriciousness was a sign of things to come.

By August 11, 2021, after weeks of meetings and communications to discuss the terms of the ground rules, the teams had still not yet come to agreement. Rather than present additional modifications to the existing redline version of the draft ground rules that the parties had been working on for six weeks, United Academics unilaterally scrapped the parties' work and presented an entirely new set. These new ground rules included the following new terms and eliminated suggested terms made by the University:

- Added language that the ground rules shall be in effect even after impasse is declared;
- Added language that the current CBA shall remain in effect until there's a new CBA--eliminating the language "or until impasse is reached"⁷;
- Eliminated the requirement that the chief negotiator must approve of any statement issued on behalf of a bargaining team;
- Eliminated the construct that each party's notes are proprietary to that party;
- Eliminated the duties of the chief negotiator;
- Eliminated all references to enlisting a mediator;
- Eliminated language that the parties would adhere to courtesies of professionalism; and
- Eliminated the paragraph stating December 31, 2021 (CBA expiration date) was the parties' the goal for the date to complete negotiations.

⁷ This goes against applicable law. *See Taft Broad. Co., Wdaf Am-Fm TV*, 163 NLRB 475, 478 (1967) (explaining that well established Board precedent provides that unilateral changes may be implemented so long as the employer has bargained in good faith until impasses).

It is telling that United Academics' unilateral revision to these ground rules included attempts to constrain the University's rights with respect to what would occur in the event of impasse, telegraphing that United Academics never intended to bargain in good faith.⁸ Moreover, United Academics' removal of the goal of reaching an agreement prior to the expiration of the then-in-place CBA demonstrated that United Academics did not take seriously the need to bargain to a new CBA in a timely manner.

Ultimately, it was not until August 27, 2021, **three months** after negotiations on ground rules began, that the teams were able to agree on the basic parameters of negotiations. The terms of the final ground rules eliminated the language "or until impasse is reached" but added "to the extent required by Alaska law."

ii. Requests for Information

Prior to the start of negotiations, on June 22, 2021, United Academics issued a request for information ("Request for Information") to the University that included the following requests: (as material to United Academics' allegations of bad faith bargaining):

- Provide the total dollar amount of external funding (e.g., federal grants) procured throughout the UA system by United Academics members during each fiscal year FY2017, FY2018, FY2019, FY2020, and FY2021.
- Identify which United Academics members who have procured external funding in fiscal years FY2017, FY2018, FY2019, FY2020, and FY2021 and the total dollar amount procured by these members in each of the five fiscal years.

⁸ Essentially, United Academics wanted to be able to hold the University hostage in the event the parties could not reach an agreement. While the University has the right, under applicable law to implement the terms of their best and final offer upon reaching impasse, United Academics wanted to prevent them from exercising such right.

- Provide (among other details) the MAU code, last name, first name, unit, job title, step, grade, annual salary, job class code, full- and part-time status, of United Academics' members for each of the fiscal years FY2017, FY2018, FY2019, FY2020, and FY2021.
- Provide the total dollar amount of external funding (e.g., gifts, contracts, grants, fundraising) procured by United Academics' members throughout the UA system for each of the fiscal years FY2017, FY2018, FY2019, FY2020, and FY2021.
- Provide for fiscal years FY2017, FY2018, FY2019, FY2020, and FY2021, any salary increase assumptions (cost of living adjustments) that were or are being used for United Academics' members and other University employees in budgets for external grants and grant proposals.
- Provide for fiscal years FY2017, FY2018, FY2019, FY2020, and FY2021, the different cost assumptions being used in University grants and contracts.
- Provide a copy of all contracts and the total dollar amount paid for fees/wages and expenses (e.g., transportation, lodging, per diem, supplies, equipment) for each consultant engaged by UA Statewide, UAF, UAA, and UAS for each of the fiscal years FY2017, FY2018, FY2019, FY2020, and FY2021.
- Provide the total dollar amount spent on fees/wages and expenses (e.g., transportation, lodging, per diem, supplies, equipment) by UA Statewide, UAF, UAA, and UAS for each legal service, outside counsel, and legal consultation (including retainers) for each of the fiscal years FY2017, FY2018, FY2019, FY2020, and FY2021, including for arbitrations involving United Academics' members.
- Provide for each of the fiscal years FY2017, FY2018, FY2019, FY2020, and FY2021, the total dollar amount spent by the University on conference fees, professional development, travel (including transportation, lodging, and per diem), and trainings for all employees throughout the UA system.
- Provide the total dollar amount of Indirect Cost Recovery—which are the revenues general from federal and other restricted grants utilized to offset administrative and support costs—ICR generated by grants/contracts for which a United Academics' member is a PI or co-PI for each of the fiscal years FY2017, FY2018, FY2019, FY2020, and FY2021.

- Provide or academic years AY2017, AY2018, AY2019, AY2020, and AY2021 the total student FTE enrollment in the UA system, the total number of FTE United Academics' faculty, and the FTE student/United Academics ratio (i.e., the student/faculty ratio restricted to United Academics' members).
- Provide a breakdown of United Academics' members' salaries according to "Fund 1" or "Fund 2" (i.e., grants and contracts) for each of the past five academic years, AY2017, AY2018, AY2019, AY2020, and AY2021.
- Provide a report for all United Academics' members of the total salary "market adjustments" made during each of the last five fiscal years, i.e., FY2017, FY2018, FY2019, FY2020, and FY2021.

The University provided all the requested information regarding to the University's funding prior to the start of negotiations, providing United Academics with a full picture of the University's financial position prior to any exchange of any proposals.

iii. Bargaining History

The parties met 42 times—over 100 hours—and exchanged over 220 proposals over the course of eight months before recognizing that deadlock had been reached and mutually agreeing to proceed with mediation through the Federal Conciliation and Mediation Service ("FCMS"). United Academics requested delays of two months over the course of that period, cancelled four sessions, and with the legislative deadline for funding looming, United Academics requested to bargain less frequently beginning mid-February 2022—requesting that the parties bargain every other week instead of every week.⁹ On April 25, 2022, the University made their best and final offer, or BAFO, as United Academics had not made any material movement towards the

⁹ Eventually, United Academics realized that such frequency was not conducive for bargaining and requested that the parties return to weekly bargaining sessions in April 2022.

University’s position with respect to Articles 15 and 16, pay and benefits and other key areas. Mediation resulted in nothing more than United Academics’ continuing to request unsubstantiated and unsupportable increases to pay and benefits. Accordingly, the University was well within the confines of applicable law to declare impasse on May 12, 2022, after exhausting statutorily-mandated mediation efforts, and to implement the terms and conditions of the BAFO and the CBA articles which had been tentatively agreed upon by the parties.

August 30, 2021 (First Bargaining Session)				
Parties met for approximately six hours	United Academics presented 18 proposals related to Articles 1, 2, 4, 5, 6, 19, 20, 21, and 22	The University presented 11 proposals related to Articles 4, 5.2, 5.6, 12.1, and 12.5	No discussions regarding additional articles, other than those presented by either party	No articles TA’d

From the very first negotiating session, the teams were on notice that, by statute, that for the University to provide any increases to represented employees, the monetary terms had to be included in the legislative budget for legislature approval. This is evident from the existing language in the ground rules for negotiations, Article 1 of the CBA, and AS 23.40.215, all of which makes explicit a legislative approval requirement.¹⁰ The University kept this deadline in mind and bargained in good faith with the goal of ensuring that United Academics’ bargaining unit members could receive salary increases for the next fiscal year; it is now apparent that

¹⁰ See Exhibit C (Ground Rules); Exhibit D (Article 1); AS 23.40.215.

United Academics did not share this goal. In fact, United Academics blatantly disregarded this deadline based on an unsubstantiated opinion that the University could file a supplemental budget request whenever the parties reached an agreement, regardless of whether the legislature was in session or not; however, there is no clear path for the approval of supplemental budget requests and no guarantee of funding for any such request.

August 31, 2021 (Second Bargaining Session)				
Parties met for approximately five hours	United Academics presented 20 proposals and one counterproposal related to Articles 4, 8, 14, and 18	The University presented seven proposals and one counterproposal related to Articles 9.2.5, 9.2.6, and 15.4.3 (“Market Increases”)	Discussions regarding United Academics’ proposal related to Article 20 in addition to those presented by either party	Parties TA’d Articles 19 and 21 when the University accepted proposals first presented by United Academics on August 30, 2021 without any modifications

The University understood time was of the essence, more so than United Academics, apparently as the CBA was set to expire in four months and the window to get appropriation by the legislature for changes to monetary terms was not much further out. Accordingly, the University presented their initial proposal for Article 15.4.3 (“Market Increases”) during the second bargaining session to underscore the sense of urgency and to begin the conversation regarding compensation at the very outset. The University anticipated proposed increases to benefits and compensation and likewise anticipated there would be substantial time spent on

these two pieces of the CBA. The University’s proposal regarding Article 15.4.3 did not propose any pay increases for 2022, because the year was nearly over, but would enable increases for FY23 and FY24 depending on available funding. The University reminded United Academics that it had previously provided market increases to represented faculty in FY20.

By contrast, United Academics’ bargaining started out with a misstep. They presented a proposal for Article 18-Management Rights that involved illegal subjects of bargaining. Specifically, United Academics attempted to redefine the University’s management rights by removing the University’s rights to establish programs. By law, the functions and purposes of the employer are not bargainable, while wages, hours and working conditions are.

In addition to making a proposal regarding Article 15.4.3, the University also discussed, at length, the budget reduction mitigation efforts implemented by the University for FY21 and FY22, which included systemwide furloughs issued for executive-level university employees and designated senior administrators (non-represented faculty). Such furloughs included:

AFFECTED POSITIONS	FY2021¹¹ FURLOUGHS	FY2022¹² FURLOUGHS
	Executive Staff Senior Administrators	Executive Staff Senior Administrators Non-Represented Faculty

¹¹ President Jim Johnson, *University of Alaska implements executive and senior leader furloughs*, University of Alaska Anchorage (April 29, 2020) <https://www.alaska.edu/pres/communications/4.29.20%20Leadership%20furloughs.pdf>.

¹² President Pat Pitney, *President Pitney Announces Extension of Administrative Furloughs for FY22*, University of Alaska (May 7, 2021) <https://www.alaska.edu/news/hr/fy22-administrative-furlough.php>.

	FY2021¹¹ FURLOUGHS	FY2022¹² FURLOUGHS
EMPLOYEES FURLOUGHED	166 employees	180 employees
FURLOUGH DAYS	10 days	10 days for Executive Staff and Senior Administrators 8 days for non-represented faculty
UNIVERSITY SAVINGS	\$554,000.00	\$775,000.00

President Pitney stated in the Fiscal Year 2022 announcement that “further cost-reduction measures will be considered before the final Fiscal Year 2022 budget is adopted by the Board of Regents at its June meeting.”¹³ During the bargaining session, United Academics represented they were unaware of the specifics of the furloughs. It strains credibility to believe that United Academics was not fully aware of these cost cutting measures aimed at reducing cuts to academics given that the entire University was notified when they occurred.¹⁴ Even so, United Academics was fully aware of the University’s financial condition and the considerable budget cuts that the University has been faced with over the last several years as of the second bargaining session and well before United Academics set forth any of their proposals regarding Article 15 (Compensation) and Article 16 (Benefits).¹⁵

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See* Ex. E (Front page of July 19, 2019 edition of The Chronicle).

September 13, 2021 (Third Bargaining Session)				
Parties met for approximately five hours	United Academics presented six proposals and one counterproposal related to Articles 3, 7, and 12	The University presented seven counterproposals related to Articles 1, 2, 8, 14, and 22	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd

September 14, 2021 (Fourth Bargaining Session)				
Parties met for approximately six hours	United Academics presented 38 proposals and one counterproposal related to Articles 1 and 13	The University presented two counterproposals related to Articles 4 and 20	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd

September 20, 2021 (Fifth Bargaining Session)				
Parties met for approximately five hours	United Academics presented 11 proposals and one counterproposal related to Articles 2 and 17	The University presented two counterproposals related to Articles 1 and 12	Discussion regarding Article 13 presented on Sept. 13, 2021	No articles were TA'd

September 21, 2021 (Sixth Bargaining Session)				
Parties met for approximately five hours	United Academics presented one counterproposal related to Article 20	The University presented one counterproposal related to Article 6	No discussions regarding additional articles, other than those presented by either party	Parties TA'd Articles 8, 14, and 22 when United Academics accepted the University's Sept. 13, 2021 proposal

October 4, 2021 (Seventh Bargaining Session)				
Parties met for approximately six hours	United Academics presented three counterproposals related to Articles 1, 6, and 12	The University presented three counterproposals related to Articles 2, 3 and 5	No discussions regarding additional articles, other than those presented by either party	Parties TA'd Articles 20 when the University accepted United Academics' Sept. 21, 2021 proposal

October 5, 2021 (Eighth Bargaining Session)				
Parties met for approximately six and a half hours	United Academics presented 25 proposals related to Articles 2, 3, 4, 5, and 9	The University presented one counterproposal related to Article 7	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd

October 18, 2021 (Ninth Bargaining Session)				
Length of meeting not recorded	United Academics presented one counterproposal related to Article 15	The University presented five counterproposals related to Articles 1, 4, 6, 12, and 18	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd

Nearly two months after negotiations began, United Academics finally presented their initial proposal for Article 15 (Compensation). While the University anticipated a proposal for increases in compensation, the magnitude United Academics' request far exceeded what the University would have ever expected, considering the financial position of the state of Alaska and the University. United Academics' initial proposal is outlined as follows:

Article	Title	United Academics' October 18, 2021 Proposal												
15.10	Faculty Initiative Fund	Did not include language to renew the \$1 million annually for faculty initiatives												
15.2	Salary Minimums	Expand salary minimums beyond initial hires												
15.2	Salary Minimums	Set forth 15.4% -16.1% increases to minimum salaries at every rank <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Rank/Status</th> <th>Minimum</th> </tr> </thead> <tbody> <tr> <td>Post Doctoral Fellow</td> <td>\$42,250 36,600</td> </tr> <tr> <td>Instructor/Lecturer</td> <td>\$55,100 47,500</td> </tr> <tr> <td>Assistant Professor</td> <td>\$66,100 57,000</td> </tr> <tr> <td>Associate Professor</td> <td>\$72,800 63,000</td> </tr> <tr> <td>Professor</td> <td>\$80,100 69,000</td> </tr> </tbody> </table>	Rank/Status	Minimum	Post Doctoral Fellow	\$42,250 36,600	Instructor/Lecturer	\$55,100 47,500	Assistant Professor	\$66,100 57,000	Associate Professor	\$72,800 63,000	Professor	\$80,100 69,000
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Professor	\$80,100 69,000													

Article	Title	United Academics' October 18, 2021 Proposal
15.4	Base Salary Adjustments	Require annual salary increases of either 3% Cost of Living ("COLA") or Alaska CPI each year of the contract; require a \$1000 lump sum distribution to base each year of the contract
15.4.3	Retention & Equity Increases	Convene committee to allocate \$1 million for retention and salary equity
15.4.4	Market Increases	Complete Years 2-3 of University market compensation project
15.4.5	Market Increases	Recompute market salaries by adding 20% (or \$18 million) for the higher cost of living in Alaska
15.5	Merit Bonuses	Require that 1% of total base payroll be awarded yearly for one-time merit bonuses
15.7.1	Department Heads/Chairs	Impose a minimum of \$2,500 on the option of financial compensation
15.7.1	Department Heads/Chairs	Provide program-level leadership the same compensation as department chairs
15.7.1	Department Heads/Chairs	Impose a higher maximum of \$7,500 on the option of financial compensation
15.7.1	Department Heads/Chairs	Allow chair compensation to go to the dispute resolution process of Article 7
15.7.1	Department Heads/Chairs	Combine department-wide leadership with program-specific leadership
15.7.2	Summer Appointments	Require UNAC members have priority in summer instruction
15.7.2	Summer Appointments	Make compensation for summer courses proportional to base academic year salary

Article	Title	United Academics' October 18, 2021 Proposal
15.7.2	UA Regent's Professor	Eliminate the \$10,000 one-time bonus for this position
15.9	Faculty Development	Expand professional development funds to go beyond travel

The University began their review of United Academics' proposal to Article 15 and estimated that the above increases would cost the University in excess of **\$78.3 million over three years.**¹⁶

October 19, 2021 (Tenth Bargaining Session)				
Length of meeting not recorded	United Academics presented four counterproposals related to Articles 6, 7, 12, and 16	The University presented three counterproposals related to Articles 2, 3, and 5	No discussions regarding additional articles, other than those presented by either party	Parties TA'd Article 18 when United Academics accepted the University's Oct. 18, 2021 counterproposal

Similar to Article 15, the United Academics' Article 16 proposal, made six weeks after negotiations began, was packed with additional financial burdens to the University **in excess of \$14.7 million.** United Academics bogged down the parties' bargaining progress by suggesting several changes that would require legal review because United Academics set forth questionably (if not outright) illegal proposals. For example, United Academics' proposal for

¹⁶ United Academics' initial proposal with respect to Article 15 represented (on an annual basis) approximately 15 times the University's cost-saving measures implemented in FY21 and FY22.

Article 16 included the addition of a voluntary early retirement program with the explanation that it would be in the University's best interest to replace older faculty with younger faculty. United Academics is certainly aware retirement incentives are highly regulated, cannot be discriminatory, and that the University would need to spend significant time reviewing to ensure the proposal comported with applicable law the University's benefits plans. The proposal also included suggestions that violated IRS guidelines by requesting that parental leave be tied to the Sick Leave Bank and that the use of the donated Sick Leave Bank could be used for any purpose and not just in instances of a serious health condition (as defined by the FMLA). Putting forward proposals that obviously violated well-known law was a waste of both teams' time. While United Academics later tried to take credit for movement on their position (e.g., by "conceding" this provision), this was an illegal subject of bargaining in the first place. This sort of movement on illegal subjects of bargaining amounted to a shell game demonstrating that United Academics had no real interest in meaningful bargaining.

Given the significant financial impacts resulting from United Academics' proposals with respect to their proposals for Article 15 and Article 16, the University was required to dedicate an extraordinary amount of time to digest, analyze, and prepare a response to such demands. On October 24, 2021, the chief negotiator for the University reached out to his counterpart for United Academics and advised that the University was continuing to analyze the Article 15 and 16 proposals and would have some clarifying questions soon. United Academics did not object to this approach.

October 25, 2021 (Eleventh Bargaining Session)				
Length of meeting not recorded	United Academics presented two counterproposals related to Articles 2 and 3	The University presented two counterproposals related to Articles 7 and 13	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd

October 26, 2021 (Twelfth Bargaining Session)				
Parties met for approximately five hours	United Academics presented three counterproposals related to Articles 4, 5, and 17	The University presented one counterproposal related to Article 17	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd

November 1, 2021 (Thirteenth Bargaining Session)				
Parties met for approximately five hours	United Academics presented four counterproposals related to Articles 4, 7, and 13	The University presented two counterproposals related to Articles 4 and 5	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd

November 2, 2021 (Fourteenth Bargaining Session)				
Parties met for approximately four and a half hours	United Academics presented two counterproposals	The University presented one counterproposal related to Articles 9	No discussions regarding additional articles, other than those	No articles were TA'd

	related to Articles 4 and 5		presented by either party	
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November 8, 2021 (Fifteenth Bargaining Session)

Parties met for approximately five hours	United Academics did not present any counterproposals	The University presented two counterproposals related to Articles 3 and 12	United Academics did a mid-term presentation related to bargaining status; there was discussion related to the Article 5 counterproposal made by United Academics on Nov. 2, 2021	No articles were TA'd
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November 9, 2021 (Sixteenth Bargaining Session)

Parties met for approximately five and a half hours	United Academics presented three counterproposals related to Articles 3, 4, and 12	The University presented a package counterproposal related to Articles 4 and 5	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd
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On November 10, 2021, United Academics informed the University they would not be available to attend the January 31 and February 1, 2021 bargaining sessions and preemptively cancelled these previously-planned sessions nearly two months in advance.¹⁷ United Academics

¹⁷ Exhibit F (email from Rickard).

also preemptively requested in this same communication that the teams meet every other week starting in February, which effectively cut in half the number of bargaining sessions the parties could conduct.

November 15, 2021 (Seventeenth Bargaining Session)				
Parties met for approximately four hours	United Academics presented one counterproposal related to Article 5	The University presented one counterproposal related to Article 3	Discussion related to Articles 3, 15, and 16 presented by United Academics on Oct. 18, 2021 and Nov. 9, 2021.	No articles were TA'd

On November 15, the teams engaged in substantive discussions regarding Articles 15 and 16. The University sought clarification from United Academics regarding aspects of their proposals in an effort for the University to continue to move forward in their analysis of the potential financial impact. The University expressed to United Academics at this meeting that it was actively considering all the proposals but needed time to fully to understand what would be permissible under applicable law and the University's budgetary constraints.

November 16, 2021 (Eighteenth Bargaining Session)				
Parties met for approximately six and a half hours	United Academics presented three counterproposals related to Articles 3, 7, and 9	The University presented a package counterproposal related to Article 7	Discussion of United Academics read of faculty testimonials	No articles were TA'd

On November 16, 2021, United Academics once again advised the University that they believed that the bargaining sessions should be reduced to an every other week beginning February 21, 2022. The University argued against United Academics' requests, as it would reduce the parties' bargaining time and the University was concerned that could impact the parties' ability to reach an agreement in a timely manner. United Academics continued to insist on this reduced schedule.

November 29, 2021 (Nineteenth Bargaining Session)

Parties met for approximately four hours	United Academics presented two counterproposals related to Articles 6 and 11	The University presented one counterproposal related to Article 6	Discussion of United Academics read of faculty testimonials	Parties TA's Article 12 when the University accepted United Academics' Nov. 9, 2021 counterproposal
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November 30, 2021 (Twentieth Bargaining Session)

Parties met for approximately seven hours	United Academics presented three counterproposals related to Articles 4, 5 and 7	The University presented three counterproposals related to Articles 4, 5, and 7	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd
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December 6, 2021 (Twenty-First Bargaining Session)

Length of meeting not recorded	United Academics did not present any counterproposals	The University presented four counterproposals related to	No discussion regarding additional articles, other	No articles were TA'd
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		Articles 4, 5, 7, and 11	than those presented by either party	
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December 7, 2021 (Twenty-Second Bargaining Session)

Length of meeting not recorded	United Academics presented three counterproposals related to Articles 4, 5, and 7	The University did not present any counterproposals	No discussion regarding additional articles, other than those presented by either party	No articles were TA'd
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Despite the fact that the current CBA was set to expire on December 31, 2021, United Academics indicated that it was not able to meet again until January 18, 2022—meaning that there was over a month lapse in negotiations. At one of the most critical junctures in negotiation, United Academics impeded any momentum the parties may have had and preemptively allowed the parties' contract to lapse without even attempting to bargain a deal that would benefit their members.

January 18, 2022 (Twenty-Third Bargaining Session)

Parties met for approximately four and a half hours	United Academics presented one counterproposal related to Article 11	The University presented four counterproposals related to Articles 2, 4, 5, and 7	No discussion regarding additional articles, other than those presented by either party	No articles were TA'd
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The teams discussed their intent to discuss Articles 15 and 16. While United Academics, in an email on January 13, 2022, mentioned they were looking forward to resuming negotiations





and discussion of Articles 15 and 16 at the next meeting, they made no mention of any dissatisfaction with the fact that the University had not yet provided a counterproposal regarding Articles 15 and 16.

January 19, 2022 (Twenty-Fourth Bargaining Session)				
Parties met for approximately two and a half hours	United Academics did not present any counterproposals	The University did not present any counterproposals	No discussions regarding additional articles, other than those presented by either party	The parties TA'd Articles 4, 5, and 7 when United Academics accepted the University's Jan. 18, 2022 counterproposals

The short duration of this session and the fact that no proposals were exchanged during the twenty-fourth bargaining was caused by United Academics' request for a full-day caucus. The University presented a *University and United Academics CBA Negotiations Status Update* to the group which discussed the impacts of United Academics' Articles 15 and 16 proposal impacts ("Impacts Presentation"). After the University presented the Impacts Presentation, United Academics requested to caucus at 11:32 a.m. and returned at 1:15 p.m. However, United Academics then communicated the team had hit a "snag" and requested to caucus the rest of the day.

The Impacts Presentation was yet another good faith effort by the University to help United Academics understand how the University could not possibly accept United Academics' proposals regarding Articles 15 and 16 given the undeniable reality of the University's financial situation by explaining the effects of enrollment decline and lack of state funding. The University

provided the following financial information regarding funding and enrollment decline, illustrating a decrease in every area:

	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>2022 vs. 2019</u>	
General Funds (\$M)	\$327.0	\$302.0	\$277.0	\$272.7	-17%	
YoY Delta		(\$25.0)	(\$25.0)	(\$4.3)	(\$54.3)	
Unrestricted Revenue (\$M)	\$535.3	\$507.2	\$473.7	\$462.8	-14%	
YoY Delta		(\$28.1)	(\$33.5)	(\$10.9)	(\$72.5)	
Tuition (\$M)	\$131.5	\$123.5	\$117.7	\$110.7	-16%	
YoY Delta		(\$8.0)	(\$5.8)	(\$7.0)	(\$20.8)	
Students (Fall FTEs)	15,455	14,047	12,723	11,960	-23%	
YoY Delta		(1,408)	(1,324)	(763)	(3,495)	

- Student FTEs have dropped 40% since FY 2012
- Systemwide enrollment has dropped 8.5% since Spring 2021
- From FY14 through FY19 the State of Alaska reduced its funding for the UA System from \$378 million to \$327 million, for a base reduction of \$51 million



By contrast, United Academics' pending Article 15 and 16 proposals requested increases, renewal of expired monetary terms, or creation of administratively burdensome elements in every material respect, including:

Compensation (Article 15)

- Increased Minimum Salaries
- Guaranteed annual COLA
- An annual lump-sum distribution to base salaries

Personnel Benefits (Article 16)

- University to increase percentage coverage of health plan costs
- A tripling of the wage base for the University Pension Plan
- Tuition benefits waived immediately upon hire

Compensation (Article 15)

- Financial commitment to “bring all UNAC members to equitable levels of compensation”
- Completion of the UA Market Compensation Project
- Market increases
- Merit bonus commitments
- Increased compensation for department chairs/heads and overloads
- Faculty Development funds;
- And more...

Personnel Benefits (Article 16)

- Adding Indigenous People’s Day as a holiday
- Doubling the amount of faculty time-off that can be cashed in
- Creating a new UNAC Leave Bank
- Creating a new Voluntary Early Retirement Program
- Base salary distribution over twelve months
- Free parking

United Academics’ initial proposals related to compensation and benefits were estimated to cost the University **\$91.5 million over three years**.¹⁸ Given the furloughs mentioned above, and in a situation where the University is attempting to save wherever it can, there was no realistic possibility that the University could ever accept these proposals.

United Academics did not address the University’s Impact Presentation during the subsequent three bargaining sessions. Instead, they waited until February 8, 2022 to engage in further discussions with respect to Articles 15 and 16.

January 24, 2022 (Twenty-Fifth Bargaining Session)				
Parties met for approximately three hours	United Academics presented one counterproposal	The University presented two counterproposals related to	No discussions regarding additional articles, other	No articles were TA’d

¹⁸ In the University’s Impact Presentation initially estimated that United Academics’ opening proposal regarding Articles 15 and 16 would cost the University approximately \$91.5 million over three years. However, upon further and closer analysis, it appears that such proposals would more likely cost the University approximately \$93 million.

	related to Article 2	Articles 3 and 17	than those presented by either party	
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January 25, 2022 (Twenty-Sixth Bargaining Session)

Parties met for approximately three hours	United Academics presented one proposal and one counterproposal related to Articles 1 and 10	The University did not present any counterproposals	Discussion regarding the number of proposals outstanding	No articles were TA'd
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As of January 25, 2022, United Academics had submitted approximately 182 separate, substantive proposed changes to the CBA, which impacted 121 different sections of the CBA—significantly outpacing the approximate 12 substantive changes proposed by the University.

February 7, 2022 (Twenty-Fifth Bargaining Session)

Parties met for approximately seven hours	United Academics did not present any counterproposals	The University presented 11 counterproposals related to Articles 1, 2, 3, 6, 9, 10, 11, 13, 15, 16, and 17	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd
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February 8, 2022 (Twenty-Eighth Bargaining Session)

Parties met for approximately eight hours	United Academics did not present any counterproposals	The University did not present any counterproposals	No discussions regarding additional articles, other	No articles were TA'd
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			than those presented by the University on Feb. 7, 2022	
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The University’s Article 15 counterproposal provided for an additional \$14 million in across-the-board salary increases over the three-year CBA term, which comprised a two percent annual increase for all United Academics’ members each year. This was significant movement from the University’s initial Article 15 proposal in August 2021 which did not commit to a specified increase. Further, the University’s Article 16 counterproposal also showed movement in that it agreed to accept United Academics’ proposal from October 18, 2021 with respect to an expanded definition of “sick leave” and the creation of a new section titled Sick Leave Bank taken from an existing Memorandum of Agreement. Such commitments represent a significant move and commitment on behalf of the University in light of the University’s financial circumstances.

February 21, 2022 (Twenty-Ninth Bargaining Session)				
Parties met for approximately six hours	United Academics presented 5 counterproposals related to Articles 1, 2, 3, 6, and 10	The University presented one counterproposal related to Article 17	No discussions regarding additional articles, other than those presented	No articles were TA’d

February 22, 2022 (Thirtieth Bargaining Session)				
Parties met for approximately six hours	United Academics did not present any counterproposals	The University presented 11 counterproposals related to Articles 1, 2, 3, 6, 9, 10, 11, 13, 15, 16, and 17	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd

The negotiation teams did not meet between February 22, 2022 and March 14, 2022 because United Academics was unable to meet the week of Spring Break, March 7 and 8.

March 14, 2022 (Thirtieth-First Bargaining Session)				
Parties met for approximately six hours	United Academics presented 11 counterproposals related to Articles 1, 2, 3, 6, 9, 10, 11, 13, 15, 16, and 17	The University did not present any counterproposals	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd

On the whole, United Academics' March 14, 2022 Articles 15 and 16 counterproposals had almost exactly the same financial impact to the University as United Academics' initial proposals on October 18-19, 2021. In five months, United Academics had made no meaningful movement in their position on Articles 15 and 16. For example, the Article 15 counterproposal was essentially the exact same as the initial proposal submitted in October 2021—the only concession was the slight reduction in the proposed salary increase pool from \$9 million to \$6.75 million per year.¹⁹ The counterproposal kept the same market increases and the salary minimums

¹⁹ Again, United Academics' singular "concession" with respect to their Article 15

and payments for department heads and chairs as the October proposal. However, offsetting that minor decrease in the salary pool, the counterproposal included an additional **increase** in payment for summer appointments as well as an added right of first refusal for bargaining members for summer teaching assignments. Taken together United Academic’s position had remained materially unchanged.

March 15, 2022 (Thirtieth-Second Bargaining Session)				
Parties met for approximately four minutes	United Academics did not present any counterproposals	The University did not present any counterproposals	No discussions regarding additional articles, other than those presented by either party	No articles were TA’d

On April 1, 2022, in between sessions, the University sent 11 counterproposals related to Articles 1, 2, 3, 6, 9, 10, 11, 13, 15, 16, and 17 to United Academics.

The University promptly responded to United Academics’ stagnant March 14 counterproposal. In addition to maintaining their commitment to two percent across-the-board salary increases, the University also agreed to increase salary minimums. This was the first time during these negotiations that the University agreed to a salary minimum increase—again

counterproposal still represented (on an annual basis) approximately 5 times the magnitude of the University’s cost-saving measures implemented in FY21 and FY22. Indeed, the total amount that United Academics reduced their proposal by still significantly outpaced the savings the University realized by furloughing 346 executive staff and senior administrators over two years.

showing the University’s efforts to reach an agreement regarding Article 15, despite United Academics’ failure to move from their \$91.5 million dollar value proposal.

April 4, 2022 (Thirty-Third Bargaining Session)				
Parties met for approximately eight hours	United Academics did not present any counterproposals	The University presented 11 counterproposals (sent April 1, 2022) related to Articles 1, 2, 3, 6, 9, 10, 11, 13, 15, 16, and 17	No discussions regarding additional articles, other than those presented by either party	No articles were TA’d

United Academics failed to present any counterproposals in response to the University’s counterproposals from the previous meeting.

April 5, 2022 (Thirty-Fourth Bargaining Session)				
Parties met for approximately eight hours	United Academics presented five counterproposals related to Articles 1, 2, 3, 6, 10, 11, 15, and 17	The University did not present any counterproposals	No discussions regarding additional articles, other than those presented by either party	No articles were TA’d

The April 5 proposal by United Academics related to Article 15 failed to provide any movement from their prior proposal related to:

- Salary Minimums;
- Lump-Sum Distribution;
- University Market Compensation Project;
- Market Increases; and
- Summer Appointments.

Shockingly, the only change United Academics made from their prior Article 15 counterproposal was another **increase**. This time, United Academics requested an increase to the COLA amount from their prior proposal of three percent for FY23, FY24, and FY25 to five percent for FY23, three percent for FY24, and three percent for FY25. United Academics failed to address Article 16 during this meeting.

United Academics also summarized their absolute “must haves,” meaning that the parties would not reach an agreement with respect to a new CBA unless the following demands were met because their members will not approve a contract:

- Competitive annual COLAs;
- No furloughs;
- No language which would impede UNAC’s use of UA’s endorsement of AAUP’s statements on academic freedom & tenure as a tool to prevent reductions or eliminations of programs;
- No language to exclude Post Docs/Visiting Faculty from the terms of the CBA in any manner;
- No language which would add consequences for unsatisfactory post-tenure reviews; and
- Stability/job security for non-tenure track faculty through guaranteed multi-year contracts.

April 11, 2022 (Thirty-Fifth Bargaining Session)				
Parties met for approximately seven hours	United Academics presented three counterproposals related to Articles 9, 13, and 16	The University presented one counterproposal related to Article 3	No discussions regarding additional articles, other than those presented by either party	The parties TA’d Article 3 when United Academics accepted the University’s April 1, 2022 counterproposal

United Academics finally—after nearly six months of insisting upon a voluntary retirement program that violated IRS regulations—relinquished their request with respect to this illegal provision. Once again, their “movement” at the bargaining table was abandonment of an illegal proposal.

April 12, 2022 (Thirty-Sixth Bargaining Session)				
Parties met for approximately seven hours	United Academics did not present any counterproposals	The University presented six counterproposals related to Articles 6, 9, 10, 11, 13, and 15	No discussions regarding additional articles, other than those presented by either party and the counterproposals ready for presentation by the University related to Articles 16 and 17	No articles were TA'd

In light of United Academics’ failure to make any concessions that ultimately impacted the cost of their proposals, the University similarly could not make any movement. No party is ever obligated to bargain against themselves.

April 18, 2022 (Thirty-Seventh Bargaining Session)				
Length of meeting not recorded	United Academics did not present any counterproposals	The University presented two counterproposals related to Articles 16 and 17	University presented the University Analysis of United Academics’ White Paper on	No articles were TA'd

			University Finances	
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During the meeting the University presented *the University Analysis of United Academics' White Paper on the University Finances*.²⁰ This presentation illustrated that United Academics continued to base their insistence on Articles 15 and 16 based on a distorted view of the University's finances with respect to funds allocated to administration, explaining to United Academics that:

- There is no operating expense called "Administration Support"
- The operating expense titled "Institutional Support" is not the same as support for administrators;
- There were 15% increases (\$13 million) made to support administration; and
- FY21 was the University's highest level of administrative support.

While the University's presentation acknowledged that there was a \$13.1 million increase in financial support to administration, it was specifically allotted for insurance. Some of this money was a result of pandemic funding from the federal government, not internal funds. This was not new information, however, as United Academics was previously provided this exact information in response to their Request for Information in August 2021. Either United Academics misunderstood the information it previously received or decided to disregard it. Further, the University explained that: (1) the University has decreased executive administrative positions by 24% in FY21, which nearly matches the 23.7% drop in Instructional and Student

²⁰ See Exhibit G.

support; and (2) it instituted furloughs for administrative and executive positions for FY21 and FY22.

April 19, 2022 (Thirty-Eighth Bargaining Session)				
Parties met for approximately six hours	United Academics presented eight counterproposals related to Articles 6, 9, 10, 11, 13, 15, 16, and 17	The University did not present any counterproposals	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd

Once again, United Academics' counterproposal for Articles 15 and 16 showed no movement whatsoever. In fact, the COLA increase **was even higher** in this proposal than the proposal provided on March 14, 2022. Additionally, the counterproposal did not present **any movement** with respect to lump sum base increases, salary minimums, the minimum or maximum compensation paid to department heads and chairs, and/or the proposal to increase summer instruction pay, which was the third time that United Academics failed to make any movement with respect to these issues. Although United Academics reduced its demand with respect to market increases by approximately \$2.25 million per year, such decrease had a marginal effect on the total economic costs of United Academics' proposals. Additionally, the total economic cost of Article 16 also minimally decreased; however, such decrease was only due United Academics' "concession" to eliminate the voluntary retirement program, which was another illegal proposal.

April 25, 2022 (Thirty-Ninth Bargaining Session)

Parties met for approximately two and a half hours	United Academics did not present any counterproposals	The University presented eight counterproposals related to Articles 6, 9, 10, 11, 13, 15, 16, and 17	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd
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At this point, United Academics had failed to make any material movement regarding the financial cost of its Articles 15 and 16 for over six months of active bargaining regarding these provisions of the CBA. With repeated untenable offers from United Academics on the table, the University was forced to either start betting against themselves or to present a BAFO.

iv. Presentation of Best and Final Offer²¹

On April 25, 2022, the University team once again advised United Academics that it had been bargaining in an attempt achieve a TA'd agreement in time for a budget submission for the current legislative session, as that was the only way to provide salary increases to United Academics' members that calendar year (2022). After many months of bargaining, the parties remained far apart on both monetary and non-monetary issues with no material movement in United Academics' position. Motivated by their desire to ensure that the parties reached a TA while it could still benefit bargaining members in the 2022 calendar year, the University presented their best and final offer, which included all articles TA'd to date. The University explained that the BAFO included improvements in compensation as well as movement on

²¹ See Exhibit A.

several language issues but acknowledged that the BAFO did not meet United Academics' demands, particularly with respect to Articles 15 and 16. However, the University explained that it would **never** be able to meet United Academics' demands considering the University's financial status. This was the best that the University could offer.

The BAFO provided an increase over the existing CBA and was something the teams could get to the Alaska Department of Administration, the Board of Regents, and President Pitney for approval in time for legislative review before the end of session in May 2022. It also provided the following realistic proposal regarding Articles 15 and 16, again keeping in mind the financial condition of the state of Alaska and the University:

Article 15: Compensation

15.2: increase minimum salaries by 3%

15.4.1: across-the-board increases of 3% in FY23, 2.5% in FY24, and 2.0% in FY25

15.4.3: removing options for market increases

15.9: provide \$900,000 over three years for faculty development and expand the use of faculty development funds beyond just travel to include other forms of professional development.

15.10: Eliminate the faculty initiative fund (as proposed by both parties)

15.11: Eliminate the University Regents' Professor (as proposed by both parties)

Article 16: Personnel Benefits

16.2: Increase University pension plan wage base from \$42,000 to \$52,000

16.3: Education benefits

- i. Eliminate the 6-month waiting period for eligibility for educational benefits

- ii. Allow tuition benefits to apply to programs with super-tuition

16.8: Other leave.

- i. Continuation of UAFT Sick Leave Bank per UA/UNAC MOA post UNAC/UAFT merger.

April 26, 2022 (Fortieth Bargaining Session)				
Parties met for approximately five hours	United Academics presented one counterproposal related to Article 6, 10, 11 and 17	The University did not present any counterproposals	No discussions regarding additional articles, other than those presented by either party	No articles were TA'd

Notably, once again, United Academics failed to present any counterproposals with respect to Articles 15 and 16, effectively rejecting the University’s BAFO with respect to the two most critical articles impeding the parties’ ability to reach a full agreement for the CBA.

v. *Deadlock, Mediation, and Declaration of Impasse*

On or around March 22, 2022, the parties appeared to be in agreement that the parties were reaching a standstill with respect to negotiations. Initially, the University presented United Academics with a memorandum of understanding providing that “the [p]arties are not at deadlock or impasse.”²² However, United Academics rejected the University’s proposal and, thus, the parties voluntarily agreed to proceed with mediation with an understanding that the parties had reached deadlock in accordance with AS 23.40.190.²³

²² See Exhibit H.

²³ See AS 23.40.190 (setting forth the requirement for post-deadlock mediation); see also *Alaska Pub. Emps. Ass’n v. State, Dep’t of Admin., Div. of Lab. Rels.*, 776 P.2d 1030, 1033 (Alaska 1989) (“[I]mpasse is reached when the parties have reached a good faith impasse and the

Accordingly, mediation with the Federal Mediation and Conciliation Services (“FMCS”) was the next good faith attempt to reach an agreement with respect to the outstanding articles, including, but not limited to, the crucial economic terms of the CBA. However, time was quickly running out before the parties could present a TA’d CBA before the legislature’s deadline, and United Academics demonstrated a continued unwillingness to compromise. Thus, by the end of two additional bargaining sessions with FMCS, with no meaningful movement from United Academics on Article 15 or 16, it was clear that no further progress could be made with respect to Articles 15 and 16.

May 9, 2022 (Forty-First Bargaining Session)

On May 9, 2022, the teams engaged in federal mediation through the FMCS. The parties were bound to keep the details of the mediated negotiations confidential; however, United Academics made no meaningful concessions with respect to Articles 15 and 16.²⁴

May 12, 2022 (Forty-Second Bargaining Session) and Impasse

On May 12, 2022, the teams again engaged in federal mediation through FCMS. Once again, no progress was made with respect to Articles 15 and 16. Following the completion of this session, and due to the parties’ firm stances on critical issues, the University declared impasse. The imposition of the BAFO positively impacted United Academics’ members, by implementing raises, among other positive terms. The BAFO did not reduce any rights

mediation process has been exhausted.”).

²⁴ While the parties’ agreed to keep discussions and supposals confidential, the parties agreed that any proposals exchanged during mediation were not confidential.

previously granted to United Academics' members under the previous CBA, and, in many instances, actually enhanced bargaining members' rights. The BAFO provided salary increases that bargaining unit members would not otherwise have received.

vi. August 29, 2022 Unfair Labor Practice Claim

On August 29, 2022, approximately three months after the University declared impasse and implemented the terms of the BAFO, United Academics filed a ULP with the Alaska Labor Relations Agency against the University.²⁵

III. LEGAL ARGUMENT

United Academics' allegations that the University engaged in unfair labor practices during the negotiation of a new CBA are false, misleading, and meritless. The University meaningfully bargained in good faith, despite United Academics' outlandish and, sometimes, illegal demands. After 42 bargaining sessions over the course of eight months, it was obvious that the parties remained firm regarding their respective positions on several articles, including, but not limited to, Articles 15 and 16 regarding pay and benefits, two of the most critical pieces

²⁵ The ULP seeks "an order requiring the University to reinstate the status quo CBA." However, in complete contradiction of the requested relief, a member of the United Academics bargaining team stated following their filing of the ULP: "I want to make one thing very clear: President Pitney said [United Academics] would be taking away the raises received by our lowest paid members (with the increased salary minimums) if we were to prevail in the ULP filing ... Even in the event that we do not get a new CBA agreement first, it could be mutually agreed to leave the raises in place. It would be an act of spite by [the University] to revoke those raises." United Academics cannot have their cake and eat it too; meaning, they cannot file a ULP, which specifically requests reversal of the implemented salary raises, while indicating it would be the University's fault for reversing salary raises if United Academics prevails. *See* Ex. I at 3 (cmt. by Melanie Arthur). This type of flawed logic exemplifies the challenges the University was up against during the negotiations.

of any CBA. Accordingly, the University lawfully declared impasse after exhausting statutorily-required mediation and implemented the terms of their BAFO. Throughout the ongoing negotiations, University President Pitney exercised the University's right to speak by publishing non-coercive, factual communications directly to the University community at large, which also necessarily includes United Academics' members, on behalf of the University.

Thus, the facts demonstrate that the University did not violate AS 23.40.080, AS 23.40.110(a)(1), 23.40.110(a)(2), and/or AS 23.40.110(a)(5) because: (a) the University bargained in good faith until impasse, and (b) lawfully published truthful, non-coercive statements regarding the status of negotiations with United Academics.

A. The University Bargained in Good Faith Until Impasse.²⁶

The University lawfully declared an impasse and implemented the terms of their BAFO because it bargained in good faith until the negotiations reached a point in which the University

²⁶ While United Academics' ULP is limited to the University's pre-impasse conduct and whether they properly declared impasse, the University also continued to bargain in good faith following their declaration of impasse because the University broke impasse and resumed bargaining once United Academics made meaningful movement. *See e.g. Holiday Inn Downtown-New Haven*, 300 NLRB 774, 778 (1990) (“[A]n impasse does not end the parties’ obligation to engage in collective bargaining but is often merely a hiatus in bargaining.”). Impasse is “not a permanent state” and “can be dissolved by time, change of circumstance, substantial change of position, or even a modification of position that creates a possibility of fruitful discussion, if not agreement, when resumption of negotiations imposes no undue burden on the other party.” *Airflow Rsch. & Mfg. Corp.*, 320 NLRB 861, 870 (1996); *see also Gulf States Mfg. Inc. v. N.L.R.B.*, 704 F.2d 1390, 1398-99 (5th Cir. 1983) (“Anything that creates a new possibility of fruitful discussion (even if it does not create a likelihood of agreement) breaks an impasse.”); *see also N.L.R.B. v. Webb Furniture Corp.*, 366 F.2d 314, 315-16 (4th Cir. 1966) (both the N.L.R.B. finding that the impasse between parties was broken (reviving the duty to bargain) when the union actually tendered concessions, but not earlier when it had merely requested a meeting).

was warranted in assuming that further bargaining would be futile. Whether a bargaining impasse has occurred is a matter of judgment based on the following factors: the bargaining history; the good faith of the parties in negotiations; the length of the negotiations; the importance of the issue or issues as to which there is disagreement; and the contemporaneous understanding of the parties as to the state of negotiations.²⁷ Additionally, with respect to Alaska Class II employees, an impasse occurs “only after the statutory mediation period which follows deadlock.”²⁸

Applying the applicable factors here, the pattern and direction of the parties’ dealings demonstrated that, as of May 12, 2022, no realistic possibility that further negotiations regarding Article 15 and Article 16 and the other six (6) remaining articles would have been fruitful. Accordingly, the University lawfully declared impasse, after exhausting statutorily-mandated mediation, and implemented their BAFO.

i. The University Bargained in Good Faith, Which Weighs Heavily in Favor of Impasse.

In an attempt to argue that University bargained in bad faith, United Academics erroneously discredits the University’s lawful conduct. Specifically, they claim that “the University delayed responding to proposals by United Academics regarding nearly every subject and bargaining” and “the University failed to respond to United Academics’ proposals on Article 15 (Compensation) and Article 16 (Benefits) for more than three months (October 18,

²⁷ *TruServ Corp. v. N.L.R.B.*, 254 F.3d 1105, 1114 (D.C. Cir. 2001), *as amended* (Aug. 17, 2001) (citing *Taft*, 163 NLRB at 478).

²⁸ *Alaska Pub. Emps. Ass’n*, 776 P.2d at 1035 (Rabinowitz, J., concurring).

2021-February 2, 2022), despite the parties participating in sixteen bargaining sessions in that time.”²⁹ A review of the parties’ bargaining history reveals otherwise.

The duty to bargain in good faith requires that the parties make a “serious attempt to resolve differences and reach a common ground.”³⁰ However, the duty to negotiate in good faith does not compel either party to agree to a proposal, make a concession, or refrain from engaging in hard bargaining.³¹ The parties have wide latitude in their negotiations with respect to the “substantive solution of their differences” so long as the parties approach the bargaining process “in good faith with a desire to reach agreement.”³² As demonstrated below, the University more than exceeded their obligation to try to reach a common ground with United Academics; however, United Academics’ continued insistence on extraordinary demands that the University could not fund due to their financial constraints, prevented the parties from reaching an agreement.

United Academics took almost five full months—from August 30, 2021 until January 25, 2022—to provide the University with all of its initial proposals. During this extended five-month period in which United Academics provided their initial proposals, the parties engaged in 26 bargaining sessions³³ and the University responded to every single one of United Academics’

²⁹ See ULP ¶ 6.

³⁰ *N.L.R.B. v. Ins. Agents’ Int’l Union, AFL-CIO*, 361 U.S. 477, 486 (1960) (quoting 29 U.S.C. § 158(d)).

³¹ See *id.*; see also *Seattle-First Nat. Bank v. N.L.R.B.*, 638 F.2d 1221, 1227 n.9 (9th Cir. 1981).

³² *Int’l All. of Theatrical Stage Emps., Loc. 15 v. Nat’l Lab. Rels. Bd.*, 957 F.3d 1006, 1015–16 (9th Cir. 2020).

³³ August 30, 2021, August 31, 2021, September 13, 2021, September 14, 2021, September 20,

proposals, except for two³⁴—Articles 15³⁵ and 16. The University was committed reviewing and preparing responses to the approximate 182 distinct changes that United Academics proposed during the first five months of bargaining. However, a CBA must be considered in its entirety and as a system—not as discrete articles, as they do not stand alone. Accordingly, there were certain articles (e.g., Article 15 and 16) that the University could not respond to until it had received and reviewed all of United Academics demands. But once the University had received all of United Academics demands on January 25, the University provided a counterproposal regarding Articles 15 and 16 the very next bargaining session, on February 7.

A summary of the parties’ bargaining history over the prolonged five-month period in which United Academics set forth all of its initial demands demonstrates the University’s continued responsiveness to United Academics’ proposals follows:

Article	United Academics’ Initial Proposal Date	University’s Response Date
Article 1 (Agreement and Duration)	August 30, 2021	September 13, 2021
Article 2 (Purpose)	August 30, 2021	September 13, 2021
Article 3 (Recognition)	September 13, 2021	October 4, 2021

2021, September 21, 2021, October 4, 2021, October 5, 2021, October 18, 2021, October 19, 2021, October 25, 2021, October 26, 2021, November 1, 2021, November 2, 2021, November 8, 2021, November 9, 2021, November 15, 2021, November 16, 2021, November 29, 2021, November 30, 2021, December 6, 2021, December 7, 2021, January 18, 2022, January 19, 2022, January 24, 2022, and January 25, 2022.

³⁴ The University responded to United Academics’ proposal to Article 10, which was made on the very last day of this initial five-month period January 25, 2022.

³⁵ The University actually made the first proposal regarding Article 15, on August 31, which United Academics failed to respond to for approximately two months.

Article	United Academics' Initial Proposal Date	University's Response Date
Article 4 (Membership, Dues Deduction, and Agency Fee)	August 30, 2021	August 31, 2021
Article 5 (United Academics Representatives and Privileges, Release Time)	August 30, 2021	August 30, 2021 ³⁶
Article 6 (Academic Freedom and Responsibility)	August 30, 2021	September 21, 2021
Article 7 (Resolution of Disputes)	August 31, 2021	September 13, 2021
Article 8 (Construction of the Agreement)	August 31, 2021	September 13, 2021
Article 9 (Faculty Status: Appointment, Evaluation, Promotion, Tenure, and Termination)	October 5, 2021 ³⁷	November 2, 2021
Article 10 (Reduction in Force Due to Discontinuance or Reduction of Program)	January 25, 2022	February 7, 2022
Article 11 (Disciplinary Action)	November 29, 2021	December 6, 2021
Article 12 (Personnel Files)	August 30, 2021	September 13, 2021
Article 13 (Workload)	September 14, 2021	October 25, 2021
Article 14 (Intellectual Property)	August 31, 2021	September 13, 2021
Article 15	October 18, 2021 ³⁸	February 7, 2022

³⁶ The parties exchanged simultaneous proposals. Following the simultaneous proposals, United Academics provided a counterproposal on October 4, to which the University promptly provided its own counterproposal the following day on October 5.

³⁷ United Academics' proposal included responses to the University's initial proposal with respect to portions of Article 9 that was made by the University on August 31, 2021.

³⁸ United Academics' ULP fails to account for the fact that the University was the first party to provide a proposal with respect to Article 15, which was provided to United Academics on

Article	United Academics' Initial Proposal Date	University's Response Date
(Compensation)		
Article 16 (Personnel Benefits)	October 19, 2021	February 7, 2022
Article 17 (Working Conditions)	September 20, 2021	October 26, 2021
Article 18 (Management Rights)	August 31, 2021	October 18, 2021
Article 19 (No Strike/No Lockout)	August 30, 2021	August 31, 2021 ³⁹
Article 20 (Meet and Confer)	August 30, 2021	September 14, 2021
Article 21 (Severability)	August 30, 2021	August 31, 2021 ⁴⁰
Article 22 (Totality of the Agreement)	August 30, 2021	September 13, 2021

As the foregoing demonstrates, United Academics' allegations of purported delay are unfounded. With the exception of Article 15 and Article 16,⁴¹ the University responded to every one United Academic's proposals within less than a month, and often by the very next bargaining session.⁴² However, as discussed above, in the interim period in which the University spent preparing their counterproposals for Articles 15 and 16, the University: (1) spent significant time analyzing the financial impact of United Academics' enormous financial requests, which would

August 31, 2021.

³⁹ The University tentatively agreed to United Academics' initial proposal.

⁴⁰ The University tentatively agreed to United Academics' initial proposal.

⁴¹ Even though the University did not provide a counterproposal with respect to Article 15 and Article 16 for three months, the parties discussed United Academics' initial proposals with respect to those articles.

⁴² Moreover, after United Academics made its last set of demands on January 25, 2022, the University presented a comprehensive package proposal responding to all outstanding articles on February 7, 2022—less than two weeks after the United Academics' last initial proposal.

result in an increase totaling \$91.5 million over the course of the three-year CBA; (2) engaged in substantive conversations with United Academics to try to reach an understanding with respect to United Academics' significant requests; and (3) discussed how United Academics' proposals were based on false premises. Once the University received United Academics' last set of demands on January 25, 2022, the University responded in less than two weeks with a comprehensive package addressing all open articles. Moreover, the University's good faith approach to bargaining is further evidenced by the fact that the parties were able to come to a tentative agreement with respect to half of the articles in the CBA during this initial five-month period—Article 4, Article 5, Article 7, Article 8, Article 12, Article 14, Article 18, Article 19, Article 20, Article 21, and Article 22—even though United Academics had failed to provide the University with all of its initial proposals.

Once United Academics provided the University with all of its initial proposals, the parties engaged in 14 more bargaining sessions over the course of three months.⁴³ During this time, the parties exchanged numerous proposals and were able to come to a tentative agreement with respect to three more articles—Article 1, Article 2, and Article 3.

With respect to Article 15 and Article 16 (among others), however, the parties made minimal progress. The parties discussed these articles during ten bargaining sessions and exchanged seven proposals before the University set forth their BAFO. United Academics,

⁴³ February 7, 2022, February 8, 2022, February 21, 2022, February 22, 2022, March 14, 2022, March 15, 2022, April 4, 2022, April 5, 2022, April 11, 2022, April 12, 2022, April 18, 2022, April 19, 2022, April 25, 2022, April 26, 2022.

however, consistently delayed responding to or discussing the University's substantial points regarding the financial impact of their initial proposal regarding Articles 15 and 16. For example, the University presented their analysis of the proposal during the Impacts Presentation on January 19. United Academics failed to substantively respond to this information until February 7, three bargaining sessions later. Following the University's counterproposal, which was based on the University's financial realities of ongoing furloughs of administrative and executive staff, program reductions, and other cost-cutting measures to save the University with respect to their finances, United Academics continually made little to no movement on these articles based on their erroneous view of the University's financial standing. In fact, following the University's counterproposal on February 7, United Academics requested increases to different aspects of Article 15 in their subsequent three counterproposals.⁴⁴ Accordingly, the University had no choice but to remain firm with respect to their proposals to avoid negotiating against themselves. However, the fact the University remained firm with respect to their position regarding Article 15 and Article 16 does not establish a refusal to bargain in good faith.⁴⁵

Overall, the bargaining history demonstrates that the University was consistently responsive in offering their own bargaining proposals and responding to the United Academics' proposals over the course of 42 bargaining sessions, including the two mediated negotiations, in the span of approximately eight months, particularly in light of the fact that United Academics

⁴⁴ Even if United Academics made any "concessions," such concessions were negated by the requested increases.

⁴⁵ *In Re Calmat Co.*, 331 NLRB 1084, 1099 (2000) ("[A]n adamant insistence on a bargaining position is not of itself a refusal to bargain in good faith.").

put forth 182 separate, substantive proposed changes to the contract impacting 121 different sections of the contract. By comparison, UA proposed only 12 substantive changes. Considering the pace and extent which United Academics was proposing changes, the University met their obligations to respond and bargain in good faith. The fact that the University bargained in good faith is a significant factor in favor of the University with respect to their declaration of impasse.⁴⁶

ii. The Parties' Protracted Lack of Progress on Two Critical Issues Supports a Finding of Impasse.

Declaring impasse after spending hundreds of hours and months of negotiations while exchanging hundreds of proposals is in accordance with applicable law. Although the parties had made modest progress with respect to Article 15 and Article 16, each side stood firm on their proposals regarding these two critical provisions of the CBA. "[A]n impasse is no less an impasse because the parties were closer to agreement than previously, and a deadlock is still a deadlock whether produced by one or a number of significant and unresolved differences in positions."⁴⁷ Over approximately eight months, the parties exchanged approximately seven proposals regarding Article 15 and Article 16 in an attempt to bridge the gaps as to their respective differences; however, the parties were not close to reaching an agreement with respect

⁴⁶ *AMF Bowling Co., Inc. v. N.L.R.B.*, 63 F.3d 1293, 1299 (4th Cir. 1995) (that employer bargained in good faith "bear[s] significantly" on impasse analysis and is a "powerful fact" in employer's favor).

⁴⁷ *Taft*, 163 NLRB at 478.

to two of the most critical articles of the CBA. The National Labor Relations Board and the courts have consistently found valid impasse under similar circumstances.⁴⁸

Despite assertions of flexibility devoid of substance and movement on issues of secondary importance, the parties took opposing positions with respect to compensation and benefits and were unable to reach an agreement with respect to these critical issues.⁴⁹ “The [p]arties ... need not pursue negotiations simply to go through the motions when there is no objectively reasonable hope of reaching an agreement.”⁵⁰ The University was facing economic exigencies, bargained in good faith, and made concessions with respect to a majority of the articles in the CBA, including, but not limited to Article 15 and Article 16. However, on April 25, 2022, the University reached a point where it was simply unable to compromise further and presented United Academics with their BAFO.⁵¹ However, United Academics swiftly and

⁴⁸ See, e.g., *In Re Calmat Co.*, 331 NLRB 1084, 1099 (2000) (finding impasse where it was clear after 7 months and 10 bargaining sessions that neither party would modify their position on critical issue); *Laurel Bay Health & Rehab. Ctr. v. NLRB*, 666 F.3d 1365, 1374-75 (D.C. Cir. 2012) (finding impasse where, after 6 months of negotiations, the parties remained as far apart as ever on critical issue).

⁴⁹ *Phillip 66 & United Steel*, 369 NLRB No. 13 (Jan. 31, 2020) (finding impasses was proper in similar circumstances).

⁵⁰ *AMF Bowling Co. v. N.L.R.B.*, 63 F.3d 1293, 1301 (4th Cir. 1995).

⁵¹ *TruServ Corp.*, 254 F.3d at 1115 (explaining that while labeling an offer as “final” is not dispositive, when the employer has not previously framed any of its offers as final and advised the union that it would only utilize a final offer when had reached the limits of its bargaining, it is indicative that the employer has engaged in the kind of good-faith, hard bargaining that characterizes impasse).

definitively rejected the University's BAFO and failed to provide a meaningful counterproposal with respect to these critical issues.⁵²

United Academics' rejection of the BAFO was particularly significant, as the deadline to present a TA'd agreement to the state legislature and to have any chance of securing salary raises for United Academics' members was quickly approaching. To the extent United Academics attempts to claim that the University's cognizance of the state legislature somehow affects the legitimacy of the University's impasse declaration, United Academics is wrong. First, providing a TA'd contract to the state legislature was not an artificial or arbitrary deadline—upon conclusion of the state legislature session, the University would not be able to obtain **any** salary increases for United Academics' members until the following year.⁵³ Second, the University's declaration of impasse was not motivated by the University's desire to implement cuts—in fact, it was the exact opposite: the University acted in a manner that improved United Academics' members terms of employment and attempted to ensure that they would reap the benefit of the salary increases in the current year.⁵⁴ Regardless of the state legislature deadline, impasse existed

⁵² Because United Academics' counterproposal occurred during one of the parties' mediation sessions, such counterproposal is confidential. However, such counterproposal did not materially deviate from United Academics' proposal that preceded the University's BAFO.

⁵³ *But see Newcor Bay City*, 345 NLRB 1229, 1240-1241 (2005) (employer prematurely declared impasse where it acted "based on its artificial deadline at a time when a negotiated agreement was still feasible")

⁵⁴ *But see Cbc Indus.*, 311 NLRB 123, 127 (1993) (finding no impasse where the respondent "was determined to abandon certain terms of the contract at its expiration irrespective of the state of negotiations"); *Newcor Bay City*, 345 NLRB at 1240 ("[A]n employer's declaration of impasse is not valid when it is motivated by an employer's determination to implement cuts immediately....").

on May 12 because the parties had, in fact, come to the ends of bargaining, and a negotiated agreement was no longer feasible. In such circumstances, declaration of impasse is proper.⁵⁵

The parties' bargaining history, without exception, reveals that United Academics never gave the University any hope that the parties' positions with respect to compensation and benefits could be overcome by further bargaining. Without any meaningful movement in response to the University's BAFO, it was objectively reasonable for the University to have concluded that further negotiating sessions would fail to elicit further concessions from United Academics regarding compensation and benefits.⁵⁶

iii. United Academics' Bald Statement of Disagreement Regarding the Status of Negotiations Does Not Defeat Impasse.

United Academics' ULP claims that it specifically disagreed with the University's declaration of impasse.⁵⁷ However, a bald statement of disagreement by one party regarding the

⁵⁵ *Concrete Pipe & Prod. Corp.-Syracuse Div. & United Steelworkers of Am., Afl-Cio-Clc, Loc. Union 14534*, 305 NLRB 152, 154 (1991), aff'd. sub nom. *United Steelworkers of Am., AFL-CIO-CLC, Loc. Union 14534 v. N.L.R.B.*, 983 F.2d 240 (D.C. Cir. 1993) ("Although the Respondent improved its economic offer to some extent during the course of negotiations, and the parties reached agreement on a number of noneconomic matters, the Respondent still sought substantial reductions, while the Union continued to seek a wage increase, until the Union's last offer at the end of the session to continue the status quo for 1 year. At that point, there was no likelihood of real progress, and it is clear that negotiations collapsed because the parties were hopelessly deadlocked. Accordingly, an impasse was reached ... and the Respondent was entitled to implement its last offer to the Union.").

⁵⁶ *See, e.g., Truserv Corp.*, 254 F.3d at 1115 (although employer "bargained in good faith [and] made substantial concessions, [it] ultimately reached a point when it was simply unwilling to compromise further"); *Am. Fed'n of Television & Radio Artists, AFL-CIO, Kansas City Loc. v. N.L.R.B.*, 395 F.2d 622, 627 (D.C. Cir. 1968) (although "minor advances toward agreement were being made all along," record showed that parties would not budge on key issue).

⁵⁷ *See* ULP ¶ 9.

status of the negotiations is insufficient to defeat an impasse.⁵⁸ Indeed, applicable precedent demonstrates that “impasse does not ... require the parties to reach mutual agreement ‘as to the state of the negotiations’; rather, each party must independently and in good faith, believe that it is ‘at the end of [their] rope.’”⁵⁹ Even if United Academics never specifically declared impasse, that does not mean that impasse did not exist.⁶⁰ Indeed, United Academics’ conduct of immediately and definitively rejecting of the University’s BAFO, without any indication that it was ready to materially move with respect to their proposal, is a clear message that further negotiations would not be fruitful.⁶¹ United Academics remained firm with respect to its proposals and **even increased** some individual asks contained in its May 9 proposals following the University’s BAFO. Moreover, in early April, United Academics summarized their absolute “must haves” and indicated that the parties would not reach an agreement if such demands were not met. The University could not agree to such demands. Accordingly, the University was warranted in determining that further bargaining would be futile and lawfully declared impasse.⁶²

⁵⁸ *TruServ Corp.*, 254 F.3d at 1117.

⁵⁹ *Id.* at 1116–17.

⁶⁰ *See Sw. Fla. Symphony Orchestra & Chorus Ass'n, Inc. & Am. Fed'n of Musicians, Loc. 427-721, Afl-Cio*, No. FORT MYERS, FL, 2022 WL 307048 (Feb. 1, 2022) (explaining that a requirement that a union also declare impasse would go beyond the holding in *Taft*).

⁶¹ *TruServ Corp.*, 254 F.3d at 1117 (further explaining that “bare assertions of flexibility on open issues and its generalized promises of new proposals do not clearly establish any change, much less a substantial change in that party’s negotiation position.”) (internal citations omitted).

⁶² Further, there is evidence that United Academics’ ULP was an attempt to motivate and not filed for proper purposes. *See University of Alaska faculty union files unfair labor practice complaint* (Aug. 30, 2022) <https://alaskapublic.org/2022/08/30/university-of-alaska-faculty-union-files-unfair-labor-practice-complaint/> (in explaining why United Academics filed the ULP, President Abel Bult-Ito stated: “And so we want to increase the pressure on the University.”).

iv. The Parties Adequately Exhausted Mediation Efforts Before the University Declared Impasse.

The initial two sessions of mediation failed to prompt United Academics to take a more reasonable approach. Indeed, United Academics' conduct failed to demonstrate that further progress would be possible through continued mediation. After the parties reached agreement with respect to deadlock and leading up to the University's declaration of impasse, United Academics repeatedly made generalized statements regarding their commitment to bargain in good faith and to continue negotiations; however, these communications failed to demonstrate any changed circumstances required to overcome impasse.⁶³ Then, on May 13, after the University declared impasse, United Academics stated that it "intended to participate in the next mediated bargaining session already scheduled at that time for May, 18, 2022."⁶⁴ However, "a vague request by one party for additional meetings, if unaccompanied by an indication of the areas in which that party foresees future concessions, is equally insufficient to defeat an impasse where the other party has clearly announced that their position is final."⁶⁵

Here, United Academics' twelfth-hour posturing failed to negate the culmination in impasse of eight months of fruitless bargaining with respect to compensation and benefits. Although United Academics exchanged a counterproposal on May 9 following the University's BAFO, United Academics continued to resist material movement in the University's direction.

⁶³ *Erie Brush & Mfg. Corp. v. N.L.R.B.*, 700 F.3d 17, 24 (D.C. Cir. 2012) (party's statement that "I do have some give on the arbitration issue . . . [, but] I don't have a counter at this point" not evidence of changed circumstances sufficient to avoid impasse).

⁶⁴ See ULP ¶ 9.

⁶⁵ *TruServ Corp.*, 254 F.3d at 1117.

While United Academics reduced their demand regarding salary minimums, they were only reduced by half of one percent. Moreover, United Academics actually **increased** their demands regarding COLA increases—from 3% to 5.5% in FY24 and increased from 3% to 6% in FY25. There were other decreases, but they were only minor decreases from United Academics' original proposals from October 2021—nearly seven months' prior—which still resulted in an untenable financial burden to the University.⁶⁶ Regardless of the subtle decreases, they did not represent significant movement from United Academics' starting proposal.

After 40 bargaining sessions and two mediation sessions, for example, United Academics was continuing to ask for substantial increases in compensation and benefits, including an increase of over 15% for base salary increases, despite the University's position that the University's budgetary constraints could not support such increases. There is no suggestion that United Academics was actually willing to compromise, which confirms that the University lawfully declared impasse.⁶⁷ Accordingly, the writing was on the wall: United Academics position was unmoving, the parties had exhausted mediation efforts, and continued mediation would have been futile.⁶⁸

⁶⁶ The approximate economic cost of United Academics' May 9 post-BAFO proposal was actually **higher than** their April 19 pre-BAFO proposal.

⁶⁷ See e.g., *Laurel Bay Health & Rehab. Ctr.*, 666 F.3d at 1375–76 (“There is no suggestion in the record that [the employer] was willing to retreat from its consistent insistence on a 16% contribution rate or that the Union would move toward it.”); *Serramonte Oldsmobile, Inc. v. N.L.R.B.*, 86 F.3d 227, 233 (D.C. Cir. 1996) (“Rather, there must be substantial evidence in the record that establishes *changed circumstances* sufficient to suggest that future bargaining would be fruitful.”) (emphasis in original).

⁶⁸ Moreover, United Academics agreed that the parties were at deadlock pre-mediation; it defies logic to argue that the parties were not at impasse given the lack of progress made during

v. The Parties' Subsequent Mediation Sessions are Irrelevant as to Whether Impasse Existed on May 12, 2022.

The fact that the parties engaged in subsequent mediation sessions is irrelevant to the determination as to whether impasse existed on May 12, 2022.⁶⁹ A party's post-impasse conduct cannot be utilized to find no impasse.⁷⁰ Thus, United Academics' arguments with respect to mediation sessions following the declaration of impasse have no bearing on whether the University lawfully declared impasse.⁷¹

B. The University's Communications Regarding the Status of Ongoing CBA Negotiations Did Not Constitute Direct Dealing.

United Academics' claims of "direct dealing" by the University are equally weak and can be easily dismissed. United Academic alleges that:

Between April 25, 2022 and August 22, 2022, University President Pat Pitney published nine statements directly to United Academics' members regarding the status of ongoing contract negotiations.... Several of President Pitney's statements represent advocacy by the University directly to United Academics' members. Most notably, her statement in the May 16, 2022 implementation announcement (Exhibit 5) that "there was no other way to get monetary terms in front of the legislature before the end of the [2022 legislative] session without this action" is both factually inaccurate and impermissibly bypassed United Academics to advocate directly to its members. The same factual

statutorily-mandated mediation.

⁶⁹ See *Taft*, 163 NLRB at 475, *enfd* 395 F.2d 622 (N.L.R.B. and Court found an impasse despite subsequent sessions), *Nw. Env't Def. Ctr. v. Gordon*, 849 F.2d 1241,1242 (9th Cir. 1988) (same); *Fin. Inst. Emps. of Am., Loc. No. 1182, Chartered by United Food & Com. Workers Int'l Union, AFL-CIO v. N.L.R.B.*, 738 F.2d 1038, 1042 (9th Cir. 1984) (same).

⁷⁰ *Erie Brush & Mfg. Corp. v. N.L.R.B.*, 700 F.3d 17, 22 (D.C. Cir. 2012) (citing *Laurel Bay Health & Rehab. Ctr.*, 666 F.3d at 1375).

⁷¹ Although not relevant for determining whether the parties were at impasse, it is helpful to note that once United Academics made a meaningful supposal with respect to Articles 15 and 16, the University determined that impasse was broken. See *Webb Furniture Corp.*, 366 F.2d at 315-16 (finding that impasse was broken after union made concessions "of such substantiality as to relieve the impasse and to open a ray of hope with a real potentiality for agreement")

misrepresentation—and other advocacy statements—have been communicated by the University directly to Academics’ members in the form of an FAQ document (Exhibit 7) maintained on the University’s Labor and Employment Engagement website.⁷²

Remarkably, except for the singular statement regarding the implementation of the BAFO due to the University’s urgency to get monetary terms in front of the legislature by a certain date, United Academics is vague (perhaps intentionally so) as to how the University impermissibly communicated to union members regarding the status of ongoing contract negotiations. Regardless, **none** of the University’s statements violate applicable law.

Section (a)(5) does not preclude an employer from communicating, in noncoercive terms, with employees during collective-bargaining negotiations.⁷³ As noted by the Supreme Court:

[I]abor negotiations do not occur in a vacuum. While the actual bargaining is between employer and union, the employees are naturally interested parties. During a labor dispute the employees are like voters whom both sides seek to persuade. As discussed earlier, unions are granted extensive powers to communicate with employees in the represented unit. Consistent with the First Amendment, the employer must also be afforded an opportunity to communicate its positions.⁷⁴

The fact that the University chose to update the University community at-large regarding the status of negotiations, provide copies proposals previously made to the United Academics, or provide factual descriptions as to why impasse occurred simply does not establish a violation of the ALRA.⁷⁵ “The fundamental inquiry in a direct dealing case is whether the employer has

⁷² See ULP ¶¶ 12, 13.

⁷³ *Endo Lab ’ys, Inc.*, 239 NLRB 1074, 1084 (1978)

⁷⁴ *N.L.R.B. v. Pratt & Whitney Aircraft Div. United Tchs. Corp.*, 789 F.2d 121, 134-35, (2d Cir. 1986) (citing *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969)).

⁷⁵ *Endo Lab ’ys, Inc.*, 239 NLRB 1074, 1084 (1978)

chosen to deal with the Union through the employees, rather than with the employees through the Union.”⁷⁶ Here, there can be no doubt that the University dealt directly with the Union. As noted above, the University engaged in 42 bargaining sessions over the course of eight months, responded to hundreds of changes proposed by United Academics, and presented the University’s counterproposals directly to United Academics first.

Throughout the course of negotiations, President Pitney kept the University community, faculty and students, as well as interested parties in the state of Alaska, informed by publishing communications to the “University Community” and posting those communications, in addition to the presentations made during bargaining and the articles contained in the BAFO, on the University’s Labor Relations website. In total, the University published nine updates on the status of the CBA negotiations with United Academics and the University’s FY23 budget, five presentations and white papers (that were first presented to United Academics during negotiations), and identical copies of the parties’ TA’d Articles 1-8, 12, 14, 18-22 and the University’s BAFO.⁷⁷ All of President Pitney’s communications on behalf of the University simply stated what had been reported to her by the University’s negotiation team and was motivated by a desire to remain transparent to the University community and residents of the State of Alaska regarding the factual circumstances and lack of progress being made by the parties.

⁷⁶ *Pratt & Whitney*, 789 F.2d at 134 (internal citations omitted).

⁷⁷ University of Alaska, *Labor and Employee Engagement*, <https://www.alaska.edu/hr/labor/labor-relations/bargaining.php> (last updated Sept. 3, 2022).

Of the 30 communications and documents published by the University to the University community, United Academics takes issue with a singular point: the University's communication regarding the ticking time clock of the state legislative session. Indeed, as the legislative session was nearing its end, and on March 22, 2022, President Pitney did provide an update on the status of negotiations. Nothing in President Pitney's communications, however, touched on any topic or issue that had not already been discussed during the parties' voluminous bargaining sessions. The purpose of the update was to inform the University community that a TA needed to be reached in time for her to present the contract terms and supplemental budget to the legislature in order for it to be included in the FY23 operating budget.⁷⁸ United Academics erroneously believes that communications such as this are an example of direct dealing—instead, the University was merely exercising their right present their position as well as the timelines at play so that employees may hear both parties' sides with respect to bargaining.⁷⁹

IV. CONCLUSION

The facts are evident: despite United Academics' obstructionist conduct, unsubstantiated requests, and financially untenable proposals, the University remained engaged with United Academics in an attempt to reach an agreement regarding the CBA. The University promptly

⁷⁸ United Academics claims that this statement is factually inaccurate without explaining how such statement is factually inaccurate. The truth of the matter is that a TA needed be reached in order to have any hope of getting monetary terms approved for FY23. However, due to United Academics' delay and the parties' inability to come to an agreement, the legislature ultimately declined to hear the University's BAFO. The fact that the legislature ultimately declined to hear the University's BAFO does not mean President Pitney's statement was false.

⁷⁹ *Pratt & Whitney*, 789 F.2d at 135.

responded to a barrage of hundreds of distinct changes to a longstanding legacy CBA—as compared to the University’s limited, distinct changes (less than 20)—and the parties were able to reach a TA with respect to half of the articles. Unfortunately, despite forty-two bargaining sessions (including two mediated sessions) and hundreds of hours spent bargaining, United Academics and the University simply could not make substantial movement towards each other with respect to the two most critical aspects of the CBA—compensation and pay. Accordingly, once it was apparent that the parties had reached a standstill with respect to these two articles after exhausting statutorily-mandated mediation, the University was well within their rights to declare impasse and implement the terms of their BAFO. Moreover, the University was well within their rights to publish truthful, non-coercive statements to the University Community. Accordingly, the University did not violate the ALRA and the University respectfully requests that United Academics’ ULP is summarily dismissed without further investigation.

DATED: September 30, 2022.

PERKINS COIE LLP

By: s/Michael O’Brien

Michael E. O'Brien
Alaska Bar No. 0311084

CERTIFICATE OF SERVICE

The undersigned hereby certifies that
on September 30, 2022, a true and correct copy
of the foregoing document was served by
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