

**DEPARTMENT OF LABOR**

**ALASKA LABOR RELATIONS AGENCY**

UNIVERSITY OF ALASKA,

Complainant,

UNITED ACADEMICS - AAUP/AFT,  
LOCAL 4996,

Respondent.

Case No. 22-\_\_\_\_\_ ULP

**COMPLAINT FOR UNFAIR LABOR PRACTICE**

The University of Alaska (“University”), through counsel Perkins Coie LLP, pursuant to AS 23.40.110, hereby submits the following Charge for unfair labor practice against United Academics - AAUP/AFT, Local 4996 (“United Academics”) surrounding the current bargaining negotiations of the parties (the “ULP”). United Academics has violated AS 23.40.110 by failing to bargain in good faith.

**I. The Parties**

The University is a public employer in the State of Alaska, governed by the laws of the State of Alaska, and party to a Collective Bargaining Agreement (“CBA”) with United Academics. A copy of the parties’ prior CBA is submitted with this Charge.<sup>1</sup>

The University is represented by Michael O’Brien and Sara Davey, Perkins Coie

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<sup>1</sup> See Exhibit 1 (CBA).

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.

## **II. Statement of Claim**

From the start of initial discussions through the University's implementation of its best and final offer ("BAFO"), United Academics engaged in a pattern of conduct intended to frustrate the negotiating process. United Academics' conduct over the course of 42 bargaining sessions, comprising of hundreds of hours of meetings over eight months until the parties reached impasse,<sup>2</sup> demonstrates that they never made a "serious attempt to resolve differences and reach a common ground."<sup>3</sup> Instead, United Academics engaged in bad faith bargaining by: (1) engaging in pre-negotiation conduct aimed at frustrating the negotiations process; (2) engaging in surface bargaining by presenting

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<sup>2</sup> This ULP is limited to the period leading up to the University's declaration of impasse. Although United Academics continued to engage in behavior that was indicative of bad faith, their post-impasse conduct did not so clearly implicate bad faith as their pre-impasse conduct. Indeed, United Academics' approach to bargaining improved following the University's declaration of impasse—United Academics took a more reasonable approach with respect to bargaining, to the point that the University determined that impasse was broken and the parties reengaged in negotiations.

<sup>3</sup> *N.L.R.B. v. Ins. Agents' Int'l Union*, 361 U.S. 477, 486 (1960) (quoting 29 U.S.C. § 158(d)).

proposals that they knew or should have reasonably known that the University would never be able to agree to in light of its widely-known financial constraints and budgetary issues, and refusing to make any movement on those proposals; (3) employing delay tactics that ultimately resulted in the University's inability to get the intended wage increases for bargaining members beginning in FY23 in front of the legislature in time to secure the necessary appropriation; and (4) repeatedly providing proposals and counterproposals that contained illegal subjects of bargaining, which ultimately took time and attention away from the parties' efforts to reach an agreement with respect to the critical aspects of the CBA—compensation and benefits. Collectively, such conduct demonstrates that United Academics refused to bargain in good faith with the University in violation of AS 23.40.110(a)(5).<sup>4</sup> The specifics of United Academics' conduct demonstrating bad faith bargaining are discussed more fully below.

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<sup>4</sup> The duty to bargain in good faith is a two-way street:

The legislative history of these provisions clearly indicates that it was the purpose of Congress to impose upon labor organizations the same duty to bargain in good faith which had been imposed upon employers in Section 8(5) of the Wagner Act, and continued in Section 8(a)(5) of the amended Act. Moreover, the standards and tests set forth in Section 8(d), applicable to both employers and unions, closely paraphrase those established in decisions of the Board and the courts in recent years. Such decisions, although they dealt primarily with employers' responsibility to bargain collectively under the Wagner Act, are nevertheless significant guideposts in determining the collective bargaining obligations of unions under Section 8(b)(3).

*Nat'l Mar. Union (Texas Co.)*, 78 NLRB 971, 980–81 (1948).

**A. United Academics' Conduct with Respect to Negotiation over The Ground Rules Previewed the Bad Faith Approach They Would Employ Throughout Negotiations.**

United Academics approached discussions over bargaining ground rules with the same bad faith and delay tactics it would employ throughout the entirety of the collective bargaining process. Indeed, it was a mere preview of how United Academics would approach the entirety of its negotiation efforts. On or around June 14, 2021, the University set forth the initial proposal for the ground rules. In response, United Academics insisted that all bargaining sessions be held in-person, without any kind of virtual attendance option, even though virtual meetings and negotiations had become commonplace during the COVID era. After six weeks of negotiating ground rules, United Academics abruptly changed its position and declared that it would include the option for virtual attendance and on the eve of negotiations notified the University that their team would actually be attending the first two bargaining sessions virtually.<sup>5</sup>

The parties did not reach an agreement regarding ground rules until August 27, 2021, approximately two months after discussions began and a mere three days before actual bargaining was set to begin. The only reason the parties were able to come to an agreement at all with respect to ground rules was the University's concession that the

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<sup>5</sup> The University team was present in person as originally agreed upon.

parties would be guided by “good faith” principles as required by applicable law.<sup>6</sup>

With the benefit of hindsight, it is clear from the outset of United Academics’ pre-bargaining conduct and the two-month effort just to agree on ground rules that United Academics would neither be acting in good faith nor willing to come to the table in a cooperative manner. Such conduct was simply a preview of what was yet to come.

**B. United Academics Engaged in Surface Bargaining with Respect To Article 15 and Article 16 Because Their Proposals Demonstrate That United Academics Lacked a Serious Intent to Reach an Acceptable Common Ground.**

From the outset of negotiations, United Academics put forth astronomical, untenable, and factually unsupported positions with respect to Article 15 (Compensation) and Article 16 (Benefits), the two most critical sections of the CBA. United Academics’ initial proposals for Article 15 and Article 16 would, in effect, result in an approximate \$93 million dollar increase of costs to the University over three years. Such proposals were made even though United Academics was well-aware of the University’s financial condition and knew the University could not agree to such an increase based on its budgetary constraints. By the end of the eight-month, pre-impasse negotiations period, United Academics had barely moved from this initial proposal. United Academics’

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<sup>6</sup> For example, the University limited the parties’ commitment to behave with professionalism to “good faith” bargaining pursuant to applicable statute. Similarly, the University limited its right to keep in place the terms of the current CBA at the time of impasse “to the extent required by Alaska law.” See Exhibit 2 (Final Ground Rules of Bargaining).

approach with respect to these critical articles demonstrated that it never intended to seriously bargain with the University to reach an agreement and was merely engaging in surface bargaining.

*i. The University's Financial Constraints.*

Despite the fact that the University's financial status has a direct and substantial impact on what terms it can agree to in a new CBA, United Academics completely ignored those well-known constraints when setting forth its initial and subsequent proposals regarding Articles 15 and 16.<sup>7</sup> United Academics feigned ignorance with respect to the University's financial state; however, such claims of ignorance are dubious—anyone halfway awake in the State of Alaska would know the financial difficulties that the University has faced in recent years.<sup>8</sup>

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<sup>7</sup> See Exhibit 3 (The Chronicle, July 19, 2019).

<sup>8</sup> The University Statewide Office of Public Affairs regularly releases information to the University community, interested parties, and directly to subscribers eligible via open and free subscription service. Some of the articles over the last 3 years include: *University of Alaska structure to be reviewed by new task force* (June 3, 2019), <https://www.alaska.edu/opa/enews/2019/63/>; *Survey shows a majority of Alaskans support the Legislature's budget for UA* (July 8, 2019), <https://www.alaska.edu/opa/enews/2019/78/>; *Regents declare financial exigency; consider structural options* (July 22, 2019), <https://www.alaska.edu/opa/enews/2019/722/>; *University of Alaska and Governor Dunleavy Reach Budget Agreement* (Aug. 13, 2019), <https://www.alaska.edu/opa/enews/2019/813/>; *University of Alaska president outlines revised timeline for UA restructuring* (Aug. 27, 2019), <https://www.alaska.edu/opa/enews/2019/827/>; *University of Alaska implements executive and senior leader furloughs* (April 29, 2020), <https://www.alaska.edu/opa/enews/2020/429/index.php>; *UA Board of Regents approves changes to academic programs and major cuts to administration* (June 5, 2020), <https://www.alaska.edu/opa/enews/2020/605/index.php>; *Regents approve discontinuation of*

The University suffered substantial decreases in state funding for several years. In 2019, the University declared financial exigency resulting from a one-year operating budget reduction of \$136 million in state funding. One of the members of the Board of Regents stated with respect to the declaration of financial exigency: **“We will not have a university after February if we don’t make a move.”**<sup>9</sup> According to Board of Regents’ Policy and University Regulation 04.09, the declaration of financial exigency is permissible when:

there is a shortfall in projected revenues compared to projected expenditures over the same period; and, the imbalance will have a material adverse effect on university operations. Financial exigency allows rapid downsizing of units, programs, services, and personnel to address **a fiscal crisis**.<sup>10</sup>

Although the financial exigency declaration was terminated shortly thereafter as a result of the Governor’s agreement (“the Compact”) to revise the budget cut to \$25 million from fiscal year 2019 and to spread the remaining reductions out over several

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*four UAA athletic teams, address budget challenges and begin planning for the future* (Sept. 11, 2020), <https://www.alaska.edu/opa/enews/2020/911/index.php>; *Statement from UA Interim President Pat Pitney on the release of the FY22 budget* (Dec. 11, 2020), <https://www.alaska.edu/opa/enews/2020/1211/index.php>; *University of Alaska System Announces First-ever Fundraising Campaign: \$200 Million Goal for Scholarships and Academic Programs* (Mar. 23, 2021), <https://www.alaska.edu/opa/enews/2021/0323/index.php>; *University of Alaska Board of Regents accepts FY22 Budget passed by the Alaska Legislature* (June 22, 2021), <https://www.alaska.edu/opa/enews/2021/0622/index.php>.

<sup>9</sup> *Regents declare financial exigency; consider structural options*, University of Alaska: Public Affairs (July 22, 2019), <https://www.alaska.edu/opa/enews/2019/722/>.

<sup>10</sup> *Id.* (emphasis added).

years.<sup>11</sup> But an ongoing financial crisis persisted. The August 13, 2019, Compact outlined the following reductions:

- FY20 \$302 million Unrestricted General Funds (down -\$25 million from FY19)
- FY21 \$277 million Unrestricted General Funds (down -\$25 million from FY20)
- FY22 \$257 million Unrestricted General Funds (down -\$20 million from FY21).

The University has taken steps to mitigate the last three years of budget cuts, including issuing systemwide furloughs of executive-level university employees, designated senior administrators, and non-represented faculty in FY21 and FY22. Such measures were widely known to the University and greater Alaskan community.<sup>12</sup>

Regardless, during the parties' **second bargaining session**, on August 31, 2022, the University extensively discussed the furloughs:

	<b>FY2021<sup>13</sup></b>	<b>FY2022<sup>14</sup></b>
	<b>FURLOUGHS</b>	<b>FURLOUGHS</b>
<b>AFFECTED POSITIONS</b>	Executive Staff Senior Administrators	Executive Staff Senior Administrators

<sup>11</sup> See President Jim Johnsen, *Regents terminate declaration of financial exigency*, Univ. of Alaska: UA News Center (Aug. 21, 2019), <https://www.alaska.edu/news/system/august-21-message-rescind-financial-exigency.php>.

<sup>12</sup> *University of Alaska implements executive and senior leader furloughs*, Univ. of Alaska: Public Affairs (Apr. 29, 2020), <https://www.alaska.edu/opa/enews/2020/429/index.php>.

<sup>13</sup> President Jim Johnsen, *University of Alaska implements executive and senior leader furloughs*, Univ. of Alaska Anchorage (Apr. 30, 2020) <https://www.uaa.alaska.edu/news/archive/2020/04/ua-executive-senior-leader-furloughs.cshtml>.

<sup>14</sup> *President Pitney Announces Extension of Administrative Furloughs for FY22*, Univ. of Alaska: UA News Center (May 7, 2021), <https://www.alaska.edu/news/hr/fy22-administrative-furlough.php>.



	<b>FY2021<sup>13</sup> FURLOUGHS</b>	<b>FY2022<sup>14</sup> FURLOUGHS</b>
		Non-Represented Faculty
<b>EMPLOYEES FURLOUGHED</b>	166 employees	180 employees
<b>FURLOUGH DAYS</b>	10 days	10 days for Executive Staff and Senior Administrators
		8 days for non- represented faculty
<b>UNIVERSITY SAVINGS</b>	<b>\$554,000.00</b>	<b>\$775,000.00</b>

Ultimately, the savings realized from furloughing 346 executive staff (\$1,329,000) were mere pennies compared to the value of United Academics' initial proposal (approximately \$31 million per year, over the course of three years). It strains credibility to believe that United Academics was not fully aware of the scope of these cost-cutting measures aimed at reducing the impacts of the budget cuts, given that the entire University was notified prior to their occurrence and as they occurred.<sup>15</sup> Even so, the University provided detailed information regarding the financial condition and considerable budget cuts the University faced over years leading up to bargaining well before United Academics presented their initial proposals for Article 15 (provided during

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<sup>15</sup> *Id.*

the ninth bargaining session) and Article 16 (provided during the tenth bargaining session).

Moreover, on January 19, 2022—during the parties’ twenty-fourth bargaining session—the University went into further detail regarding 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>	
<b>General Funds (\$M)</b>	\$327.0	\$302.0	\$277.0	\$272.7	-17%	
YoY Delta		(\$25.0)	(\$25.0)	(\$4.3)	(\$54.3)	
<b>Unrestricted Revenue (\$M)</b>	\$535.3	\$507.2	\$473.7	\$462.8	-14%	
YoY Delta		(\$28.1)	(\$33.5)	(\$10.9)	(\$72.5)	
<b>Tuition (\$M)</b>	\$131.5	\$123.5	\$117.7	\$110.7	-16%	
YoY Delta		(\$8.0)	(\$5.8)	(\$7.0)	(\$20.8)	
<b>Students (Fall FTEs)</b>	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



ii. *United Academics’ Astonishing Proposals with Respect to Article 15 and Article 16.*

Despite the University’s obvious and serious financial situation, United Academics continued to put forth, and insisted upon, astonishing economic proposals with respect to Article 15 and Article 16. On October 18-19, United Academics presented its initial proposal regarding Article 15 (Compensation)<sup>16</sup> and Article 16 (Benefits). United Academics’ initial proposal, detailed in Exhibit 4 of this Charge, included 31 distinct changes from the prior CBA and provided an estimated total increase of \$93 million over the next three years, the duration of the anticipated CBA.<sup>17</sup>

The University spent the next few weeks analyzing the financial impacts of United Academics’ proposal. On January 19, 2022, the University presented a *University and United Academics CBA Negotiations Status Update* to United Academics, discussing the impacts of United Academics’ Articles 15 and 16 proposal impacts (“Impacts Presentation”). The Impacts Presentation refuted any possibility the University would be able to agree to the requested increases.

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<sup>16</sup> Technically, United Academics’ first proposal regarding Article 15 was actually a counterproposal in light of the fact that the University had presented its proposal for Article 15 on day two of negotiations, August 31, 2021.

<sup>17</sup> See Exhibit 4, which provides the approximate economic costs it would take to fund United Academics’ Article 15 and Article 16 proposals.

In fact, it later came to light that United Academics based the terms of their proposals for Articles 15 and 16 on inaccurate and unsubstantiated information.<sup>18</sup> The financial representations made by United Academics regarding available funds and sources of funding were false. Specifically, United Academics claimed that their members produce \$80 million in surplus beyond the costs needed for those members. That claim is based on two major errors. One error was in double-counting \$50 million in grant revenue, and another was arguing that all grant revenues can be reallocated to increased salaries across United Academics' members.

Even after the University pointed out United Academics' double-counting error—and United Academics acknowledged their mistake—they continued to base their proposals on refuted evidence and unsubstantiated assumptions. For example, United Academics claimed **without any evidence** that a “conservative estimate” is that “2/3 of the total \$151 million in University federal, state, and local grants/contracts (FY17-FY21 average) are possible through the work of [United Academics'] bargaining members.”<sup>19</sup> When the University pushed back and asked why United Academics believed members are responsible for two-thirds of total grant funding, United Academics essentially

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<sup>18</sup> United Academics also repeatedly made inaccurate public statements with respect to the University's finances and the status of negotiations.

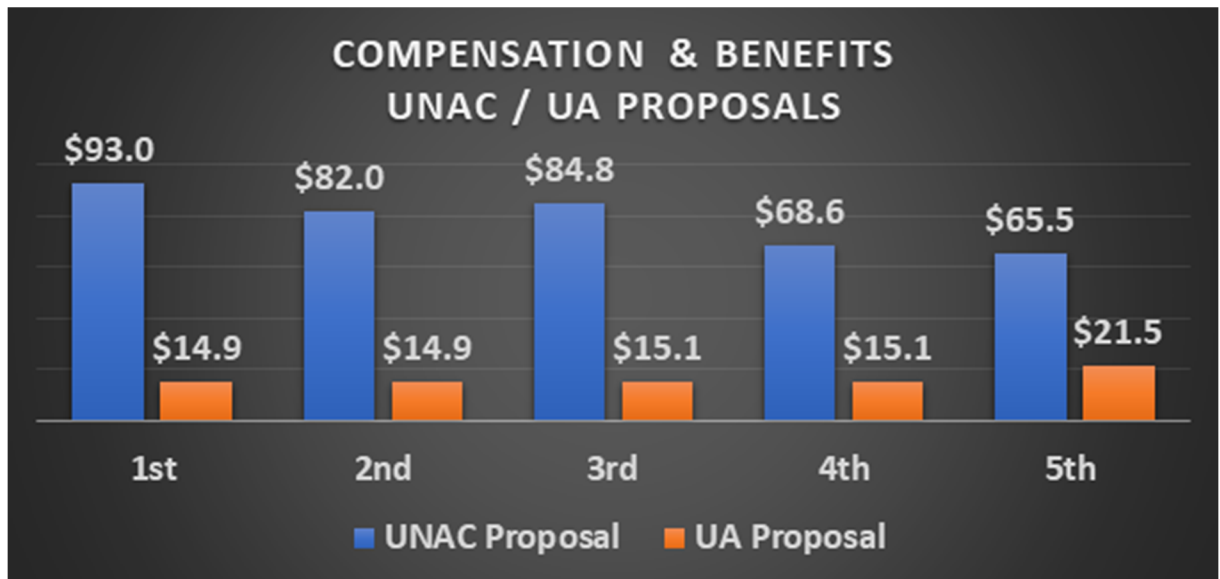
<sup>19</sup> Exhibit 5 (United Academics' Mar. 14, 2022 Estimate of Annual University of Alaska Revenue Generated by UNAC Bargaining Unit Members).

challenged the University to show them otherwise, even though the burden was on United Academics to demonstrate the basis for their request. United Academics' claim is directly contradicted by evidence provided by University of Alaska Institutional Research indicating that United Academics produces far less than United Academics claims—\$51 million. United Academics had once again doubled the actual data in their favor and refused to change their position when their mistake was brought to their attention.

Additionally, United Academics erroneously claimed that their requested increase could be supported because: (1) restricted grant funds contribute enough to the University to free up unrestricted funds for United Academics' compensation; (2) the University has always come up with the money to fund the agreement in the last 25 years; and (3) the University is choosing to allocate to administration, versus students and instructors. Once again, all of these claims are directly contradicted by the actual circumstances: (1) the University is constrained in its abilities to reallocate grant funds that have already been legally earmarked for certain purposes (i.e. United Academics' claimed fungibility does not exist); (2) while the University may have been able to fund the CBA in the last 25 years, (a) the necessary funding for a new CBA has never increased this dramatically in the past, and (b) the University has had to cut programs and implement furloughs in order to do so; and (3) the University (a) decreased executive administrative positions by 24% in FY21, which nearly matches the 23.7% drop in Instructional and Student support, and

(b) it instituted furloughs for administrative and executive positions for FY21 and FY22. United Academics' proposals were based on a false or fabricated narrative regarding the University's financial position. Their proposals were disconnected from reality and from how University funding actually works.

Between October 18, 2021, and May 9, 2022, United Academics set forth five proposals and counterproposals regarding Article 15. The overwhelming financial impact of each counterproposal—summarized below—demonstrates that whatever minor concessions United Academics may have made throughout eight months of bargaining—they still were proposing economically untenable packages.



iii. *United Academics' Proposals Regarding Article 15 and Article 16 Were Clearly Designed to Frustrate Attempts to Reach An Agreement Regarding a New CBA.*

The evidence establishes that United Academics' contract proposals regarding Article 15 and Article 16 were designed to frustrate any opportunity for agreement.<sup>20</sup> United Academics' "extreme proposals can serve as evidence that [they] lack[ed] a serious intent to adjust differences and reach an acceptable common ground."<sup>21</sup> An objective review of United Academics' proposals revealed that they made minimal movement, despite the commonly-known financial constraints of the University, and demonstrate that United Academics' demands regarding Articles 15 and 16 were actually designed to frustrate reaching an agreement on a new collective bargaining agreement.<sup>22</sup> Similarly, United Academics' failure to offer sufficient and fact-based explanations to support their proposals regarding Articles 15 and 16 is another manifestation of bad faith bargaining.<sup>23</sup> Making extreme proposals, refusing to engage in reasoned discussions, and

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<sup>20</sup> United Academics has spent more time playing to their audience than on serious negotiations and their consistent unprofessional behavior at the bargaining table—eye rolling, smirks, sarcastic comments—demonstrates that they were more interested in juvenile antics than the sort of professional collaboration that the parties have come to expect over years of bargaining.

<sup>21</sup> *In Re Liquor Indus. Bargaining Grp.*, 333 NLRB 1219, 1220 (2001) (citing *A-1 King Size Sandwiches, Inc.*, 265 NLRB 850, 858 (1982), *enfd.* 732 F.2d 872 (11th Cir. 1984), *cert. denied* 469 U.S. 1035 (1984)).

<sup>22</sup> *See id.*

<sup>23</sup> *See, e.g., Alba-Waldensian, Inc.*, 167 NLRB 695, 696 (1967) (respondent made no attempt to explain its proposal but merely asserted that wages and seniority were a matter for management alone to decide); *Summa Health Sys., Inc.*, 330 NLRB 1379, 1379 (2000) (respondent failed "to provide any specific economic justification for the absolute discretionary powers it demanded

resisting meaningful movement is a hallmark of surface bargaining and not hard bargaining.<sup>24</sup>

A finding of bad faith can be based solely on United Academics' surface bargaining with respect to Article 15 and Article 16 but is further bolstered by the other corresponding bad faith behavior by United Academics as discussed herein.

**C. United Academics Repeatedly Delayed Negotiations, Ultimately Preventing the Parties from Timely Submitting a Proposal to the State Legislature.**

United Academics consistently delayed negotiations, prevented the parties from timely submitting a proposal to the state legislature, and ultimately resulted in the parties' failure to reach an agreement to date. At the outset of negotiations, the parties knew that they were "on the clock" to get a tentative agreement completed in time to get funding appropriation by the state legislature, which was required for the University to provide

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which lessened protections for bargaining unit work, other than generalized insistence on some vague concept of 'flexibility'").

<sup>24</sup> See *In Re Liquor Indus. Bargaining Grp.*, 333 NLRB 1219, 1221 (2001) (finding evidence of bad faith on behalf of an employer in similar circumstances); see also *N.L.R.B. v. Wright Motors, Inc.*, 603 F.2d 604, 608 (7th Cir. 1979) (upholding an administrative law judge's finding of surface bargaining based on evidence "that the employer was not engaging in hard bargaining or maintaining a legitimately held position, but instead was insisting on unreasonable positions ... and 'to ensure no bargain through the tactics of delay'" (quoting record cite); *In Re APT Med. Transp., Inc.*, 333 NLRB 760, 761 (2001) ("Bad faith is indicated when the proposals are so predictably unpalatable to the other party that the proposer should know agreement is impossible....").



any salary increases to represented employees. Proposals had to be submitted to the legislature in April 2022 to be approved in mid-May 2022.

However, despite these well-known time constraints,<sup>25</sup> United Academics canceled meetings, ended bargaining sessions early, cut the cadence of meetings in half, withheld the introduction of critical articles, and delayed the start of mediation. The core of any collective bargaining agreement is pay and benefits, yet United Academics delayed presenting proposals on these critical articles until nearly five weeks into the negotiations—even though the University made their proposal on one of them, Article 15, on the second day of negotiations—and subsequently delayed presenting a proposal in response to the University’s initial counterproposal for a full six weeks.

Less than three months into the bargaining process, United Academics preemptively requested that the parties switch from meeting on a weekly basis to meeting every other week. That request effectively cut in half the number of bargaining sessions between the parties; as a result, the University objected. However, on February 8, 2022, United Academics insisted that the parties implement the reduced bargaining session

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<sup>25</sup> 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 set forth a legislative appropriation requirement. The state legislature is scheduled to meet annually in May.

schedule, even though the University had provided its counterproposal for Articles 15 and 16 the day prior.<sup>26</sup>

In addition to the delays related to establishing ground rules, as described above, United Academics caused the following delays:

- 10/18/2021 United Academics made its first counterproposal related to Article 15 five weeks after negotiations began.
- 10/19/2021 United Academics made its first proposal related to Article 16 five weeks after negotiations began.
- 11/9/2021 Despite the expiration of the CBA set to occur on December 31, 2021, United Academics suggested January 18 and 19 as the first bargaining days in 2022 due to holiday travel.
- 11/10/2021 United Academics informed the University they are unavailable for the January 31 and February 1, 2022, sessions.
- 11/16/2021 United Academics preemptively requested meeting every other week starting February 21 and 22.
- 1/19/2022 During a critical discussion of Article 15, United Academics requested to caucus at 11:32 and return at 1:15 p.m. Prior to 1:15, United Academics reached out to the University team to advise they would like to caucus the rest of the day due to the team having hit a “snag.”
- 2/8/2022 United Academics reminded the University they would like to meet every other week and discontinue weekly meetings.
- 2/22/2022 United Academics informed the University they were unable to have a package of proposals next week and requested the following week off due to Spring Break.

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<sup>26</sup> Eventually, United Academics realized the error of their ways and in April 2022 requested that the parties return to meeting on a weekly basis.

- 3/7/2022 Spring Break - United Academics did not want to meet this week.
- 3/8/2022 Spring Break - United Academics did not want to meet this week.
- 3/14/2022 United Academics delayed presenting their counterproposals for Articles 15 and 16, which contained the most critical aspects of the CBA—a full six weeks after the University’s proposal and showed little to no movement.
- 4/26/2022 United Academics delayed agreeing to engage in mediation for 4 weeks after the University suggested the parties appoint a neutral third party in order to help the parties progress with respect to their negotiations.

The above demonstrates that, even with the deadline for the expiration of the CBA and legislative session looming, United Academics repeatedly engaged in delay with respect to their availability and in presenting the key articles of compensation and benefits that both parties knew, given the financial condition of the University, would require lengthy negotiations. United Academics’ delay often occurred at the most critical junctures of negotiations, effectively impeding any progress that the parties may have made and denying the parties any bargaining momentum.

The Board and courts have found delay to constitute evidence of bad faith in similar circumstances. For example, in *Calex Corp.*, the Board determined that a party exhibited an unlawful pattern of delay when the party canceled a number of bargaining sessions and reduced the frequency of meetings, even though the parties held 19 bargaining sessions in 15 months.<sup>27</sup> The Board determined that the purpose of such tactics

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<sup>27</sup> See, e.g., *Calex Corp.*, 322 NLRB 977, 987 (1997) *enfd.* 144 F.3d 904 (6th Cir. 1998).

was “to delay the negotiations and stretch them out for as long as possible to either avoid reaching agreement or undermining support for the [other party] or both.”<sup>28</sup> Similarly, here, United Academics’ request to cut the number of meetings in half during a critical period of negotiations significantly impacted the parties’ ability to reach an agreement.<sup>29</sup>

United Academics demonstrated dilatory behavior throughout the entire bargaining process, while University demonstrated a sense of urgency and recognized the need to reach an agreement in time to present economic terms to the state legislature to ensure salary raises to represented members. Instead of working cooperatively with this goal in mind, United Academics delayed and dragged its feet.

**D. United Academics’ Proposals during Negotiations Were A Mix of Illegal and Permissive Bargaining Topics.**

United Academics also engaged in bad faith behavior with respect to negotiations by repeatedly including proposals that contained a mix of illegal and permissive bargaining. Although United Academics is permitted to bargain permissive subjects, the repeated inclusion of permissive bargaining topics undermined the parties’ main goal, to reach a complete agreement with respect to mandatory bargaining topics. By continually

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<sup>28</sup> *Id.* at 987.

<sup>29</sup> *Rhodes St. Clair Buick*, 242 NLRB 1320, 1323 (1979) (“That the parties managed to discuss most of the sections of the Union’s proposed contract during the first six meetings shows, not that the meetings were reasonable in frequency and duration as Respondent contends, but that agreement might have been reached in less time had Respondent been amenable to longer and more frequent meetings and sincerely desirous of reaching agreement.”).

proposing permissive and illegal bargaining topics—even after the University pointed out that such topics were not appropriate for the parties’ CBA—United Academics delayed and detracted from the parties’ efforts with respect to critical mandatory bargaining topics (e.g., compensation and benefits). A summary of the illegal and permissive bargaining topics proposed by the University follows:

**UNITED ACADEMICS’ ILLEGAL & PERMISSIVE BARGAINING TOPICS**

Article 1	United Academics sought to bargain a land acknowledgment.	Non-mandatory, permissive subject of bargaining.
Article 2	United Academics sought to eliminate language surrounding academic governance of the University, and removal of language that members could participate, provided they avoid conflicts of interest.	Illegal subject of bargaining.
Article 7	United Academics sought to bargain over academic judgments.	Permissive subject in some cases and illegal (e.g., what programs are offered by the University) in others.
Article 13	United Academics sought to bargain over the oversight of academic programs.	Illegal subject as it is a statutorily provided management right.
Article 16	United Academics repeatedly introduced the following proposals: (1) tie the addition of parental leave to the sick leave bank (in violation of IRS regulations); (2) enable use of the donated sick leave bank for any purpose and not just in instances of a serious health condition (in violation of IRS regulations); and (3) create a	Violates tax laws; would also create compensation obligations in contradiction with the

**UNITED ACADEMICS' ILLEGAL & PERMISSIVE BARGAINING TOPICS**

	voluntary early retirement program (“VERP”) that included access to health care.	University’s benefit plans.
Article 18	United Academics sought to remove the right of management to establish “programs.”	Illegal subject governed by Alaska statute.

Even after the University informed United Academics that certain proposals were illegal and/or permissive topics of bargaining, United Academics continued to re-introduce the proposals. For example, United Academics reintroduced the illegal provision regarding the voluntary early retirement program in its second proposal for Article 16 and repeatedly insisted that the University link parental leave to the sick leave bank. With respect to United Academics’ proposal regarding expanding the permitted usage of the donated sick leave, the University had to waste hours of its caucus and negotiating time to address this clearly illegal proposal, as United Academics continued to pursue this demand well beyond the declaration of impasse. United Academics did not seem to care that its proposals would have violated applicable law and continually re-proposed them despite their knowledge that the University could not legally agree. United Academics’ repeated offering of illegal proposals required the University to divert time and attention away from the negotiations to unnecessarily confer with outside counsel regarding the legality of such proposals. And, despite the University’s explanation that it

could not agree to such proposals since the proposals violated applicable law (even after confirming that the University had been advised by outside counsel it would have been illegal to accept such proposals), United Academics continued to re-introduce the illegal Article 16.

### **III. Conclusion.**

United Academics' conduct throughout bargaining was dilatory and driven by a purposeful strategy to make bargaining futile or fail. United Academics' bad faith bargaining tactics have succeeded to the detriment of its members—the parties, to date, despite over a year of bargaining, have failed to come to an agreement despite significant efforts on behalf of the University. United Academics' pattern of conduct evidenced a preconceived determination not to reach agreement, except on its own terms,<sup>30</sup> violating its duty to bargain in good faith in violation of AS 23.40.110(a)(5).

Accordingly, the University respectfully requests that the ALRA: (1) consolidate this ULP with United Academics' previously-filed ULP; (2) enter an order finding that United Academics has failed to bargain in good faith in violation of AS 23.40.110(a)(5);

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<sup>30</sup> *In Re Seven Seventeen Hb Buffalo Corp.*, 2002 WL 31386015 (Sept. 27, 2002) (explaining bad faith bargaining can be evidenced when a party “engage[s] in a pattern of conduct evidencing a preconceived determination not to reach agreement except on its own terms, irrespective of the [other party’s] bargaining powers, approach, or techniques ... To sit at a bargaining table, or to sit almost forever, or to make concessions here and there, could be the very means by which to conceal a purposeful strategy to make bargaining futile or fail.”) (internal citations omitted).

(3) enter an order directing United Academics to publish a letter to its members explaining its failure to bargain in good faith; (4) retain jurisdiction and monitor United Academics in the event of future breaches in its duty to bargain in good faith; (5) enter an order awarding the University its costs and attorneys' fees; and (6) enter an order for any other further relief as will be necessary to fully and completely remedy the unfair labor practices committed by United Academics in this case.

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 email on:

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