

## **INTRODUCTION**

1. Alaska Community Colleges' Federation of Teachers, Local 2404 ("ACCFT") has filed an unfair labor practice charge ("ULP") against the University of Alaska ("University"). The ULP is dated October 17, 2007. In a letter from the Alaska Labor Relations Agency ("ALRA") dated October 22, 2007, ALRA has requested from the University a response and any accompanying documents to be filed by November 5, 2007. The current submission is both a response to the ULP and also a request that the ULP be converted into a Petition for Unit Clarification pursuant to 8 AAC 97.050. The dispute underlying the ULP is in fact a dispute between two bargaining units, ACCFT and United Academics, over the boundaries of each of the units. United Academics, which is a necessary party in this dispute over unit boundaries, joins the University in the request to convert the ULP into a Unit Clarification proceeding.

## **BACKGROUND**

2. The bargaining unit represented by ACCFT includes: faculty, librarians and counselors of community colleges; faculty, academic counselors, and librarians whose principal assignment is at an extended site; faculty whose principal assignment is vocational-technical instruction; and faculty who are employed to teach exclusively at the lower division level, that is 200 level courses or below, or are employed to teach exclusively at the lower division level with a single part service assignment. . .<sup>1</sup>

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<sup>1</sup> ACCFT CBA, Article 9.1.A. The CBA is attached as Exhibit A.

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

...The assignment of an upper division course or courses *which would otherwise exclude a Faculty Member from the bargaining unit is permitted without exclusion from the bargaining unit*, provided that the Faculty Member and appropriate University administrator agree to the assignment and such agreement is reduced to writing.<sup>2</sup> (Emphasis added)

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

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

All employees who are recognized by the University of Alaska as represented by the Alaska Community Colleges' Federation of

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<sup>2</sup> "Faculty Member" is a term used in the ACCFT CBA to mean an employee of the ACCFT bargaining unit.

<sup>3</sup> See ALRA Decision and Order No. 202, attached as Exhibit B.

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

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

The assignment of an upper division course or courses is permitted, provided that the Faculty Member and appropriate University administrator agree to the assignment and such agreement is reduced to writing.

7. Since the formation of the bargaining unit represented by United Academics, the University has assigned new faculty at the three main campuses<sup>5</sup> to ACCFT if they were employed to teach exclusively at the lower division level.<sup>6</sup> However, while existing faculty represented by ACCFT typically do teach lower division courses at the main campuses, the practice of allowing “grandfathered” Faculty Members represented by ACCFT to teach upper division courses has continued to some extent.

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

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

<sup>6</sup> Faculty would also be assigned to ACCFT if their principal assignment is vocational-technical instruction.

8. Though issues regarding unit placement have been raised by one or the other union since 1998, both ACCFT and United Academics have acquiesced in certain exceptions by virtue of informal third-party agreements. However, for a period extending over the last several years, both ACCFT and United Academics have threatened that they will insist on strict enforcement of their unit definitions if no satisfactory resolution of their inter-union dispute is reached. The University has requested that the two unions resolve the issue between themselves.<sup>7</sup>

9. ACCFT has argued from time to time that, by virtue of Article 5.1, faculty at main campuses could not be moved to United Academics when new and voluntary assignments included upper division courses even though the faculty were initially hired after the advent of United Academics. ACCFT has also argued during bargaining that the University negotiated the unit definition for United Academics and that the definition failed to recognize AACFT's upper division "rights" under Article 5.1 of the ACCFT CBA.

10. In November 2006 United Academics reported to the University that its discussions with ACCFT about resolving the unit definition dispute had failed to resolve the matter. United Academics requested that the University comply with the unit definition in their CBA and assign faculty teaching upper division courses to United Academics.<sup>8</sup> United Academics subsequently asked the University to hold the November

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<sup>7</sup> See letter from University, dated August 12, 2004, attached as Exhibit D.

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

2006 request in abeyance while it engaged in further discussions with ACCFT in an effort to resolve the dispute.

11. On October 10, 2007 United Academics reported that its discussions about unit definition with ACCFT had once again broken down, and United Academics reactivated its November 2006 request that its CBA be enforced by the University regarding the teaching of upper division courses.<sup>9</sup>

12. Following the October 10 request by United Academics, the University proposed a solution for the unit definition dispute. That proposal was as follows:

1. To retain in ACCFT:
  - Counselors currently placed in ACCFT, who were hired before July 1, 2007, and who work on the Main Campuses;
  - Faculty currently placed in ACCFT, who were hired before July 1, 2007, who work on the Main Campuses, and who have a history or regularly teaching upper and lower division courses, and who may be assigned mixed upper and lower division classes from time to time, provided they wish to remain in ACCFT.
2. Faculty currently placed in ACCFT who either have no recent history of regularly teaching upper and lower division courses, or who were hired after July 1, 2007, and who work on the Main Campuses, whose principal assignment is other than vocational-technical instruction, would be transferred to United Academics upon accepting an assignment of an upper division course or courses;
3. To retain in United Academics:
  - UAF School of Education faculty in the College of Rural Alaska;
  - UAF SFOS faculty.
4. To otherwise enforce current unit definitions, including retaining in ACCFT faculty at extended sites who teach upper division courses.<sup>10</sup>

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

<sup>10</sup> See letter from University, dated October 18, 2007, attached as Exhibit G.

In its letter to both unions, the University observed that, if an agreement could not be reached, it would be appropriate to jointly submit the unit definition dispute to the ALRA (or to some neutral third party). Absent an agreement, the University informed both unions that it planned to act consistently with its current approach.

On October 18, 2007 the University received a copy of the ULP filed by ACCFT. Following the receipt of that ULP, the University wrote to the unions inviting both unions again to join the University in a petition to convert the ULP into a Unit Clarification.<sup>11</sup> United Academics expressed its willingness to participate in such a petition.<sup>12</sup> ACCFT declined to join such a petition.<sup>13</sup>

## **ANALYSIS**

13. The dispute which underlies this ULP is a unit definition dispute between two unions that is most appropriately treated as a Unit Clarification matter. Such treatment will afford both unions the opportunity to address the matter before the ALRA, and such a treatment will ensure that all parties of interest meaningfully participate in this matter. The University will analyze the unit definition issue first. Following such an analysis, the University will respond to the specific allegations set forth by ACCFT in the ULP. The unit definition analysis is also set forth in the October 18, 2007 letter which is Exhibit G.

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<sup>11</sup> See letter from University, dated October 24, 2007 attached as Exhibit H.

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

<sup>13</sup> See letter from ACCFT, dated October 26, 2007, attached as Exhibit J.

### **The Meaning of Article 5.1 of ACCFT CBA.**

14. Article 5.1 of the ACCFT CBA has always been permissive – the assignment of an upper division course or courses is “permitted.” Article 5.1 conditions such assignments on course by course agreements between individual Faculty Members and individual University administrators. By the terms of the provision, the University may not insist that an ACCFT Faculty Member teach upper division, and neither ACCFT nor the Faculty Member may insist on receiving upper division assignments. Though ACCFT argues that Article 5.1 is part of and expands its unit definition, expansion of a unit definition would not be phrased in terms of discretion of the employer and employee, thus this language is not consistent with an intent to expand ACCFT’s unit definition.

15. Moreover, agreements with ACCFT Faculty Members to teach upper division courses could occur without affecting unit definition or placement, i.e., at extended sites, at a community college, or in vocational-technical instruction. This is the case because such faculty are excluded from the unit represented by United Academics, regardless of teaching level.

16. As a result, the plain language of Article 5.1 cannot be read to reflect an agreement between ACCFT and the University to alter or augment ACCFT’s unit definition at the expense of United Academics. It can only be read to do what the parties legally could do, i.e., permit upper division assignments to ACCFT Faculty Members where unit placement is not affected by the assignment, and allow the University to determine when to offer such upper division assignments.

17. Bargaining history shows that after the advent of United Academics, ACCFT and the University recognized that they could not permit retention of Faculty Members in ACCFT when upper division courses were assigned which would otherwise exclude a Faculty Member from the bargaining unit. The parties bargained significant changes to Article 5.1 in the 1997 ACCFT CBA. That CBA was the first new CBA with ACCFT after establishment of the United Academics unit. In that CBA, ACCFT and the University removed the language in Article 5.1 which had expressly permitted retention in the ACCFT unit despite the assignment of a disqualifying upper division course. As a result, the current Article 5.1 cannot be construed as authorizing, much less requiring, retention in ACCFT when assignment of an upper division course would otherwise place the Faculty Member in United Academics.

18. The University has proposed in bargaining that the current language of Article 5.1 regarding upper division assignments be deleted from the ACCFT CBA. However, for the reasons already discussed, this does not reflect any need or desire to adjust ACCFT's unit definition. On the other hand, retention of the current language should not be viewed as University acceptance of ACCFT's interpretation of this provision or as an intention to continue any past practice. That is not the case.

### **ALRA ESTABLISHMENT OF UNITED ACADEMICS**

19. As noted above, the unit definition of United Academics was determined by the ALRA, with full participation by ACCFT. ACCFT did not assert, and the ALRA did not recognize, expanded unit rights for ACCFT under Article 5.1. The University did not bargain an expanded unit definition with United Academics.

## **UPPER DIVISION TEACHING NOT LIMITED TO UNITED ACADEMICS**

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

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

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

22. A review limited to the United Academics and ACCFT unit definitions would compel the conclusion that faculty who do fall outside the three categories referenced above, and who teach any upper division courses, are in the United Academics bargaining unit. It is, however, at least arguable that a pattern and practice of acquiescence in a different application of a unit definition, or an agreement among all affected parties, may render the affected aspects of a unit definition unenforceable.

23. Here all three parties have long permitted ACCFT faculty who were in place and accustomed to teaching a mix of upper and lower division classes at the time United Academics was recognized to continue this teaching and remain in ACCFT. Similarly, all

three parties have acquiesced in the chosen unit placement of counselors and UAF School of Education faculty.

24. A strict reading of either unit definition would seem to be undesirable from numerous perspectives. It would compel inter-unit transfers of faculty long accustomed to their present unit. Such transfers would disrupt distinct compensation mechanisms, and in some cases, the mechanisms for evaluation and administration. In addition, strict adherence has the potential to disrupt University operations to the extent that some ACCFT Faculty Members who are currently relied upon to teach upper division classes at main campuses would refuse such assignments if the result was a change in unit. This would leave the University with ACCFT faculty without adequate workloads, and at the same time, insufficient faculty to teach upper division classes. Given such circumstances, the solution to the unit definition dispute set forth above in paragraph 12 makes sense.

#### **University Response to Specific Charges by ACCFT**

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

26. ACCFT alleges in the ULP that in September 2007 the University threatened to move existing ACCFT Faculty Members teaching any upper division

courses to the United Academics bargaining unit. The University made no threats. In September and October 2007, the University proposed a resolution of the unit definition dispute between ACCFT and United Academics that would “grandfather” into the ACCFT bargaining unit certain faculty who were teaching upper division courses and to otherwise assign faculty with upper division course assignments to United Academics.<sup>14</sup>

27. ACCFT asserts in paragraph 17 of the ULP that in August 2007 the University hired three new nursing faculty in a manner which would violate the ACCFT unit definition. This allegation is incorrect. In 2007 the University recruited new nursing faculty at UAA that the University knew would be used to teach some upper division classes. The positions were advertised as United Academics positions because the University knew the positions would teach some upper division courses. The University followed the unit definitions for ACCFT and for United Academics and assigned new faculty at UAA who would be teaching upper division classes to the United Academics bargaining unit.

ACCFT further alleges in paragraph 17 of the ULP that the University hired a faculty member with a bipartite workload and then assigned him one upper division class and assigned him to United Academics. The University does not know which faculty member is being referenced here, and so the University cannot address the specifics of this hire and assignment. However, if a new faculty member is hired and is assigned to

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<sup>14</sup> This course of action is fully set forth in Exhibit G, at 6-7.

teach an upper division class, that faculty member would be assigned to the United Academics unit pursuant to the unit definitions of the two unions.

28. ACCFT charges in paragraph 18 of the ULP that the University has attempted to circumvent the scope of the ACCFT unit by the fiction of appointing faculty at extended campuses through letters of appointment from the Fairbanks main campus. This charge is without merit. Again, the University cannot address the specifics of the actions referenced in paragraph 18 of the ULP because ACCFT does not identify the new faculty members or the programs involved. The University can state that it is not attempting to circumvent the scope of the ACCFT unit by appointing faculty at extended campuses through letters of appointment from UAF. The University might conjecture that ACCFT is referencing School of Education faculty at extended sites whose unit placement appears to have resulted from choices permitted through a Unit Transitional Agreement dated May 8, 1992, and which has been known to ACCFT for years.

29. ACCFT charges in paragraph 19 of the ULP that it “believes” that the University has assigned new faculty members to teach an upper division class for the purpose of keeping such individuals out of the ACCFT bargaining unit. This charge is untrue. The University has assigned new faculty members to teach appropriate courses. If those courses include upper division classes, then the University has assigned the faculty members to the United Academics unit because such an assignment is called for by the unit definitions.

## **REQUESTED ACTION**

The University requests that the ULP charge filed by ACCFT be transformed into a Unit Clarification proceeding with the full participation of ACCFT, United Academics, and the University. The University further requests that the ALRA clarify the respective definitions of ACCFT and United Academics so that the current dispute is fully resolved.

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