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UNITED ACADEMICS-AAUP/AFT,)
AFL-CIO,)
)
Petitioner,)
)
vs.)
)
UNIVERSITY OF ALASKA,)
)
Respondent.)
and)
)
ALASKA COMMUNITY COLLEGES')
FEDERATION OF TEACHERS,)
LOCAL 2404, AFT, AFL-CIO,)
)
Intervenor,)
)
_____)
CASE NO. 96-486-RC)

DECISION AND ORDER NO. 202

This matter was heard on March 22, 1996, in Anchorage, Alaska, before a panel of the Alaska Labor Relations Board, with Vice Chair Stuart H. Bowdoin and Member Robert A. Doyle, participating at the hearing, and Member Karen Mahurin, participating on the basis of a review of the record. Hearing Examiner Jan Hart DeYoung presided. The record closed on March 22, 1996.

Appearances:

William K. Jermain, Jermain, Dunnagan & Owens, P.C., for petitioner United Academics-AAUP/AFT, AFL-CIO; Ralph McGrath for intervenor Alaska Community Colleges' Federation of Teachers, Local 2404, AFT, AFL-CIO; Thomas P. Owens, Jr., Owens & Turner, P.C., for respondent University of Alaska.

Digest: (1) A unit of regular, nonadjunct faculty that excludes the faculty represented by the ACCFT, as proposed by United Academics-AAUP/AFT, AFL-CIO, is an appropriate unit for purposes of collective bargaining under AS 23.40.090.

(2) Because department heads are not supervisors of other members of the unit under 8 AAC 97.990(5), 8 AAC 97.090 does not require their exclusion from the unit.

DECISION

A hearing was conducted on March 22, 1996, at which the parties presented testimony and other evidence. The record closed that same day. Upon consideration of the record, the panel finds the facts as follows:

Findings of Fact

Procedural history.

1. United Academics-AAUP/AFT, AFL-CIO, on December 19, 1995, filed a petition to represent a unit of University of Alaska employees. It described the unit as including,

All regular, non-adjunct faculty in the following ranks: Instructor, Assistant Professor, Associate Professor, Professor; Research Assistant Professor, Research Associate Professor, Research Professor; Visiting Instructor, Visiting Assistant Professor, Visiting Associate Professor, Visiting Professor; Cooperative Extension Faculty and/or Agents; Post Doctoral Fellows. Librarians, counselors, rehabilitation faculty, advisors, cooperative extension agents, and other academically related personnel. Department heads/chairs, and those administrators who are elected by the faculty.

2. United Academics excluded from the proposed unit all faculty recognized by the University as represented by the Alaska Community Colleges' Federation of Teachers, Local 2404, AFT, AFL-CIO (ACCFT). It described the ACCFT unit as follows:

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

In addition, United Academics excluded "Administrators who are not elected by the faculty, supervisors, adjunct faculty, temporary personnel, aides, assistants, and office clerical personnel."

3. The University provided a roster of the employees in the proposed unit and a check of the interest cards confirmed that United Academics satisfied the threshold requirement in AS 23.40.100 of a 30 percent showing of interest in support of its petition.

4. A notice of United Academics' petition was posted from January 6 through January 12, 1996, at various work locations of the proposed unit members throughout the state.

5. ACCFT provided written notice on January 26, 1996, of its interest in United Academics' petition as the bargaining representative of the existing faculty bargaining unit at the University.

6. On January 26, 1996, the University provided notice that it objected to the appropriateness of the proposed bargaining unit.

7. On February 5, 1996, the Agency conducted a prehearing conference on the petition and objection, providing notice to representatives of United Academics, the University, and ACCFT. Representatives of United Academics and the University attended and agreed to a change in the usual order of presentation at the hearing; they agreed that respondent University would proceed first, followed by petitioner United Academics and intervenor ACCFT. The University and United Academics also agreed to the scope of the issues in dispute as follows:

The University of Alaska will not be contending that there is a lack of community of interest among the faculty petitioned for by United Academics. The University's position is that the description of the unit unnecessarily stops short of the full extent of that community of interest, which is shared by more faculty than has been petitioned for. Therefore, it will not be necessary for United Academics to introduce evidence to establish that there is a community of interest among the faculty that they have petitioned for. [T. Owens, letter to J. DeYoung (Mar. 18, 1996).]

Findings on the factors listed in AS 23.40.090.

8. **Community of interest.** Despite the reorganization combining the faculty of the community colleges and of the four-year universities, the faculty of the proposed United Academics' unit has maintained a distinct community of interest

from the former community college faculty represented by the ACCFT.

9. The University presented evidence of the organizational structure of the University. The president of the board of regents Sharon Gagnon states the University of Alaska is the only public university in the state and it must address a multitude of needs, from adult basic education to doctoral level programs. The University of Alaska is described in UA in Review:

The University of Alaska System, which covers an area one-third the size of the United States, is governed by an 11-member Board of Regents The Board reviews and approves educational policy, degree programs, campus development, and budget requests. The Board appoints the president who is responsible for the administration of the System and serves as executive officer of the Board of Regents. The president's immediate staff consists of a vice president for finance and planning, vice president for university relations, and a general counsel. The System office is located in Fairbanks.

There are three universities in the System - University of Alaska Anchorage, University of Alaska Fairbanks, and the University of Alaska Southeast. Each is headed by a chancellor who reports to the president.

University of Alaska System Office of Institutional Research, UA in Review (Mar. 1995), Exh. C, at v.

10. The three universities in the system consist of a number of facilities throughout the state. Organizational chart, Exh. B. All faculty, including both unrepresented faculty and ACCFT bargaining unit members, are part of this single administrative system under the board of regents.

11. Faculty in the proposed United Academics' unit are located in the University system principally in the three main campuses in Fairbanks, Anchorage, and Juneau. They are also located in several research facilities. Exh. C, at v & vi. However, they are not located in the remote campuses. Faculty in the remote locations are members of the ACCFT bargaining unit. These locations are called "extended sites" in the ACCFT/University collective bargaining agreement, Articles 1.2 & 2 (May 8, 1992 -- June 30, 1994), Exh. A, at 1 & 3, and represented on the organizational chart under the University of Alaska Fairbanks College of Rural Alaska, Cooperative Extension and Vocational Education, as the Kuskokwim, Northwest, Bristol Bay, Chukchi, Interior Aleutians and Tanana Valley campuses; under the University of Alaska Anchorage as the Kenai Peninsula, Kodiak, and Mat-Su campuses; and under the University of Alaska Southeast as the Sitka and Ketchikan campuses. Exh. B; Exh. C, at v-vii.

12. The vocational education faculty, i.e., faculty whose principal assignment is vocational or technical instruction, are also in the ACCFT bargaining unit. Agreement, Article 1.2, Exh. A, at 1.

13. The teaching function of all of the faculty employees distinguish them from the classified and professional employees of the University. Faculty employees may employ similar skills when they teach, but the work does differ between the two faculty groups. While Chancellor Marshall Lind of the University of Alaska Southeast states the two groups teach in the same way, are hired in the same way, and would be hard to distinguish, he does acknowledge one difference -- responsibility for research. The faculty employees in United Academics' proposed unit have a stronger research focus in their work. Research generally is not required of ACCFT bargaining unit members, who have a stronger focus on teaching and community service. These differences in the workload of the two faculty groups are significant and have a substantial impact on how the faculty view themselves and their community of interest.

14. Professor Nag Rao believes that the distinctions between the two faculty groups remain strong in part because of the difference in their missions. ACCFT President Ralph McGrath described the mission of the ACCFT group. The former community college teachers are oriented to teaching and service to the community. They support the local school districts and communities in areas of developmental education, adult basic education, job skills, vocational technical programs, and community interest courses. They teach in programs offering the two-year certificate associate of arts and applied sciences. While certain courses taught by the ACCFT members can transfer and provide the foundation of a four-year education, the focus of the ACCFT members is different than the focus of the faculty geared to the four-year and graduate students. In large part it is because they are serving a different audience.

15. Rao believes the University's reorganization in 1987 has not had an impact on the two faculty groups. However, the consolidation of the two groups has had the obvious effect of requiring more interaction between them than when they were in separate institutions. For example, the two faculty groups can be in the same departments in the Fairbanks, Anchorage, and Southeast campuses. They may work together on University governance. Faculty employees can be assigned to University committees or participate in curriculum development without regard to their bargaining unit status. The two groups interact to an extent that would have been impossible before the consolidation. However, we credit Rao's statement that the two faculty groups are in two different worlds. Despite the organization, these faculty have maintained different missions and identity and these differences continue despite University reorganization.

16. An example of how these differences resist integration is the experience with promotion and tenure. Regent Gagnon and the Assistant Vice President of Employee Relations, Stevan DeSoer, state that promotion and tenure policies are the same for both faculty groups. The statements, however, are oversimplified to the point of being misleading. After consolidation, the former community college teachers were given rank and tenure. Professor Rao states that the University did not change its promotion and tenure review standards to accommodate the differences in the mission and work of these teachers. Because the work of the ACCFT bargaining unit members did not prepare them or qualify them for review under those standards, they were unsuccessful in meeting them. According to Professor Art Bukowski, the University has since adopted different standards and revised its expectations for the ACCFT members. The procedures were negotiated with the ACCFT and agreed to in August of 1994. Chancellor Lind described the effect of these differences on the ACCFT bargaining unit members employed at the University of Alaska Southeast (UAS). Those UAS faculty employees and the ACCFT unit members at the University of Alaska Fairbanks (UAF) are evaluated for promotion and tenure under policies established for the University of Alaska Anchorage (UAA) ACCFT bargaining unit members. The differences in tenure and promotion policy are set forth in the exhibits incorporating those policies. Regional Review Process for UAF and UAS CBU Members (1993-1994), Exh. 5; Promotion & Tenure Review Process for ACCFT CBU Members (1994-1995), Exh. 6. A key difference is that research is not required for ACCFT bargaining unit members but it remains an important factor in evaluating the performance of the nonbargaining unit faculty. Compare UAA Faculty Handbook 111-5 -- 111-6 (Sept. 1991), Exh. 2, with UAF Faculty Handbook 7 (August 1993), Exh. 4. Non-ACCFT unit faculty employees cannot be promoted without work in research.

17. The absence of integration of the ACCFT bargaining unit members into the larger faculty community is supported by a letter from University President Jerome Komisar. In response to a legislative inquiry about salary levels of ACCFT bargaining unit members, President Komisar compared ACCFT bargaining unit members to faculty in two-year, rather than four-year, institutions. J. Komisar, letter to T. Martin (Feb. 13, 1996), Exh. 7.

18. **Wages and hours.** Although the differences are not very significant, there are differences in the compensation and benefits paid the two faculty groups.

19. Regent Gagnon and Chancellor Lind testified that the faculty compensation and benefits paid the faculty are the same throughout the University system. All faculty are compensated under board of regents policy. University Regulations 04.05.01 -- 04.05.15., Exh. E.

20. The regents policy and University regulations on salaries, salary differential, and fringe benefits are adopted by reference in the ACCFT/University collective bargaining agreement. Agreement, Article 7, Exh. A, at 10-11.

21. The two faculty groups were compensated under the same policy at the commencement of the ACCFT/University agreement, but the regents changed the policy during the term of the agreement. The change had the effect of providing different compensation and benefits to the two faculty groups. Executive Director of Human Resources Patty Kastelic explained that regents policy on health benefits changed after the ACCFT/University agreement became effective. The change was applied to non-ACCFT bargaining unit faculty but it was not applied to ACCFT members. The ACCFT/University agreement was interpreted to freeze the regents policy in effect as of the date of the agreement. The resulting minor differences in health benefits include different coverage for prescriptions and the absence of dependent health care charges for ACCFT unit members.

22. Life insurance also changed. ACCFT unit members are insured for twice their annual salary, while the life insurance of other employees is capped at \$50,000. Exh. D, at 2.

23. Placement on the salary scale is determined for both faculty groups at the time of hire. ACCFT unit members are compensated on the same salary scale as other faculty at the University. However, the ACCFT is pursuing a claim that its contract froze a regents policy of a three percent annual salary increase in effect on the date of the agreement but since repealed. J. Komisar, letter to T. Martin (Feb. 13, 1996), Exh. 7; M. Burton, memorandum to D. Tonkovich (Mar. 5, 1996), Exh. 8.
24. Retirement benefits remain the same for both groups of faculty. All faculty are given the choice to participate in the State of Alaska Teachers' Retirement System (TRS) or an alternate plan offered by the University (ORP). Exh. D, at 4.
25. **Working conditions.** Working conditions for the two groups of employees are similar but there are enough differences to justify separate units.
26. The principal difference was described under the findings addressing community of interest -- the mission and teaching work of the two groups. The presence or absence of a research requirement is a key difference between the two faculty groups. Before the consolidation, ACCFT President Mcgrath states the community college workload was 12 credits or four courses in a semester or eight courses in an academic year. Four/fifths of the work was teaching. The fifth part of the workload was public service. In University parlance, this is a bipartite workload.
27. Since consolidation, the ACCFT bargaining unit members continue to teach a bipartite workload. They teach exclusively vocational and lower division courses. This bipartite workload is different from the work of the four-year faculty.
28. The faculty in the proposed United Academics' unit work a tripartite workload. The third component after teaching and service is the research requirement. Research is a very important responsibility of the tripartite faculty. One is not promoted without it.
29. Other differences exist in the working conditions of the two groups as a product of ACCFT's representation in collective bargaining. The most important of these is that ACCFT members have a grievance process that culminates in arbitration.
30. There are also similarities in the working conditions. The most significant is that ACCFT unit members and nonbargaining unit faculty can work together in the same department on the same campus. The work location of the two groups can also be very different. Whether the two groups interact will depend largely on the institution. The faculty at the extended sites are ACCFT unit members and have less opportunity for interaction with nonbargaining unit faculty than those members assigned to the UAA, UAS, and UAF campuses. Provost Keating described differences among the two faculty groups at the University of Alaska Fairbanks. He noted that the Tanana Valley and Aleutian campuses are geographically distinct from the main University campus. There is also a separate research facility with 12 faculty. Those faculty may teach only one or two courses each year and it can be inferred from this fact that they would have fewer opportunities to interact with ACCFT bargaining unit members.
31. Another similarity is the fact that faculty do not accrue leave. Contract length is a matter negotiated with the employee.
32. **History of collective bargaining.** The history of collective bargaining at the University is a significant factor supporting the proposed unit.
33. The history of recognition of two separate faculty units is longstanding. The ACCFT was certified in 1974 as the bargaining representative of a unit of instructional staff at the fourteen community colleges. President McGrath states the ACCFT had initially sought recognition only for the Anchorage Community College but a statewide unit was certified after an election. However, in 1987 higher public education in Alaska was restructured and the community colleges were consolidated into the three regional universities. The ACCFT bargaining unit survived that restructure, although not without a struggle. The University contested the continued existence of the bargaining unit and the dispute went to arbitration. The arbitrator addressed the question of the continued appropriateness of the ACCFT bargaining unit as follows:

In lay terms, the question in each case is whether employees share a significant and sufficient number of working conditions and interests to warrant their being clustered for purposes of bargaining with their employer. There is no simple, single formula that can answer that question. Instead, the facts of each case must be weighed with sensitivity to the statutory right of employees to come together for purposes of collective bargaining. Concomitantly, the facts also must be weighed with sensitivity to the right of the employer to manage its organization with reasonable freedom and flexibility.

An academic institution is a unique employing organization. Considerations that might be relevant in fashioning a unit of factory workers may be relevant or marginally relevant to college teachers. Based on a close review of this record, relevant administrative agency and court decisions, and informed by two decades' experience in higher education, I find that there is a "community of interest" among former faculty members of the community college system that has survived the restructuring of the University of Alaska.

In re Alaska Community Colleges' Federation of Teachers, Local 2404 and University of Alaska, Decision and Award of Arbitrator Tim Bornstein (Restructuring Grievance: Phase II) (Jan. 5, 1990), Exh. 1, at 6.

34. The arbitrator found that the reorganization and transfer of employees had not meaningfully changed the working conditions and community of interest of the former community college teachers. For example, they taught the same courses, in the same campuses, to similar students. *Id.*, at 7. Critical to determining community of interest was the difference in the workload of the two groups of faculty. The community college teachers had a heavier teaching workload and less responsibility for scholarly research. The extended sites also remained the exclusive domain of the former community college teachers. *Id.*, at 8.

35. The arbitrator did not specifically define the unit, but the University and ACCFT negotiated a unit description that defined the unit as the arbitrator had described. The composition of the ACCFT unit has been the source of dispute. A petition to clarify the unit was pending before this Agency at one point but the parties reached a settlement. The parties more recently arbitrated a dispute about the unit status of three faculty members. We will not, however, infer from the mere existence of these disputes that the unit is not appropriate.

36. The University's consolidation did result in some changes to the ACCFT unit. The consolidation created transfer opportunities and bargaining unit members acquired rank and tenure, which they had not had in the community colleges. It did not, however, change the character of the work or the mission of the two faculty groups.

37. ACCFT and the University have had a contentious relationship throughout their history. The confrontational nature of the relationship predates consolidation. ACCFT President Mcgrath states the ACCFT engaged in three strikes early in the parties' relationship. He believes that the ACCFT was the first public sector union to strike under the Public Employment Relations Act. ACCFT struck in 1974 and 1976. The first two agreements followed strikes and arbitration. The first collective bargaining agreement that ACCFT actually negotiated at the table with the University occurred in 1983 or 1984. However, it was more than 14 months before the agreement became effective.

38. The most recent ACCFT/University agreement expired on June 30, 1994. The University and ACCFT began negotiations for a successor on April 28, 1994. They have been unable to reach a successor agreement after two years at the bargaining table.

39. The AFL-CIO constitution contains a provision that protects AFL-CIO affiliates from raiding by other union affiliates. Both United Academics and ACCFT are AFL-CIO affiliates.

40. **Desires of employees.** Those potential unit members testifying, Professors Rao and Bukowski, testified in support of the proposed unit. While two employees are hardly representative of a group as large as the approximate 770 members in the proposed unit, it is significant that no affected employees testified in opposition to the proposed unit.

41. The University presented evidence that the ACCFT bargaining unit had not voted on representation since consolidation. The members of the unit did vote once. ACCFT was certified, and the unit survived consolidation. The

absence of another election does not prove or disprove employee support for the ACCFT bargaining unit or the union. Nevertheless, ACCFT presented testimony through its president, Ralph Mcgrath, that 87 percent of the unit members are members of ACCFT.

42. **Unit size and the issue of unnecessary fragmenting.** In light of the other factors considered, the unit proposed by United Academics is as large as is reasonable and avoids unnecessary fragmentation.

43. The long history of separation of these two faculty groups demonstrates the absence of a real issue with fragmentation. While the University fears that movement between bipartite and tripartite teaching loads would be disruptive, the evidence supports the conclusion that the problem, if indeed it is a problem, occurs rarely. Professor Rao, UAF department head in sociology, said he does not have any faculty in his department who teach a bipartite work load. UAA department head Bukowski said there had been one such change between bipartite and tripartite work loads in his department since consolidation. The split between bipartite and tripartite faculty in his department was 8/9 at one point and 10/7 at another.

Findings on the supervisory responsibilities of department heads.

44. The existence of peer review in the University system complicates the question who is a supervisor. Actual authority over such issues as hiring and promotion, firing, and discipline rests at the level of chancellor or provost.

45. UAS Chancellor Lind states that all faculty in University of Alaska Southeast report through their deans to him. All final action is by Lind. UAF Provost Keating states that all UAF faculty report through him to the chancellor, except the faculty of the College of Rural Alaska. Effective authority appears to rest at the level of deans.

46. Faculty positions are filled with the help of a search committee. Rao believes peer review is the most important step in promotion and tenure. This is true for both faculty groups. The department head selects the search committee in consultation with the dean. Any member of the faculty regardless of unit status can serve on a search committee. The committee reviews applications and conducts interviews of job candidates and then makes a hiring recommendation to the department chair. The chair then makes a recommendation to the dean. The dean makes a recommendation to the provost or chancellor. At UAF, the provost makes the actual hiring decision. At UAS, the chancellor does. UAF Provost Keating states he gives very heavy weight to the department head's recommendation. Keating also states that he is unaware of an instance when the search committee's recommendation was not followed. These recommendations are an integral part of a group decision process.

47. Department head Rao states that the search committee and its recommendation are independent. The department head must pass along the recommendation; he cannot stop or change it. The department head may, however, serve on the search committee.

48. Department heads are selected by their peers, *i.e.*, the faculty in the department vote. To be a department head does not require full professorship or tenure. University Assistant Vice President DeSoer considers department heads to be the first line supervisors of the departments. The department heads themselves however, plainly do not. They consider themselves to be the selected representative of their peers in the department. Rao described his role as the representative of his department before the dean. Rao states he is a facilitator not a decision maker. He may make hiring and salary recommendations, but the buck does not stop in his office. He states that the dean makes the decision. There are 11 deans at UAF. Bukowski stated that, while he does first review candidates for promotion or tenure, the real authority rests with the dean. Bukowski states the dean performs salary negotiations with new faculty for his department.

49. Rao described the role of the department head as a collegial one. For example, the department head does not assign courses. The department members sit down and decide together who teaches each class. The department head also advocates for the department with the administration for such things as equipment. Bukowski, dean of the math department in UAA between 1981 and 1993, with the exception of one year, states he represents but does not supervise the faculty in his department. He does the paperwork but the faculty themselves decide the courses they want to teach.

50. Department heads do hire adjunct faculty. The University has open recruitment for adjunct faculty. Adjunct faculty

are employees of the University but they are not "regular" faculty. They do not have an expectation of continued employment but are hired as needed to teach courses not taught by the regular faculty. The adjunct faculty are not in the proposed unit. At the extended sites the hiring of adjunct faculty is done by the dean or director.

51. Provost Keating states a dean would consult with the department head on the issue of firing a faculty employee. Bukowski, a department head at UAA, says a department head would not be involved in firing, although he or she might do the paperwork.

52. The department heads have a limited management role. They manage a budget but do not have a role in building it. Rao states he has authority to make small purchases but the dean must sign any expenditure over \$500. His impact on policy will depend in large part on who the dean is. Bukowski states that the dean handles the travel budget.

53. The department head is the first person to respond to student grievances about a teacher.

Conclusions of Law

1. The University of Alaska is a public employer under AS 23.40.250(7) and the United Academics-AAUP/AFT, AFL-CIO, and Alaska Community Colleges' Federation of Teachers, Local 2404, AFT, AFL-CIO (ACCFT) are labor organizations under AS 23.40.250(5). This Agency has jurisdiction under AS 23.40.100 to consider this petition.

2. Petitioner United Academics has the burden to prove each element of its case by a preponderance of the evidence. 8 AAC 97.350(f).

3. The issue of the appropriateness of the unit is governed by AS 23.40.090, which provides:

Sec. 23.40.090. Collective bargaining unit. The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS 23.40.070 -- 23.40.260, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided. [Emphasis added.]

4. The parties dispute how AS 23.40.090 should be construed. United Academics argues that a unit need only be an appropriate unit to meet the requirements of AS 23.40.090. It relies on precedent under the National Labor Relations Act. The University, on the other hand, argues that the use of the article "the" in AS 23.40.090 shows that the unit must be "the most" appropriate unit to meet the requirements of this section.

5. We reject the University's argument that the word "the" carries implicitly the meaning "most." The mandate to the Agency in AS 23.40.090 is to determine whether a proposed unit is "the unit appropriate" considering the listed factors. The Agency does not review the work place as a whole and determine the most appropriate unit. The focus is the proposed unit. In this case the question is whether the unit proposed by United Academics is the appropriate unit.

6. United Academics proposes a unit consisting of those regular, nonadjunct faculty, including department heads, counselors, librarians, advisors, and visiting faculty among others, who are not represented by ACCFT. We believe this unit is the appropriate unit for purposes of collective bargaining based on the factors listed in AS 23.40.090.

7. Community of interest. The University does not dispute that faculty members share a community of interest. Its dispute is with the division of the faculty into two bargaining units. A good starting point for the examination of community of interest of the two faculty groups is the arbitrator's decision In re Alaska Community Colleges' Federation of Teachers, Local 2404 and University of Alaska, Decision and Award (Restructuring Grievance: Phase II), Exh. 1 (hereafter "ACCFT Restructuring Grievance Arbitration"). The division of the faculty into two groups is firmly based in history. Pertaining to Representation Petition by "Associated Faculty" affiliated with the National Education Association, SLRA Order & Decision No. 25 (July 26, 1976). When the ACCFT unit was certified, the community colleges were independent of the University. After the consolidation of the community colleges and University into the

statewide university system in 1987, the University disputed whether the bargaining unit survived. The arbitrator in ACCFT Restructuring Grievance Arbitration concluded that it had. The University again argues in this case that the consolidation has resulted in an integrated faculty that should appropriately be a single unit. United Academics, however, presented substantial credible evidence that the division between the two faculty is maintained to this day, both in mission and in job content. They have also established the cohesiveness of the two groups, which is a critical factor to a unit's effectiveness in bargaining. 1 Patrick Hardin, The Developing Labor Law 453 (3d ed. 1993). We conclude the community of interest of the faculty groups has not changed since the arbitrator's decision in 1990.

8. An employer's organizational structure is an appropriate consideration in determining community of interest. The University, however, has not presented evidence that the effect of the restructure was finally to combine the two groups into a single community. The evidence showed very little movement between the two groups of faculty. It is unusual for faculty to shift between "bipartite" and "tripartite" teaching assignments. Moreover, members of the proposed United Academics unit do not work at the extended sites or in vocational instruction. While there is some interaction between the two groups, particularly between faculty who work in the three principal University sites, the two groups have maintained a distinct community of interest based on their different missions and workload.

9. Wages. There are some differences in wages that provide some support for a division of the faculty into two units, but this factor did not weigh significantly in the decision.

10. Hours. United Academics did not address hours of work specifically in the testimony. We infer from the kind of work the two groups perform -- teaching and service, and in the case of United Academics' proposed unit members, research -- that the hours worked would be similar.

11. Working conditions. The working conditions of the two faculty units provide some support for two bargaining units. The work load and research responsibilities distinguish the two groups. The work locations also provide some differences. The proposed bargaining unit members may work with ACCFT unit members but they do not work in the extended sites. There are also similarities. The two groups share some of the same skills. They teach. They participate in the same governance structure alongside each other. These similarities are offset by the important differences in their mission and their work, which are highlighted by the different application of rank, promotion, and tenure policies.

12. History of collective bargaining. The history of collective bargaining weighs very strongly in favor of the proposed unit. We note that the National Labor Relations Board is reluctant to disturb longstanding bargaining units. 1 Patrick Hardin, *supra* 455; *see e.g.*, Buffalo Broadcasting Co. and National Ass'n of Broadcast Employees & Technicians, 242 N.L.R.B. No. 152, 101 L.R.R.M.(BNA) 1306 (1979). This Agency gives decisions of the National Labor Relations Board and federal courts great weight. 8 AAC 97.450(b). We conclude it would be inappropriate to disrupt the longstanding division of the faculty into two groups without evidence of some change in circumstances that made the existing division into two units inappropriate. The restructuring of the University is not sufficient because the evidence did not establish that the outcome of the restructuring was the integration of the faculty. Instead the evidence showed that the differences and communities are in very large part preserved. The University's reorganization was as ineffective in eliminating the ACCFT bargaining unit in 1996 as it was before the arbitrator in 1990.

13. Fragmentation. The University is concerned that two separate bargaining agreements with inconsistent obligations for employees who work side by side could create problems. However, this petition by United Academics does not create this division. The division has existed since ACCFT was recognized the bargaining representative of the community college teachers. The situation is analogous to the facts in In re University of Medicine and Dentistry of New Jersey and Allied Health Faculty, NJEA-Higher Education, 9 New Jersey Pub. Employee Rep. 14253 (Sept. 16, 1983), in which the faculty in health related programs sought recognition. The bargaining representative for the existing university faculty unit had no interest in representing these faculty and had formally disclaimed any interest. The New Jersey university objected to the unit as fragmented, making arguments similar to the University's in this case -- the faculty were interdependent; they participated in the governance of the University; and the terms and conditions of employment were similar for all faculty. The New Jersey Public Employment Relations Commission rejected these arguments. It found genuine differences between the two faculty groups and that there was "no real threat of undue unit proliferation." In that case the outcome of finding a single faculty unit appropriate would have resulted in the petitioning faculty obtaining no representation. In this case, there is likewise no genuine risk of a proliferation of

faculty units because the proposed unit would include all faculty who are not already represented by ACCFT. It preserves the existing division without creating a new one.¹ We conclude the proposed unit is as large as is reasonable and avoids unnecessary fragmenting.

14. Exclusion of supervisors. United Academics proposes to include in the unit the department heads who are elected by faculty. The University argues that these employees are supervisors and must be excluded from the unit.

15. 8 AAC 97.090(a)(1) provides that "at the state level a proposed bargaining unit is not an appropriate unit if it combines . . . supervisory personnel with nonsupervisory personnel."

16. The University is a state employer and 8 AAC 97.090(1) applies. See SLRA Order & Decision No. 25.

17. We conclude that the role of department heads in peer review for employment, rank, tenure, and promotion of other employees in the proposed unit does not make them "supervisory employees" under 8 AAC 97.990(a)(5). The department head does not have "authority to act or to effectively recommend action in the interest of the public employer" in the area of employing the regular faculty, for example. The department head provides one step in a process that begins with a search committee and ends with actual authority resting in a chancellor or provost. The department heads do not represent management's interest in this process. We found convincing the testimony from the two department heads that they view their role as the representative of the faculty who elected them, rather than as the representative of management.

18. The responsibility to hire adjunct faculty does not affect the placement of the department heads in the unit because the adjunct faculty are not a part of the bargaining unit.

19. Department heads are appropriately included in the bargaining unit United Academics seeks to represent.

ORDER

1. The unit petitioned for is the appropriate bargaining unit and the objections of the University of Alaska are denied;
2. An election is directed among the employees in the petitioned bargaining unit; and
3. The University of Alaska is ordered to post a notice of this decision and order at all work sites where members of the bargaining unit affected by the decision and order are employed or, alternatively, serve each employee affected personally. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Stuart H. Bowdoin, Vice Chair

Robert A. Doyle, Board Member

Karen J. Mahurin, Board Member

APPEAL PROCEDURES

An Agency decision and order may be appealed through proceedings in superior court as provided in the Alaska Rules of Appellate Procedure and the Administrative Procedures Act.

The decision and order becomes effective when filed in the office of the Agency, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of UNITED ACADEMICS-AAUP/AFT, AFL-CIO vs. UNIVERSITY OF ALASKA and ALASKA COMMUNITY COLLEGES'

FEDERATION OF TEACHERS, LOCAL 2404, AFT, AFL-CIO, CASE NO. 96-486-RC, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 29th day of April, 1996.

Victoria Scates

Administrative Clerk III

This is to certify that on the 29th day of April, 1996, a true and correct copy of the foregoing was mailed, postage prepaid to

William K. Jermain/United Academics

Ralph McGrath/ACCFT

Thomas P. Owens, Jr./UAA

Signature

There is a risk that finding only one unit appropriate would leave the tripartite faculty unrepresented. This could result from United Academic's AFL-CIO affiliation and the AFL-CIO's "no raiding" article if the ACCFT were to disclaim any interest in representing these faculty. This risk is speculative, however, and possibly remote. Unlike the existing faculty representative in the New Jersey case, the ACCFT has not disclaimed any interest in representing the faculty in the proposed unit. Another possible effect of finding one unit appropriate would be for United Academics to drop its AFL-CIO affiliation so that it could challenge ACCFT in an election to represent all of the faculty. See Public Safety Employees Ass'n (FWEO) v. State, Decision & Order No. 186, at 7-8 (May 25, 1995).