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UNIVERSITY OF ALASKA,)
)
 Petitioner,)
)
 vs.)
)
 UNIVERSITY OF ALASKA)
 FEDERATION OF TEACHERS,)
 LOCAL 2404, APEA/AFT,)
 AFL-CIO,)
)
 Respondent,)
)
 and)
)
 UNITED ACADEMICS-AAUP,)
 AFL-CIO,)
)
 Intervenor.)
)

Case No. 08-1537-UC

DECISION AND ORDER NO. 301

This dispute over unit composition was heard in Anchorage over a 14-day period, from April 12, 2010, to April 29, 2010. Hearing Examiner Mark Torgerson presided. The parties submitted written closing arguments on August 27, 2010, and response briefs on October 19, 2010. On October 25, 2010, United Academics (UNAC) filed a motion to strike portions of the response brief and accompanying documents filed by the University of Alaska Federation of Teachers (UAFT) on October 19. On November 4, 2010, the University of Alaska filed a brief supporting UNAC's motion to strike. On November 8, 2010, UNAC filed a reply. On November 15, 2010, UAFT filed a response to UNAC's motion. The motion is granted.¹

¹ Specifically, UNAC requested that we strike "certain exhibits not admitted into evidence and assertions of fact not supported by the record." (UNAC's October 25, 2010, Motion to Strike, at 1.) UNAC specifically requests that we strike "charts included in the UAFT Appendices at Tabs 3 (UA), 4 (UAS), and 5 (UAF) and produced throughout [UAFT's post-hearing response brief]. Mislabeled as Exhibit 421, the charts were not offered at hearing and have not been admitted as evidence." (UNAC Motion to Strike at 2). Unless the parties agree otherwise, exhibits offered after the end of the hearing are not admitted into the record. The parties did not agree to the admission of exhibits

On October 4, 2011, we issued an Order for briefing "on the issue of the appropriateness of one unit of non-adjunct faculty" at the University.² The parties filed briefing in response to this Order on January 13, 2012. Subsequently, we reopened the record to obtain a missing part of an exhibit. The record closed after final deliberations on April 11, 2012.

Digest: The petition by the University of Alaska for unit clarification is granted, in accordance with this decision. The bargaining unit descriptions of the University of Alaska Federation of Teachers and United Academics are clarified to reflect substantial changes in circumstances since certification, under 8 AAC 97.050. The University of Alaska Federation of Teachers' bargaining unit shall include non-adjunct, regular faculty at the University whose principal assignment is in vocational technical programs or certificate programs; developmental education program and community interest faculty; and faculty, librarians, or counselors of a community college established by the University of Alaska Board of Regents. The United Academics bargaining unit shall include non-adjunct, regular faculty who have a research component in their course load, and non-adjunct, regular faculty who teach courses that lead to four-year and graduate degrees.

Appearances: Thomas Wang, attorney for the University of Alaska; Kathleen Phair Barnard, attorney for the University of Alaska Federation of Teachers; Beth Bloom and Cliff Freed, attorneys for United Academics.

Board Panel: Gary P. Bader, Chair; members Matthew R. McSorley and Tyler Andrews.³

DECISION

On August 15, 2008, the University of Alaska (University) filed a unit clarification petition requesting clarification of the boundaries between the two regular faculty-represented bargaining units at the University, and to resolve a dispute regarding faculty members who teach upper division courses.⁴

Two unions, United Academics (UNAC) and the University of Alaska Federation of Teachers (UAFT), dispute bargaining unit assignments made by the University, each contending that the University should have placed certain faculty members into their respective unit. They

offered after the hearing ended. Regarding any unsupported assertions of fact by any party, they are given no weight or consideration in this determination. Nonetheless, we reviewed the exhibits and assertions presented by UAFT, as outlined in UNAC's Motion, and we conclude that the outcome in this matter would not change even if the exhibits were admitted and assertions given weight.

² October 4, 2011 "Order for Briefing on Unit Clarification Petition."

³ Board members attended some of the hearing sessions in person and other sessions by telephone, as their scheduling permitted. In reaching their decision, the panel considered the entire hearing record.

⁴ Case No. 08-1537-UC, August 15, 2008 petition; September 23, 2008, letter to Kris Racina from agency Hearing Officer Jean Ward.

also dispute the boundary between their units. The University seeks clarification of several issues in order to resolve this long-simmering dispute over bargaining unit boundaries.

Procedure in this case is governed by 8 AAC 97.350.

Issues

1. Are there changed circumstances, since certification of the full-time faculty bargaining units at the University of Alaska, which require clarification of the unit boundaries between the UAFT and UNAC-represented units?
2. If there are changed circumstances, what are the appropriate bargaining units for faculty members represented by UAFT and UNAC, for the purpose of collective bargaining?
3. Have vocational technical programs evolved to the point that some previously vocational technical faculty should be classified as academic faculty members, while others remain under the definition of principally vocational technical? If so, what is an appropriate definition of vocational technical instruction?

Summary of the Evidence

A. Testimony

The following witnesses testified during the hearing:

For the University of Alaska:

1. Michael Driscoll, Ph.D.
2. Roberta Stell, Ph.D.
3. Susan Henrichs, Ph.D.
4. Beth Behner
5. Ralph Gabrielli, Ph.D.
6. Jim Johnsen
7. Jean Ballantyne, Ph.D.
8. Barbara Tullis
9. Renee Carter-Chapman
10. Rhonda Ooms
11. Sandra Carrol-Cobb
12. Paul Reichardt, Ph.D.
13. Carl Shepro, Ph.D.
14. Michael Jennings, Ph.D.
15. Abel Bult-Ito, Ph.D.
16. Karen Schmidtt, Ph.D.

For United Academics (UNAC):

1. Francisco Miranda, Ph.D.
2. Bogdan Hoanca, Ph.D.
3. Kevin Maier, Ph.D.
4. Jill Dumesnil, Ph.D.
5. Khrystyne Duddleston, Ph.D.
6. Michael Stekoll, Ph.D.
7. Hilary Davies, Ph.D.
8. Ram Srinivasan, Ph.D.

For the University of Alaska Federation of Teachers (UAFT):

1. Anupma Prakash, Ph.D.
2. Jennifer Reynolds, Ph.D.
3. Terrence Kelly
4. Lance Howe, Ph.D.
5. Colleen McKenna
6. Patricia Sandberg, Ph.D.
7. Sudarsan Rangarajan, Ph.D.
8. Joseph Connors
9. Patricia Hong
10. Stan Sears
11. Laura Kelley, Ph.D.
12. Aisha Barnes
13. Ira Rosnel
14. Tim Powers
15. Kathleen Stephenson
16. Jane Weber
17. Utpal Dutta, Ph.D.
18. Patricia Jenkins, Ph.D.
19. Marc Robinson, Ph.D.
20. Ralph McGrath
21. Robert, J.D.

B. Documents

The record is dense. (UNAC August 27, 2010, Post-Hearing Brief at 1). In addition to the testimony of the above 44 witnesses and the resulting 2,500-plus pages of hearing transcript, we considered the several hundred exhibits admitted, along with hundreds of pages of briefing, and the agency's record.

Applicable Law for Unit Clarification Petition

AS 23.40.090 provides:

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.

Agency regulation 8 AAC 97.050(a)(1) allows a public employer or a public employee representative to file a petition seeking "clarification of an existing bargaining unit, where no question concerning representation exists, in order to resolve a question of unit composition raised by changed circumstances since certification[.]"

Procedural Summary

On October 19, 2007, UAFT filed an unfair labor practice (ULP) complaint alleging, among other things, that the University committed multiple violations, including moving UAFT's bargaining unit members out of the UAFT-represented unit and into the bargaining unit represented by UNAC, and wrongfully placing new faculty hires into the unit represented by UNAC instead of the one UAFT represents. (Agency Case No. 07-1514-ULP). The Agency's hearing officer, Jean Ward, investigated the allegations and found probable cause that up to 25 faculty members may have been placed improperly into an incorrect bargaining unit. (April 28, 2009, Notice of Preliminary Finding of Probable Cause at 4, 42). However, Ward also found that the ULP charge raised "multiple unit clarification issues, and the unit clarification issues involve three parties" (April 28, 2009, Notice of Preliminary Finding of Probable Cause at 43). Ward recommended that the unit issue be decided first, or in conjunction with the ULP issues.

On June 24, 2008, UAFT filed a second ULP charge alleging that the University committed multiple violations, including refusing to allow Associate Professor Carol Klamser to teach upper division and graduate-level courses based on her UAFT bargaining unit membership, and refusing to allow UAFT bargaining unit members to teach any upper division courses unless they give up their UAFT bargaining unit membership. (Agency Case No. 08-1536-ULP; February 19, 2009, Notice of Preliminary Finding of Probable Cause, at 1). Hearing Officer Ward found probable cause existed to support the charge that Klamser was not allowed to teach an upper division and/or graduate level course based on UAFT bargaining unit membership. (February 19, 2009, Notice of Preliminary Finding of Probable Cause, at 1).

On August 15, 2008, the University filed a unit clarification petition to clarify the boundaries between the UAFT and UNAC-represented bargaining units, and to resolve a dispute

regarding faculty members who teach upper division courses. (Agency Case No. 08-1537-UC, August 15, 2008; September 23, 2008, letter to Kris Racina from Jean Ward).

In its August 15, 2008, unit clarification petition, the University requested that the two ULP's filed by UAFT be converted to unit clarification petitions. However, UAFT objected. The Agency therefore continued its investigation of the ULP's and, as noted above, found probable cause that some violations may have occurred. (Jean Ward September 23, 2008, letter to Kris Racina).

On October 30, 2008, UAFT filed a request to intervene in the University's August 15, 2008, unit clarification petition, and an objection to the petition and to conducting a unit clarification proceeding.

The parties attended a status conference on January 14, 2009. At the conference, the parties agreed to submit briefing on UAFT's October 30, 2008, objections.

On August 25, 2009, a panel of the Alaska Labor Relations Agency Board placed the two unfair labor practice cases in abeyance and ordered the parties to proceed to prehearing conference to schedule a hearing on the unit clarification petition. (August 25, 2009, Order on Petition for Unit Clarification, and August 25, 2009, Order Placing Cases in Abeyance).

On September 9, 2009, UAFT file a Motion for Reconsideration of the Board's August 25, 2009, Orders. On October 6, 2009, the Board panel denied UAFT's motion and ordered the parties to a prehearing conference on the unit clarification petition. (Order on Motion for Reconsideration, October 6, 2009).

A prehearing conference was held on November 18, 2009, and a follow-up conference was scheduled for December 16, 2009. However, the parties cancelled the December 16th conference, expressing hope that they could resolve their differences. They attempted but failed to resolve them.

The parties then attempted mediation. They subsequently notified the Agency that mediation was unsuccessful. They requested a prehearing conference to schedule a hearing.

A prehearing conference was held, and a hearing was scheduled for April 12, 2010.

On April 9, 2010, the parties appeared before the hearing examiner to present oral arguments on a "Motion for Partial Dismissal" filed by the University on March 30, 2010. In its Motion, the University requested dismissal of 1) claims for a merged, wall-to-wall unit on the University of Alaska (UAA) and University of Alaska Southeast (UAS) main campuses; 2) claims by UAFT that all bipartite faculty teaching upper division classes on the main campuses should be placed into UAFT's bargaining unit, rather than UNAC's bargaining unit; 3) claims by UNAC that all faculty teaching upper division classes on extended sites, and currently placed into UAFT's bargaining unit, should be placed into the unit represented by UNAC. (University's March 30, 2010, Motion for Partial Dismissal at 3).

On April 1, 2010, UNAC filed its own, separate Motion for Partial Dismissal. UNAC asserted that the University's partial motion for dismissal "did not go far enough. United Academics urges the ALRA to dismiss the University's petition for "clarification" of the appropriate unit placement of UAFT-placed faculty members who may in the future seek to teach upper division courses on the main campuses. There is no ambiguity in the terms of the two unit definitions." (UNAC's Motion for Partial Dismissal at 1).

UAFT opposed both motions.

The hearing in this matter began on April 12, 2010. During preliminary procedural matters, UNAC withdrew its assertion that it should be the representative of faculty who teach upper division courses at extended sites. "That is subject to a representation petition which we have not filed." (UNAC attorney Beth Bloom, TR at 6).⁵

In addition, the parties stipulated to dismiss claims for a wall-to-wall unit on the UAA and UAS main campuses. However, to the extent that the stipulation conflicts with this decision, the stipulation is rejected.⁶

At the hearing, we denied the partial motions for dismissal at that time. We told the parties that before making these or any other determinations, we needed to take testimony and review the record. (TR at 342).⁷

The hearing ended on April 29, 2010. The Board granted the parties' request to file post-hearing briefing.

What the Parties Seek in this Proceeding

The University of Alaska filed this petition for unit clarification, seeking clarification of the following issues relating to the two regular, full-time faculty bargaining units at the University: 1) clarification of the appropriate unit placement of 16 "grandfathered" UAFT-represented faculty with a history of main campus upper division teaching; 2) confirmation that UAFT faculty members teach exclusively lower division courses and must be placed in the UNAC-represented bargaining unit if they accept main campus upper division assignments; 3) confirmation that so-called "remote site" faculty in the School of Natural Resources and Agricultural Sciences (SNRAS), Department of Alaska Native and Rural Development (DANRD), School of Fisheries and Ocean Sciences (SFOS), Fishery Industrial Technical Center (FITC), and Marine Advisory Program (MAP), who – the University alleges – have been excluded historically and intentionally from UAFT's bargaining unit are appropriately placed in

⁵ "TR" designates the page of the transcript containing the named witness's testimony

⁶ Stipulations between parties are not binding on a court. *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985); *Jerrel v. Kenai Peninsula Borough School District*, 567 P.2d 760, 764 (Alaska 1977).

⁷ The motions for partial dismissal were considered during the course of the hearing and written closing arguments, and in the context of the issues, testimony, and evidence presented at hearing. To the extent that a further ruling is necessary, the ruling is incorporated in the body of this decision.

the UNAC-represented bargaining unit; 4) clarification of the meaning of "vocational-technical" instruction or other guidance concerning unit placement of historically technical disciplines; and 5) confirmation of current unit placement practices at the University of Alaska at Fairbanks despite conflicts with the certified unit description. (University of Alaska Post Hearing Brief, August 27, 2010).

The respondent, University of Alaska Federation of Teachers (UAFT, or ACCFT),⁸ seeks a new configuration or new alignment for the descriptions and boundaries of the two bargaining units. UAFT contends that the current unit division that separates upper division faculty from lower division faculty is unworkable, impractical, and impossible to apply. (UAFT October 13, 2010, Post Hearing Brief at 1-4). The more workable and practical alignment, in UAFT's view, is a UAFT-represented unit that includes all teaching faculty, and a UNAC-represented unit that includes all research faculty. (UAFT October 13, 2010, Post Hearing Response Brief at 4). This new alignment would move all current bipartite UNAC teaching faculty into the UAFT-represented unit and would change the bargaining unit descriptions. Both the University and UNAC oppose UAFT's realignment argument.

UNAC, the intervenor, agrees generally with the need for clarification as framed by the University. UNAC contends: 1) The UNAC-represented unit is the appropriate unit for placement of new faculty teaching across the four-year university curriculum; 2) the Agency should clarify the definition of "vocational technical" to provide a distinct and easy-to-apply boundary between the two units; 3) UNAC faculty working in so-called "remote" locations should remain in the UNAC bargaining unit because of their historical ties to UNAC; and 4) bipartite faculty teaching a mixture of upper and lower division courses belong in UNAC's bargaining unit. (UNAC August 27, 2010, Post Hearing Brief at 52, 95, 110, and 118).

In their responses to the order for briefing on the appropriateness of a single, merged bargaining unit, the University and UAFT oppose such an idea. UNAC believes that given the substantial integration of full-time faculty that has occurred at the University, a single unit may be within the realm of possibility.

The parties' dispute primarily concerns the University's unit placement decisions for faculty members into either the UNAC or UAFT-represented bargaining units. The factors they ask us to consider include: 1) faculty course loads, that is, exclusively upper or lower division courses or a mix thereof, and the effect of any research component; 2) whether a faculty member is classified as bipartite or tripartite; 3) faculty physical teaching location – main campus, extended site, remote site, or distance teaching; and 4) the effect of the evolution in many university program offerings i.e., their change from two-year degree programs to four-year and graduate degree programs, and whether these program changes should result in a change in designation from vocational technical to four-year/graduate, and thus be a part of the upper division curriculum at the University.

⁸ From its inception in 1973 to 2007, the University of Alaska Federation of Teachers was known as the Alaska Community Colleges Federation of Teachers, or ACCFT. The two acronyms UAFT and ACCFT for the former community colleges' faculty will be used interchangeably.

Findings of Fact

The panel, by a preponderance of the evidence, finds the facts as follows:

A. The Parties.

1. The petitioner University of Alaska (University) is a public employer under AS 23.40.250(7). The University is the state's primary higher education system. It employs full-time faculty members to teach a wide variety of instructional programs to students at numerous locations throughout Alaska.
2. The full-time (regular) faculty at the University are represented by two different unions at this time. One union, the respondent University of Alaska Federation of Teachers (UAFT), represents faculty members whose positions and responsibilities originated from the state's community college system. Initially titled the Alaska Community Colleges Federation of Teachers (ACCFT), this union was certified in 1973 to represent vocational technical and other community college faculty members. (Exhibit 500 at 6).⁹
3. The second union, intervenor United Academics (UNAC), was certified in 1996, 23 years after ACCFT's certification. UNAC's composition was intended to be a mirror image of the UAFT/ACCFT membership, representing the full-time faculty at the University who are not represented by UAFT.
4. Both UAFT and UNAC are labor organizations under AS 23.40.250(5). Both are affiliated with the AFL-CIO.
5. A third faculty unit consisting of adjunct teachers is not a party to this dispute. Adjuncts are those faculty members who teach less than half of a full-time course load. (Driscoll, TR at 142; *See United Academics Adjuncts-AAUP/AFT/APEA, AFL-CIO vs. University of Alaska*, Decision and Order No. 218 at 5 (April 15, 1997).

B. Historical Overview.

6. In 1915, Congress set aside lands near Fairbanks for a land-grant college. (Exhibit 356 at 7). In 1917, the Alaska Territorial Legislature created the Alaska Agricultural College and School of Mines. (Exhibit 35 at 5). The college opened in 1922 with a total of 6 faculty and 6 students. (*Id.*). The college grew to 150 students by 1935 and was renamed the University of Alaska. Today, the

⁹ The acronyms ACCFT and UAFT apply to the representative of the same bargaining unit. ACCFT, now UAFT, represents the faculty members in the former community college bargaining unit.

- University serves more than 32,000 students at more than 20 locations in Alaska. It covers an area one-fifth the size of the 48 contiguous states. (Exhibit 356 at 7).
7. The University was originally administered by a Board of Trustees that was subsequently renamed the Board of Regents. (Exhibit 35 at 5). The Board of Regents governs the University, sets its policies, and hires its president. (Exhibit 41 at 35).
 8. Over time, three main university campuses developed and evolved. These campuses, located at Fairbanks, Anchorage, and Juneau, developed courses and programs that led to undergraduate and graduate degrees. The primary focus of the faculty members on these campuses was teaching the undergraduate and graduate courses, both lower division and upper division.
 9. Main campus faculty members carried either a bipartite or tripartite workload. The bipartite caseload consists of two components, usually four parts teaching and one part service. However, there are also now a significant number of faculty members who carry a bipartite load that consists of research and service. These course loads usually consist of 80 percent research and 20 percent service. (Henrichs, TR at 220)¹⁰. A smaller number are designated bipartite service and bipartite clinical. (Exhibit 43).
 10. Tripartite workloads usually consist of three parts teaching, one part research, and one part service.
 11. In the mid-1950's, the Board of Regents created a community college system following enacting legislation. (Exhibit 500 at 5-6). Initially there were two community colleges, but the system grew to eight community colleges by 1974, and then thirteen by 1984. (Exhibit 500 at 5-7).
 12. The primary focus of community college faculty was vocational technical education, college preparatory, developmental and community interest classes, and courses for academic transfer. (Exhibit 41 at 209, McGrath, TR at 2123-2125). Developmental classes are designated 0 to 100. (Henrichs, TR at 229). The vocational technical and academic transfer classes were all lower division, designated as 100 and 200-level classes. (McGrath, TR at 2125; Exhibit 41 at 209-210). Other lower division classes are also designated in the 100 and 200-level range.
 13. Depending on the particular program requirements, course certifications and degrees at the community colleges could be completed in anywhere from six months to two years. (Exhibit 41 at 210; *See* Schmidt, TR at 1471). Upon completion of course requirements, students at the community colleges obtained certificates or associate of arts and applied sciences degrees. (Exhibit 41 at 210).

¹⁰ "TR" designates the page of the transcript containing the named witness's testimony.

14. The community colleges did not offer any upper division courses, four-year, or graduate-degree programs. (Schmidt, TR at 1471). The gamut of the teaching was vocational technical and adult basic education courses. (Exhibit 41 at 211). However, on rare occasions, community college instructors taught upper division courses. (See Driscoll, TR at 169).
15. Meanwhile, the main university campuses at Fairbanks, Anchorage, and Juneau offered bachelor's and graduate degrees. Their faculty taught 100 and 200-level lower division classes as well as upper division classes, designated as 300 and 400-level. The combination of lower and upper division courses is required to get a four-year bachelor's (baccalaureate) degree. The main university campuses also teach 500-level classes, which are professional development, and 600 and above, which are graduate-level courses. (Driscoll, TR at 171; Henrichs, TR at 229; Carter-Chapman at 539; Jennings, TR at 783-784).
16. Prior to the 1987 merger of community colleges into the University campuses, UAF was a "pretty typical four-year and graduate institution." (Reichardt, TR at 658).¹¹ Most of the faculty held terminal degrees, usually doctorate degrees. (Reichardt, TR at 658).
17. There were also several programs administered out of the Fairbanks campus that were located in remote sites throughout Alaska. They include the Department of Alaska Native and Rural Development (DANRD),¹² the School of Fisheries and Ocean Sciences (SFOS),¹³ which includes the Fishery Industrial Technical Center (FITC)¹⁴ and the Marine Advisory Program (MAP),¹⁵ and the School of Natural Resources and Agricultural Sciences (SNRAS).¹⁶

C. 1987 Merger of Community Colleges into the University Campuses.

18. By 1987, the University consisted of three main campuses and fourteen community colleges. Administratively, there were five major administrative units (MAU's): the University of Alaska at Fairbanks (UAF); the University of Alaska at Anchorage (UAA); the University of Alaska at Juneau (UAJ); the Community Colleges, Rural Education and Extension (CCREE); and Anchorage Community College (ACC). (Exhibit 500 at 5). Each unit was administered separately.

¹¹ Paul Reichardt, Ph.D., was a faculty member at UAF during the '70's and 80's. He then was appointed provost at UAF in 1998, retiring in the summer of 2007. (Reichardt, TR at 658).

¹² Exhibit 4.

¹³ Exhibit 8.

¹⁴ Exhibit 5.

¹⁵ Exhibit 6.

¹⁶ Exhibit 9.

19. That same year, University President Donald O'Dowd proposed restructuring the university system due primarily to revenue shortfalls and budget cuts at the state level. (Exhibit 500 at 9 – 15; Exhibit 41 at 217). In May 1987, the University's Board of Regents approved a restructuring and reorganization of the university system. (Exhibit 500 at 17). Under this reorganization, the state's community colleges were all eliminated except for Prince William Sound Community College in Valdez. (Exhibit 500 at 17). As a result of the savings plan, the community college system disappeared as an administrative unit. (Exhibit 41 at 213; Exhibit 500 at 14).
20. Post-merger, the University consists of four major administrative units instead of five. They include the University of Alaska Statewide Administration, University of Alaska Fairbanks (UAF), University of Alaska Anchorage (UAA), and University of Alaska Southeast (UAS).¹⁷ (Exhibit 356 at 6).
21. UAF, UAA, and UAS comprise the three academic campuses at the University. (Exhibit 356 at 6; Exhibit 379 at 1). Each of these campuses, or "regional university centers," is headed by a chancellor who reports to the university's president. (Exhibit 356 at 7). Each of these "main" campuses also includes rural education campuses located throughout the state. These rural educational facilities are community campuses where the community colleges were located pre-merger. These locations are also called "extended sites." (Exhibit 507 at 7).¹⁸
22. In addition, the University calls some rural facilities "remote sites" or "rural sites." (Exhibit 356 at 9; Exhibit 508 at 7; Exhibit 207). The programs affiliated with these locations are administered out of UAF, the main campus in Fairbanks. They include the Department of Alaska Native and Rural Development (DANRD), the School of Fisheries and Ocean Sciences (SFOS), which includes the Fishery Industrial Technical Center (FITC) and the Marine Advisory Program (MAP), and the School of Natural Resources and Agricultural Sciences (SNRAS).

D. Regular, Full-time Faculty Unions, Before and After Merger.

23. UAFT and UNAC are the representatives of the two bargaining units for full-time faculty at the University.

¹⁷ The July 1, 2010, to December 31, 2010 Collective Bargaining Agreement between the University and UAFT provides that "MAU" means "major administrative unit," and that there are three such units, including UAF, UAA, and UAS.

¹⁸ "Extended Site" means an educational facility or facilities not located on the principal campuses of the University of Alaska Anchorage, the University of Alaska Fairbanks and the Juneau campuses of the University of Alaska Southeast, including but not limited to: the Bristol Bay Campus, Chukchi Campus, Interior-Aleutians Campus, Kenai Peninsula College, Ketchikan Campus, Kodiak College, Kuskokwim Campus, Matanuska-Susitna College Northwest Campus, Sitka Campus, and Tanana Valley Campus." (Exhibit 507 at 7: Article 2 definitions in the July 1, 2007, to June 30, 2010, collective bargaining agreement between UAFT and the University).

24. Before 1973, none of the full-time faculty members were represented for collective bargaining. (Exhibit 500 at 5-6). In 1973, UAFT became the first representative of a faculty bargaining unit certified for collective bargaining. (Exhibit 500 at 6; Exhibit 41 at 203). Then known as ACCFT,¹⁹ this union signed its first collective bargaining agreement with the University in 1974. (Exhibit 500 at 6; Exhibit 510).
25. ACCFT represented the state's community college teachers.²⁰ They taught vocational technical, developmental and community interest courses, and some academic transfer courses. Developmental and college preparatory courses help qualify students to attend college. (Driscoll, TR at 155). All classes were lower division classes. None was upper division. However, now and then an ACCFT faculty member would teach an upper division class. (Connors, TR at 1569).²¹
26. The community college teachers carried a bipartite – two-part – workload consisting of four parts teaching and one part service. (Connors, TR at 12569; Hong, TR at 1668; Kelley, TR at 1731). The four parts of teaching consisted of four three-credit courses for a total of 12 credits.
27. ACCFT's first agreement with the University covered the 1974 to 1976 period. (Exhibit 510). This agreement provided that ACCFT was the exclusive representative for the following faculty:

[A]ll of the statewide community college faculty of the University of Alaska, including all permanent academic and vocational instructional personnel, librarians, and counselors, and excluding supervisors, temporary personnel, aides, assistants, office clericals, those administrators who are not elected by the faculty, and all other persons not employed as instructional personnel, librarians, or counselors for at least 60% of fulltime.

(Exhibit 510 at 1-2, Article 1.2 of ACCFT/University 1974-76 Collective Bargaining Agreement).²² The campuses covered by the agreement included Anchorage Community College, Juneau-Douglas Community College, Ketchikan Community College, Kuskokwim Community College, Kenai Community College, Matanuska-Susitna Community College, Kodiak Community College, and Tanana Valley Community College. (Exhibit 510 at 3).

¹⁹ Alaska Community Colleges' Federation of Teachers.

²⁰ The union's original intent was to just organize the Anchorage Community College faculty. (Exhibit 41 at 204). However, the University would only recognize a statewide unit. The union met the requisite showing of interest for including all community college faculty, and it succeeded in the subsequent election. (Exhibit 41 at 204).

²¹ These classes presumably were taught at one of the main university sites.

²² The agreement covered the period August 5, 1974 to June 30, 1976. (Exhibit 512 at 2). Article 1.1 states that some parts of the agreement were effective August 5, 1974, but the majority of the contract's provisions ran from January 1, 1975, through June 30, 1976. (Exhibit 510, Article 1.1 at 1; Exhibit 512 at 5).

28. The University and ACCFT entered into several collective bargaining agreements between the initial 1974 agreement and the 1987 merger, when the University reorganized both administratively and structurally. Agreements were negotiated in 1976 and 1979 (Exhibit 511). The recognition clause of the 1976 agreement included all of the 1974 language but added language at the end of the clause to exclude "all other persons not employed as instructional personnel, librarians, or counselors for at least 60% of fulltime *"five-part workload for instructional bargaining unit members or of the full-time workload assignment of librarians or counselors."*" (Exhibit 511 at 5). The agreement also added qualifying employees of two more campuses to the bargaining unit: Northwest Community College in Nome and Sitka Community College in Sitka. (Exhibit 511 at 6; Exhibit 500 at 6). The parties' 1979 to 1984 agreement listed thirteen colleges: the ten noted above, and community colleges in Kotzebue, Valdez, and the Rural Extension Center in Galena. (Exhibit 500 at 6). Prince William Sound Community College, added subsequently, became the state's fourteenth community college.
29. At the time of the 1987 merger, ACCFT was the only faculty union representative at the University. The faculty who taught courses that led to bachelor's, master's, and doctorate degrees, and those who carried a research caseload were unrepresented at that time. These were the faculty who resided on the three main campuses, and also faculty who taught in "remote" locations but whose programs were administered out of UAF, the main campus in Fairbanks.
30. After the 1987 merger, new faculty recruits who were assigned a lower division workload were placed into ACCFT's bargaining unit. Main campus faculty, including those faculty assigned a mix of upper and lower division workloads, were generally unrepresented. (Tullis, TR at 518). The remote site faculty whose programs were administered out of UAF were unrepresented. (*See, e.g., Gabrielli, TR at 401; Reichardt, TR at 664*). Infrequently, an ACCFT bargaining unit member taught an upper division class. (Tullis, TR at 518-519).
31. In 1995, UNAC filed a petition to represent the unrepresented faculty on the three main campuses. (Exhibit 504). The unrepresented faculty also included the faculty whose programs are administered out of the UAF main campus, many of whom are located in remote areas of Alaska. These included the DANRD, SFOS, FITC, MAP, and SNRAS programs noted above. ACCFT never sought to represent these remote site faculty during the time leading up to UNAC's certification.
32. The unrepresented faculty succeeded in a contested representation proceeding, and in a subsequent election, they voted in favor of representation by UNAC. The unit was certified for collective bargaining in 1996. (Johnsen, TR at 455; Reichardt, TR at 665; Jennings, TR at 770).

33. The UNAC-represented bargaining unit was described as including the following faculty:

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.

(United Academics-AAUP/AFT, AFL-CIO vs. University of Alaska and Alaska Community Colleges' Federation of Teachers, Local 2404, AFT, AFT-CIO, Decision and Order No. 202 at 2; Exhibit 504 at 2).

34. UNAC's recognition clause was intended to be the mirror image of the ACCFT unit. "So [the recognition clause] excludes anyone who would be represented by UAFT [ACCFT] as well as anyone who is appropriately in the adjunct [part-time faculty] bargaining unit." (Behner, TR at 273; Shepro, TR at 733).²³
35. After its 1996 certification, the state of the UNAC unit was chaotic. "[I]t was a brand new local and you're talking about academics, not labor people. There was a great deal of discussion and debate about governance . . . all the normal business things that go with setting up a new business. I mean, you were dealing with a bunch of neophytes when it came to labor relations, so there was a lot of debate." (Jennings, TR at 770-771). It took time to develop record-keeping, collection of accounts receivable and payable, and effective communication with the membership. (Jennings, TR at 772). UNAC got "the hand of it" and became organized to do its work more effectively in 2000 or 2001. (Jennings, TR at 771).

E. Appointment, Bargaining Unit Placement, and Course Loads of University Faculty and Course Loads.

36. Post-merger, the University offers curricula from the former community colleges as well as that offered at the three main campuses. Therefore, the University offers a wide range of courses that vary in difficulty from developmental to doctorate. (Driscoll, TR at 155). In the wide range of course offerings, the University offers classes that lead to six-month or one-year certificates, two-year associate's degrees, four-year bachelor's degrees, and master's and doctorate degrees, as well as graduate certificates and licensure programs. (Henrichs, TR at

²³ The UNAC unit description specifically excludes all ACCFT (UAFT) faculty. (See Exhibit 504 at 2).

216). All of the three main campuses offer a variety of programs. UAF is the only research center and also the only campus that grants doctorate degrees. (Exhibit 356 at 8).

37. Each position for hire has a position control number (PCN). The number is associated with a prior position that becomes vacant, but the history of that position is wiped clean; that is, whether the prior faculty member in the position taught upper or lower division classes is not retained. (Tullis, TR at 522). At one time, ACCFT attempted to persuade the University to retain the history of the position with the next hire, but the University contended that continuing the history would diminish management rights granted under the contract. (Tullis, TR at 523).²⁴
38. The University considers a number of factors when hiring full-time faculty. Factors considered include institutional, departmental, and student needs. (Tullis, TR at 516-517). Bargaining unit placement is not a factor. (Tullis, TR at 518). The Board of Regents policy, which applies to faculty hires in the entire university system, provides:

The initial rank, type of appointment, and base academic year salary will be established by the appropriate chancellor. Rank, appointment, and salary will be based on the needs of the institution, the faculty member's education and experience, and prevailing market conditions as indicated by annual surveys of faculty salaries from sources appropriate to the hiring department or program which will include, but not be limited to, the American Association of University Professors (AAUP), Oklahoma State University (OSU), and the College and University Personnel Association (CUPA).

(Exhibit 383 at 3). Additionally, the UAA hiring process is described specifically in its "Policies and Procedures relating to Appointment, Review, Promotion, and Tenure." (Exhibit 373).

39. Michael Driscoll, provost at the University of Alaska Anchorage (UAA), explained the process as it occurs at the UAA main administrative unit. We find this process generally reflects the hiring process at the University.
40. The University looks for applicants' credentials that fit the anticipated workload. Applicants expected to teach exclusively lower division classes in an associate's degree program are expected to have at least a baccalaureate degree, but experience and other factors may be appropriate substitutes. (Driscoll, TR at 166). "[W]e would expect someone who is teaching in an associate's program, or

²⁴ "[I]t can't be presumed that we would, as a university, always replace a departing faculty member with an exactly assigned new faculty member. (Behner, TR at 384).

teaching lower division courses, to have seen those courses, have gone through those courses, and gone beyond that when they teach." (Driscoll, TR at 166).

41. Credential requirements increase with the expected workload. "So if I continue up the progression of levels, it would be unusual for me to say that someone with a bachelor's degree is the right person to teach in a bachelor's program without other factors and so on." (Driscoll, TR at 166). At the graduate level, the University expects someone "to have experience with a graduate degree and have the detailed knowledge that comes at that more advanced level. . . . Certainly it wouldn't be unheard of for a master's qualified faculty member to teach in a master's program, but would be very unusual for them to teach in a doctoral program. Again, experience would be part of the main determining – or expertise in a very specific area" (Driscoll, TR at 167). However, there are no "absolutes" in the credential requirements. (*See* Driscoll, TR at 168).
42. Faculty are hired to teach across the discipline, "across the range of programs that exist." (Driscoll, TR at 163).
43. Vocational technical courses that lead to certificates or associate's degrees are all lower division courses. Academic programs that lead to bachelor's and graduate degrees offer a mix of lower and upper division courses. The difference in credentials required to teach in these different curricula is significant:

Q: Suffice it to say, though, there is a difference when you appoint somebody, that will have a meaning as far as whether they are academic or vocational, correct?

A: The difference, as represented here is, in the credential and experience level required for initial appointment and/or promotion to a particular rank, and those are our minimum standards for that.

So one could advance to the rank of professor in a bipartite vocational education position with a master's degree as the minimum credential, and the equivalent statement requirement for a bipartite academic is a terminal degree in the discipline or field. Those are open to exception based on experience and other aspects of a faculty member's work, such things do happen, and they are minimum requirements, not absolute requirements.

(Driscoll, TR at 134-135).

44. A terminal degree is the "final degree in a discipline or the highest level degree However, not all fields have a doctorate as their terminal degree"

(Driscoll, TR at 135-136; *See also* Shepro, TR at 741).²⁵ Seventy-eight percent (762 out of 974) of the UNAC represented faculty have terminal degrees, while thirty-four percent (122 out of 385) of faculty represented by UAFT have terminal degrees. (Exhibit 44; *See* Driscoll, TR at 136; Ooms, TR at 570; Shepro, TR at 740-741).

45. Exhibit 373 is a faculty handbook for UAA. Chapter III details procedures and policies relating to appointment, review, promotion and tenure. (Exhibit 373 at 43 – 62). The standard requirements for initial appointment and promotion are more stringent for tripartite and bipartite academic faculty than they are for bipartite vocational faculty. (Exhibit 373 at 45–50). To get promoted to full professor, tripartite and bipartite academic faculty must have a terminal degree, but bipartite vocational faculty may receive promotion to full professor with a master's degree in vocational education "or other appropriate field" (Exhibit 373 at 45-47).²⁶ Tenure criteria are the same for all faculty members. (Exhibit 373 at 44-45).
46. Bipartite faculty who teach a mix of upper and lower division courses are supposed to have a terminal degree. (*See* Stekoll, TR at 1160-1161).
47. A primary factor in hiring a particular faculty member to teach at the University is the expected workload. (Driscoll, TR at 104). The two general types of workloads are the bipartite and tripartite loads. These workloads may consist of any number of combinations of teaching, research, or service. Vocational technical workloads are bipartite.
48. The credentials and qualifications of many bipartite faculty teaching at the upper division and graduate level on main campuses have increased to doctoral degrees (Ph.D.). These bipartite faculty who teach upper division have the same qualifications and credentials as tripartite faculty members. This is a considerable change from the qualifications of ACCFT-represented community college faculty employed in 1986, pre-merger. (Stell, TR at 190).
49. Some bipartite faculty members also engage in significant forms of research despite the fact research is not a component in their workload. (*See* Dumesnil, TR at 1026-1027; Stekoll, TR at 1161). This helps them stay current in the field.
50. Appointment requirements differ depending on the type of hiring appointment.

²⁵ "Terminal degree" shall mean degrees at the doctoral level in the discipline unless otherwise specifically noted by the school or college, and approved by the University-wide Faculty Evaluation Committee and the Vice Chancellor for Academic Affairs. (Exhibit 373 at 43).

²⁶ Board of Regents policy 04.11.01 July 1, 1987 implemented special provisions for former community college faculty transferring to and integrating into the University after the merger. For example, the policy provided that a terminal degree for the transferring community college faculty was a master's degree. There were also special tenure provisions. (Exhibit 373 at 44 – 47).

51. Faculty workloads, whether bipartite or tripartite, are normally set at the time of hire. (Driscoll, TR at 119). The faculty member retains this workload "unless it is changed by mutual agreement between the faculty member and the appropriate dean or director." (Exhibit 373 at 43).²⁷
52. Sometimes, a faculty member's classification does not reflect reality. One witness testified that while he is still classified by the University as tripartite, he actually teaches a bipartite course load. Ram Srinivasan, Ph.D., was hired as a tripartite in 1988, carrying a workload of three parts teaching, one part research, and one part service, a 3-1-1 load. (Srinivasan, TR at 1276). Due to an acute shortage of teachers in 1998 or 1999, Professor Srinivasan agreed to change to a bipartite workload for a year or two to help out. However, he continues to carry the bipartite load, but the University still classifies him as tripartite. (Srinivasan, TR at 1276, 1278-1279).
53. Under the University's interpretation of the current collective bargaining agreements, the University places new hires into bargaining units according to the nature of the workload carried by the faculty member. After the University reviews the expected faculty workload, it determines whether the assignment falls into the UAFT unit or the UNAC unit. (Behner, TR at 384).
54. Faculty whose "principal assignment" is a "vocational technical" workload are placed into UAFT's unit. This includes faculty who may have a tripartite workload, and faculty with a bipartite workload who teach an upper division class – as long as the faculty member's workload is "principally" vocational technical. (Behner, TR at 272-273; 288).
55. Faculty who are assigned an exclusively lower division workload are placed into the UAFT-represented unit. (Behner, TR at 273). This includes faculty at the three main campuses or at extended sites. (Behner, TR at 295, 334).²⁸
56. Faculty assigned to teach either a lower or upper division workload at the extended sites, or a mixed upper/lower workload, are currently placed into UAFT's bargaining unit.
57. Faculty who carry an exclusively lower division workload at the extended sites are placed into the unit that UAFT represents.

²⁷ Professor Patricia Jenkins, a member of UAFT, switched from bipartite to tripartite in 2005.

²⁸ UAF Provost Henrichs testified that faculty who teach an exclusively lower division workload on the main campus in Fairbanks are placed into UNAC's bargaining unit, and never into UAFT's unit. (Henrichs, TR at 221). This appears to contradict Behner's testimony. While we find both Behner and Henrichs credible, we credit Behner's testimony because she works on placement issues more frequently than Henrichs.

58. There have been occasions when a faculty member is hired to teach at least some upper division courses on a main campus, but that faculty member may end up teaching lower division for a semester or more. When that occurs, the University keeps the faculty member in UNAC's bargaining unit. There are fewer than five bipartite faculty teaching on the UAF main campus, and only two or three who consistently teach lower division. (Henrichs, TR at 221).²⁹
59. In addition, UNAC faculty members do get assigned exclusively lower division courses for a semester, and sometimes longer. (Behner, TR at 335-336). The University does not move the faculty member to UAFT's bargaining unit when this occurs. "We do not anticipate or welcome taking someone out of the unit in that situation, because, as you can imagine, it would be extremely disruptive and you would have people ping-ponging back and forth between the units. . . . So, again, in this setting, the university would welcome clarification." (Behner, TR at 335-336).
60. Faculty with a research component to their workload (other than the vocational technical example above) are placed into UNAC's bargaining unit. This includes both bipartite research, which is a research and service course load,³⁰ and tripartite faculty members.
61. Faculty who are hired to teach a mix of upper and lower division classes or a workload consisting of exclusively upper division classes are placed into UNAC's bargaining unit.
62. Faculty who teach distance education courses are placed into the unit related to the faculty members' teaching location. (Stell, TR at 188, 194; Behner, TR at 313, 346-347). DANRD faculty, currently included in UNAC's bargaining unit, are located on the UAF main campus with one exception. They teach distance education from wherever they are located to students in many locations. (Henrichs, TR at 254). DANRD faculty are placed into UNAC's unit because of their historical association with the Fairbanks main campus. (Henrichs, TR at 253).
63. The dispute over unit boundaries impacts the University's ability to efficiently assign faculty members to courses. UAA Provost and Vice Chancellor for Academic Affairs Michael Driscoll³¹ testified:

Fundamentally the challenge that we face with this dispute is being able to adequately deploy faculty resources to meet the needs of our students and academic programs. Continuing questions about the ability to do so has certainly increased the

²⁹ These are some math faculty on the campus. (Henrichs, TR at 233-234).

³⁰ Jennings, TR at 839.

³¹ Driscoll, TR at 97.

administrative overhead in considering such assignments at the dean department level, and those not unusually end up on my desk at some point as we try to resolve: Is this allowable in these circumstances? Is it not? How does the language of the collective bargaining agreement apply in these cases?

And so decisions are delayed, in some cases students' needs are not met as easily as they might be. We may have to hire adjunct or other faculty to teach other courses for which there are otherwise qualified faculty available to teach, except for the concern about the representation issue.

(Driscoll, TR at 102-103).

F. Evolution of Course Programs, Degrees, and Delivery.

64. As the University has expanded from its initial six students to its current population of more than 32,000, its programs and course offerings have expanded as well. Before the 1987 merger and integration of the community college system into the three regional universities, the community colleges offered instruction in lower division courses and vocational technical courses that led to certificates of completion and two-year associate's degrees. As previously noted, their "major focus" was vocational technical education. (McGrath, TR at 2124-2125; Exhibit 41 at 209).
65. This focus differed significantly from the focus of the academic programs at the main campuses, which offered four-year bachelor's and graduate degrees. Former ACCFT president and long-time university professor Ralph McGrath³² described the difference while testifying at the 1996 hearing that addressed UNAC's representation petition:

The four-year institutions, I think, gear themselves very much to – to a different audience in terms of they're – they are looking for people who are essentially looking to four years of education versus a semester, a year, a two-year. And, obviously, they – they have – do grant baccalaureate degrees, master's degrees, and doctoral degrees in the University of Alaska system whereas the community college focus would be the certificate degrees and the associate of arts and applied sciences degrees.

(Exhibit 41 at 210).

³² Professor McGrath was president of ACCFT from 1974 to 1997, when he retired. (McGrath, TR at 2016-2017).

66. During the community college era prior to the 1987 merger, the meaning of "vocational technical" was not in dispute. "[O]riginally at the community college context it was apparent what vocational technical was and there was really no need to spell it out." (Behner, TR at 307).
67. Since the 1987 merger, many university programs have added courses and expanded course offerings to the point that these programs, initially recognized without dispute as vocational technical programs at the community colleges, now offer 'non-community college' courses that provide students the opportunity to obtain baccalaureate (four-year) and (in some programs) graduate degrees. (Driscoll, TR at 108-110).
68. The meaning of "vocational technical" has become an ongoing source of dispute and confusion. The parties have clashed over its meaning. In that vein, they also dispute which university programs should be included as vocational technical, and whether any programs originally deemed vocational technical are no longer so. The term's meaning ultimately affects placement into the two bargaining units.
69. The term "vocational technical" has "been in flux for a hundred or so years, but in general it involves training of people for specific trades or crafts." (Johnsen, TR at 432-433). As the "field of knowledge expands, the expectation of that skilled work rises." (Johnsen, TR at 456).
70. UAA Provost Driscoll asserted that the term "vocational technical" is less clear than it once was. It provides characteristically less breadth of instruction than that required for a four-year degree:

The definition [of vocational technical] has become less clear and distinct than it once was. Primary characteristics of vocational/technical would be programs intended to provide students – or prepare students, rather, for quick transition into the workforce, perhaps moving from high school entry, but potentially non-traditional older students, having a year or two perhaps of study leading to a credential, could be an associate's degree, could be a certificate, that provides them with specific skills pertinent to working in areas of the workforce.

Examples include things like automotive mechanic sort of work, welding, machine shop sort of work, something that requires more than the skills typically obtained in the high school education, but certainly significantly less than we would expect in terms of breadth of instruction for a student pursuing a four-year degree.

(Driscoll, TR at 107-108). Regarding the area of study associated with vocational technical instruction, Driscoll added:

Certainly, as mentioned, things like welding, some technician fields that require just a year or so of work. Automotive. Some areas related to aviation, like aviation mechanics, not unlike auto mechanics. Certainly I would think of some areas related to culinary arts as another example, for what I would typically consider a vocational/technical program, and historically again as well.

And I have to say that some of those distinctions have blurred over time as these areas have changed and grown and we've seen baccalaureate and master degree levels show up in some areas.

(Driscoll, TR at 108).

71. The term "vocational technical" is contained in the UAFT bargaining unit description, but it is not defined in the collective bargaining agreement. (Behner, TR at 307). The University has discussed the description with UAFT. (Behner, TR at 307).
72. As the term "vocational technical" has been used in the UAFT collective bargaining agreement, the University has construed it to mean "a type of instructional assignment. And, again, it's the principal assignment of eligibility for UAFT unit membership that would not lead to a bachelor's degree or graduate degree, but would be more of a certificate program or lower level associate program degree." (Behner, TR at 311, 315; Schmidt, TR at 1474).
73. Vocational technical education is primarily "focused on training people to have specific skills versus specific jobs." (Johnsen, TR at 433-434). Typical degrees are associate degrees or certificates. (Johnsen, TR at 434). "Many unions now perform vocational/technical instruction as well . . . it's typically not associated with the broader liberal arts and science curriculum that one would take as a baccalaureate or a graduate student." (Johnsen, TR at 434).
74. Many vocational technical programs were offered at the old Anchorage Community College (ACC). (Exhibit 35). None of them offered baccalaureate or graduate programs. (Behner, TR at 307; Exhibit 35). None involved upper division teaching assignments. (Behner, TR at 307; Exhibit 35). For the most part, ACC offered one and two-year certificates, and associate of arts degrees in many areas. (Carter-Chapman, TR at 538). As some vocational technical programs evolved and expanded course and degree offerings, the University discussed unit placement with UAFT. (Behner, TR at 308).
75. The programs currently in dispute among the parties include nursing; human services; geomatics; health, physical education and recreation (HPER); and aviation. (Driscoll, TR at 108-113; 116-117). All of these programs now offer both associate's degrees and bachelor's degrees. Some offer a master's degree.

76. In 1989, the University administration "asked that any of the two-year programs, that if they could go to a four-year program, they would like to see that happen." (Sears, TR at 1690). Since then, many programs have increased course and degree offerings. Along with these changes, the qualifications and credentials for faculty members teaching the new offerings have changed.
77. Many of these program expansions have occurred in programs that traditionally have been deemed vocational technical programs.
78. The Department of Human Services is an example of a university program that has expanded and evolved from its community college, vocational technical origins.³³ Before the 1987 merger, Anchorage Community College's (ACC) human services department offered only an associate of applied sciences (A.A.S.) degree containing all lower division courses. (Exhibit 35 at 23). Professor Laura Kelley, a member of the ACCFT bargaining unit, helped develop an associate degree program in human services in the early 1980's at ACC. (Kelley, TR at 1722). Among other courses, Professor Kelley taught a 200-level (lower division) course in the AAS program before the merger. After the merger and end of ACC as an entity, Professor Kelley rewrote that same lower division course, and it became an upper division course.
79. Since the merger, the human services program has changed substantially. Between the 1987 merger and 2000, Professor Kelley and other faculty in the Human Services Department wrote a bachelor's degree program. (Kelley, TR at 1728). The program expansion reflects the growth in the human services field. (Kelley, TR at 1772). The UAA Human Services Department recently developed a graduate certificate, too. (Kelley, TR at 1773). Kelley continued to be a member of the ACCFT-represented bargaining unit. The current Human Services Department faculty are a mixture of UAFT and UNAC bargaining unit faculty who historically teach a mix of upper and lower division courses, and who are both tripartite and bipartite. (Kelley, TR at 1735-1736; 1740; Exhibit 14 at 6; Exhibit 47 at 15).
80. The University's nursing program has also undergone substantial changes since the merger, primarily with the integration of the community college and university degree programs, and with several instances of restructuring. (See Exhibit 7).

³³ Professor Laura Kelley started out in the social science division at Anchorage Community College in 1981. After the merger, she and her colleagues were separated into different departments at the University of Alaska Anchorage's College of Arts and Sciences. Upon their urging, the UAA's administration eventually reunited them into the College of Career and Vocational Education. (Kelley, TR at 1726-1727). Later, they were moved again to the College of Health and the School of Education. Ultimately, the School of Education separated and Professor Kelley and her colleagues stayed in the College of Health and Social Welfare. (Kelley, TR at 1727).

81. The non-bachelor's nursing program started at Anchorage Community College (ACC) in 1971. In 1983 it moved into the newly dedicated Division of Allied Health Sciences Building.³⁴ (Exhibit 35 at 25; *See* Hong, TR at 1645). By 1985, it offered a three-semester course that enabled students to test for a licensed practical nurse (L.P.N.) certificate. (Hong, TR at 1665). This L.P.N. program provided a one-year certificate that required 47 credits for certification. The associate degree program, initiated in 1971, prepared students to receive an associate of applied sciences (A.A.S.) degree and certification to take the National Council Licensure Examination for Registered Nursing. The program required approximately 70 credits. (Exhibit 35 at 15).
82. At the time of the merger, the University offered a Bachelor of Science degree in nursing. (Hong, TR at 1647). The bachelor's program started at Anchorage Senior College in 1976, and the master's program graduated its first class in 1983. After the 1987 merger, the community college nursing programs were placed into the College of Community and Vocational Education. (Hong, TR at 1648). The baccalaureate in nursing program stayed in the College of Nursing and Health Sciences. (Hong, TR at 1648).
83. In 1996, following a major restructuring of the University of Alaska Anchorage, all nursing degree programs joined together in the College of Nursing and Health Sciences. (Exhibit 7 at 1). In 2002, another restructuring resulted in the nursing program remaining within the reformulated College of Health and Social Welfare. (Exhibit 7 at 1).
84. After the merger of the nursing programs, some ACCFT bargaining unit members, including Patricia Hong, began teaching lower and upper division courses. (Hong, TR at 1651-1653; 1666-1667).
85. The nursing program is a bone of serious contention. As the university's nursing program expanded and integrated the associate's degree program with the bachelor's and master's programs, UAFT insisted the nursing program was still all vocational technical.³⁵ (Behner, TR at 308-309). Therefore, UAFT believes all nursing faculty, both those that teach lower and upper division courses, should be placed into UAFT's bargaining unit.
86. The University contends the nursing program should no longer be considered "vocational/technical." (Driscoll, TR at 116-117, 149-150; Behner, TR at 308-309). The University maintains that any vocational aspects the program contained previously are now integrated into the bachelor's degree program. (Behner, TR at 394-395). Jean Ballantyne, Ph.D., has been Director of the School of Nursing at UAA since July 2005. She has been a registered nurse since 1970. She has a

³⁴ The Allied Health Sciences Building was dedicated in the fall of 1983. (Exhibit 35 at 5).

³⁵ *See* Exhibit 7 for a history of the nursing program.

doctorate of nursing degree. (Ballantyne, TR at 458-460). Ballantyne does not consider the associate's degree in nursing at UAA a vocational technical program:

It prepares graduates to be professional nurses. It prepares them to take the same licensure exam as the other program, the baccalaureate program. Our industry that hires nurses don't pay them any differently, whether they're A.A.S. graduates or B.S. graduates, to my knowledge. They're expected to perform as professional nurses. I just do not see them as voc/tech.

(Ballantyne, TR at 474) (Grammar and spelling in original transcript).

87. Ballantyne does not distinguish the professionalism of nurses based on their education as A.A.S. graduates or B.S. graduates. (Ballantyne, TR at 474). They are subject to the same professional licensing regime and code of ethics. (Ballantyne, TR at 474-475).
88. Professor Patricia Hong, who was in the ACCFT bargaining unit, disagrees to an extent. She believes the A.A.S. nursing degree is vocational technical, while the bachelor's and master's degree programs are "professional degrees." (Hong, TR at 1670-1671).
89. The University does not regard any programs that offer baccalaureate and graduate degree components as vocational technical. (Driscoll, TR at 112).
90. Surveying technology, offered at ACC as an A.A.S. degree, was another program that experienced substantial change. Stan Sears, who created the original associate's degree program at Anchorage Community College in approximately 1971, also created the four-year surveying and mapping degree in 1989. He then changed the program name to geomatics. (Sears, TR at 1690). The fundamental parts of surveying have not changed, but with the new technology, "we do so many more things faster now, and it has increased tremendously the ability to measure things and so forth." (Sears, TR at 1692-1693).
91. Sears believes the program is still technical in nature, and he wanted the program housed in the College of Career and Vocational Education. However, he was 'outvoted' by his colleagues, who believe it belonged in engineering. The program now resides in the UAA School of Engineering. (Sears, TR at 1694).
92. The Department of Health, Physical Education, and Recreation (HPER) has also changed significantly. (See Driscoll, TR at 110). HPER expanded from its original two-year associate's program to a baccalaureate program. (Driscoll, TR at 110). It also partners with the College of Education to offer the physical education component of the Master of Arts in Teaching. (Carroll-Cobb, TR at 640). All HPER faculty are currently in the UNAC-represented bargaining unit. Some teach all upper division courses, and some teach a mix of upper and lower

division courses. (Carrol-Cobb at 646). However, the lower division courses in the HPER Department are taught primarily by the part-time, adjunct faculty. (Carroll-Cobb, TR at 648, 654).

93. Sandra Carroll-Cobb, head of the HPER Department, does not believe the program is vocational technical in nature. "It's just the nature of the profession." (Carrol-Cobb, TR at 647).
94. The UAA Aviation Technology Division has likewise undergone expansion from associate's degree programs to now also include bachelor's degree programs. (Driscoll, TR at 160, 163).
95. As the University's course program offerings expanded from associate's degrees, containing all lower division courses, to bachelor's and master's degree programs, with upper division and graduate courses, the University has "seen a move toward master's or doctorally-qualified faculty as the norm." (Driscoll, TR at 111).

G. Placement Disputes.

96. Historically, bargaining unit placement decisions were based on whether the faculty member taught at a community college. The community colleges offered only lower division, community interest, and vocational technical courses, and the faculty members who taught those courses were placed into the ACCFT-represented unit. Faculty at the three main campuses and faculty at remote sites administered out of UAF taught lower and upper division courses that led to bachelor's and graduate degrees. These faculty were unrepresented prior to 1996.
97. When UNAC was certified as representative of a bargaining unit in 1996, it expected to represent full-time faculty members who were not represented by ACCFT. (*See* Henrichs, TR at 208).
98. As program expansion progressed, disputes arose over placing new faculty into bargaining units. There were even placement issues between ACCFT and the University prior to UNAC's 1996 certification. (*See, e.g.*, Exhibits 308-314). These disputes centered particularly around placing faculty members into programs once considered vocational technical but now considered academic because they led to a bachelor's or graduate degree.
99. The dispute eventually arose over whether faculty members in ACCFT's bargaining unit could teach upper division courses. Prior to UNAC's creation and certification, "the University and ACCFT had latitude to agree that work beyond the unit definition approved by the Alaska Labor Relations Agency could be assigned to faculty without affecting their unit status." That latitude was memorialized in Article 5.1 of the 1992 – 1994 collective bargaining agreement. Article 5.1A allowed the University to assign an upper division course to an ACCFT bargaining unit member, and that faculty member could remain in the

ACCFT-represented unit as long as the faculty member and the University agreed to the upper division assignment. (Exhibit 22 at 1-2; Exhibit 513 at 6; Behner, TR at 281, Exhibit 515 at 9).³⁶

100. As noted, the University moved toward hiring "master's or doctorally-qualified faculty as the norm" as it added bachelor's and graduate degrees to course programs. (Driscoll, TR at 110-111) (Grammar and spelling in original transcript). The University recruits faculty who can teach the full range of courses, both lower and upper division, that lead to bachelor's and graduate degrees. (Driscoll, TR at 112).
101. After UNAC's certification in 1996, the University placed faculty teaching any upper division courses or a mix of lower and upper division courses on the main campuses into UNAC's bargaining unit. However, the University continued its occasional practice of allowing some faculty members on the main campuses to teach upper division courses and still remain in the ACCFT-represented unit, pursuant to Article 5.1 of the ACCFT collective bargaining agreement. (Exhibit 22 at 2).
102. In its start-up years, UNAC experienced a chaotic period that included difficulties with record keeping and other organizational matters. (Jennings, TR at 770, 789). By 2001, UNAC had identified several issues of concern. These included 1) participation with ACCFT on promotion and tenure committees, and how to evaluate bargaining unit members represented by the other union who had a different mission and workload distribution; 2) supervision questions that arose when UNAC-represented faculty supervised ACCFT-represented faculty in the same department – or vice versa; and 3) concerns about the appropriateness of ACCFT-represented faculty teaching upper division courses in some departments. (Jennings, TR at 789).
103. In 1997, the University and ACCFT changed the language in Article 5.1 of the collective bargaining agreement. They removed the previous Article 5.1 language allowing the ACCFT bargaining unit member to remain in the ACCFT unit while teaching upper division courses. The relevant language, unchanged from 1997 to the present, states: "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 (Appendix B)." (Exhibit 507 at 19). This language no longer guaranteed that, if the parties each agreed, an ACCFT-represented faculty member could teach upper division and remain in the ACCFT unit.

³⁶ Article 5.1A in the 1992 agreement states in relevant part: "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 (Appendix C)." (Exhibit 515 at 9) (Capital letters in original).

104. Regarding the University's upper division assignments to faculty members represented by ACCFT, UNAC communicated to the University that it was aware that the University was still assigning some upper division classes to faculty in ACCFT's bargaining unit. (Behner, TR at 283; Jennings, TR at 787-789). UNAC made it clear to the University that it did not condone this practice. (Behner, TR at 282).
105. The dispute over assigning upper division courses to ACCFT bargaining unit members came to a head in the 2003-2004 time period. (Behner, TR at 283).
106. On August 12, 2004, Beth Behner, the University's Human Resources Director, wrote the heads of the two unions to try to resolve the upper division placement dispute. (Exhibit 14). The unions asked for time to reach agreement to resolve the dispute. Their efforts failed.
107. On November 24, 2004, Michael Jennings, UNAC's president, informed Behner of the unsuccessful settlement talks. Jennings asked the University to enforce what UNAC believed to be the appropriate placement of upper division instructors:

Specifically, we are asking that those individuals represented by ACCFT who are teaching upper division and/or graduate courses, whether via distance education, correspondence study, direct classroom instruction or via any other mode or medium cease and desist doing so. United Academics is not asking that these individuals be moved from ACCFT to the United Academics bargaining unit, only that they not be placed in instructional positions covered by our CBA.

(Exhibit 15).

108. Bob Congdon, president of ACCFT, responded to UNAC's November 24th letter: "We view any change in assignments or anticipated assignments or any other action by the University of Alaska to remove upper division classes from the workload of faculty members represented by ACCFT to be a violation of the Collective Bargaining Agreement between the University and ACCFT, particularly Article 5.1". (Exhibit 16 at 1). UAFT threatened to grieve any such action by the University. On December 14, 2004, UAFT instructed its bargaining unit members to report to UAFT any attempt to require them to change unions in order to continue upper division teaching, or to remove an upper division course from their course load. (Exhibit 18). In fact, ACCFT had already filed a grievance over the upper division teaching disagreement. (Exhibit 28).
109. The dispute over assigning upper division courses to ACCFT's bargaining unit members continued, although it was interrupted periodically by several resolution attempts, including trying to merge the two unions. (Exhibits 19 – 24; *See also*,

e.g., Behner, TR at 311-313 regarding George Guthridge dispute). ACCFT even argued at one point that the UAA main campus should be considered an extended site, enabling the University to assign upper division classes to ACCFT faculty members at UAA. (Behner, TR at 289).

110. On October 18, 2007, Beth Behner wrote the unions a letter outlining the background of the placement dispute and proposing a solution. (Exhibit 22; Behner, TR at 288-289, 327). The University proposed:

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 of regularly teaching upper and lower division courses, and who may be assigned mixed upper and lower division classes from time to time, provided they wish to remain in 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 UNAC upon accepting an assignment of an upper division course or courses;

3. To retain in UNAC:

- UAF School of Education faculty in the College of Rural Alaska;
- UAF SFOS³⁷ faculty;

4. To other wise enforce current unit definitions, including retaining in ACCFT faculty at extended sites who teach upper division courses.

(Exhibit 22 at 6-7). The University added that if agreement could not be reached among the parties, the University proposed submitting the dispute to this agency or a neutral third party. Moreover, the University notified the parties that barring agreement by the unions, the University would apply "this proposal" as its "current approach" to unit placement. (Exhibit 22 at 7).

³⁷ SFOS is the School of Fisheries and Ocean Sciences.

111. In an attempt to appease UNAC and UAFT, the University "grandfathered" UAFT faculty members who had previously been assigned and had taught any upper division courses on the main campuses prior to July 1, 2007. (Behner, TR at 327). This meant that UAFT faculty members who were already assigned to teach upper division courses on the main campuses could continue to do so and could remain in the UAFT-represented bargaining unit.

[The] "grandfathering arrangement . . . was an attempt by the university to stay the course, to avoid conflict, to try to encourage the unions to work things out. But it was our effort to say that for the faculty who had already been regularly teaching upper division, they would be permitted to continue, but we were not going to enlarge the group beyond that present category. And that was an informal understanding, it was never put in writing by the parties, but I think it was well understood by both unions what the university was trying to do.

(Behner, TR at 280-281).

112. Regarding new, non-grandfathered faculty, UNAC made it clear to the University, "with varying degrees of intensity," that it would no longer tolerate the assigning of upper division course work to newly hired ACCFT-represented faculty. (Behner, TR at 282).
113. Now, the University places faculty members who teach any upper division courses on the main campuses into the UNAC-represented bargaining unit. (Driscoll, TR at 112; Stell, TR at 185-187, 194; Behner, TR at 282-283; Henrichs, TR at 218, 225-227). This placement procedure has been in practice since the 2002-2003 timeframe. (Behner, TR at 283). Upper division teaching requires that these faculty members "be able to teach the full range of courses in the curriculum leading to a baccalaureate degree, which would include upper division coursework. And so that's the primary determinate in placement in UNAC." (Driscoll, TR at 112).
114. Contrary to the former mission of the community colleges, in which faculty taught all lower division classes, the University does place one group of upper division-teaching faculty into UAFT: faculty who teach at the extended sites. The University sees no prohibition for this assignment in the collective bargaining agreements. (Behner, TR at 287). In addition, the University places faculty into the UAFT-represented bargaining unit if they teach an upper division course on any campus as long as their "principal assignment" is vocational technical. (Behner, TR at 288, 316). The upper division course could even include a non-vocational upper division course, such as English 301. (Behner, TR at 315, 392). The parties still have not defined or agreed on the meaning of "principal assignment" as it pertains to vocational technical in the collective bargaining agreements.

115. Placement disputes continue at the University. These disputes can affect work assignments and the quality of teaching provided by the University. For example, the UAA nursing program contains a baccalaureate program that runs on a trimester basis. Because some baccalaureate faculty do not want to teach during the summer trimester, the school of nursing at UAA has had difficulty hiring summer instructors, in Nursing School Director Jean Ballantyne's viewpoint. Ballantyne has been advised she cannot hire qualified nursing instructors from UAFT's bargaining unit for upper division courses. (Ballantyne, TR at 476-477). This division of teaching between the A.A.S. program and the bachelor's and master's programs creates an artificial barrier to assigning work appropriately. (Ballantyne, TR at 477).
116. Currently, at UAF, faculty who are part of the School of Fisheries and Ocean Sciences are placed into UNAC's bargaining unit. (Henrichs, TR at 212). DANRD faculty are also placed into UNAC's bargaining unit because of their historical association as an academic department of the UAF campus. (Henrichs, TR at 215, 253-254). All main campus faculty at UAF are placed into the UNAC-represented unit. (Henrichs, TR at 218).³⁸ Cooperative Extension and Marine Advisory Program faculty, located in various areas of Alaska, are also placed into UNAC's unit. (Henrichs, TR at 238).
117. At UAA, faculty members who are teaching or plan to teach the full range of courses leading to a bachelor's degree, including lower and upper division courses, are placed into the UNAC-represented unit. (Driscoll, TR at 104, 112, 163). Faculty members who teach exclusively lower division courses are placed into UAFT's unit. (Driscoll at 104). There are exceptions on the main campus. The UAFT faculty who teach upper division courses on the main campus were 'grandfathered' and allowed to remain in UAFT because they've taught the courses for a significant period of time. (See Driscoll, TR at 162).
118. At UAS, baccalaureate programs increased in number between 1990 and 1996. New hires were therefore expected to teach both the lower and upper division courses on the UAS campus. These hires were not placed into ACCFT's bargaining unit but instead were part of the unrepresented faculty at UAS. (Stell, TR at 186).
119. Now, UAS Provost Roberta Stell, Ph.D., looks at several factors in determining whether to place an employee into either the UNAC or UAFT-represented bargaining unit. "Depends on the program they are hired to teach, the workload that you anticipate they are going to teach. If it's in a baccalaureate program or a graduate program, they would teach 100 to 400, or graduate level at 600. If they

³⁸ The College of Rural and Community Development uses a few classrooms on the UAF campus to teach developmental education classes. This teaching location benefits the students, who reside on the main campus. There are also a few Tanana Valley Campus (TVC) courses taught on the main UAF campus. The instructors for these developmental and TVC courses are usually UAFT faculty members.

are teaching in a program, like I mention the math, developmental math, is a UAFT-placed faculty because they teach exclusively lower division, hire generally almost always with a master's degree, and they would not be assigned upper division." (Stell, TR at 186). Faculty teaching exclusively lower division courses or teaching on a UAS extended site are placed into UAFT's unit. (Stell, TR at 187). Faculty who teach a mix of upper and lower division courses at the UAS main campus are placed into UNAC's unit. (Stell, TR at 185, 187).

H. Community of Interest.

120. Academic faculty members, those who teach courses that lead to bachelor's and graduate degrees, share a community of interest. Particularly since the 1987 merger, these faculty members increasingly have worked more closely together to the point that they are integrated as a faculty body responsible for academic courses.
121. Integration has occurred even in programs in which faculty members reside at different locations. The DANRD³⁹ program is one example. DANRD faculty previously were located at the Chukchi, Northwest and Kuskokwim campuses to be near the students. Now, with the advent of more sophisticated and effective methods of teaching by distance delivery, the DANRD faculty are located in Fairbanks and Anchorage. However, one DANRD faculty member still resides in Dillingham at the Bristol Bay campus. Yet, he is completely integrated with other DANRD faculty members. All DANRD faculty members are linked by phone and email, and the Dillingham faculty member flies to Fairbanks a few times a semester to meet with other faculty members. All DANRD faculty meet face-to-face two or three times a year. (Gabrielli, TR at 402-403).
122. Bipartite and tripartite faculty members are integrated in the academic programs leading to bachelor's and graduate degrees. In the languages program at UAA, Francisco Miranda, Ph.D., carries a bipartite workload but still conducts significant research. (Miranda, TR at 927). Other bipartite faculty members in other programs also conduct research because it is part of their mission as teachers. (Sandberg, TR at 1521). The languages program faculty members, both bipartite and tripartite, are integrated. (Miranda, TR at 935-936). In addition, the mission for the upper and lower division classes is the same. (Miranda, TR at 954).
123. The nursing program is another example of a university program in which teaching lower and upper division courses has become integrated over time. (Behner, TR at 393-396).
124. Bipartite and tripartite faculty members who teach courses leading to four-year and graduate degrees interact together. (*See* Stell, TR at 188).

³⁹ Department of Alaska Native and Rural Development.

125. There is a community of interest among faculty members who teach in programs whose end product is a bachelor's or master's degree. This community of interest is reflected in significant part by the preparation and research required to teach upper division programs compared to lower division programs. Students at the junior, senior, and graduate class level have a higher degree of base knowledge, and this level of knowledge requires that the faculty member teaching them have a more in-depth knowledge of the entire discipline in order to teach effectively. (See Driscoll, TR at 167-168, 170; Shepro, TR at 750).

126. Faculty members must spend more time preparing to teach upper division courses than lower division courses. Professor Kevin Maier from UAS explained the differences:

I feel like in the classroom of an upper division class there is a sunset. Students are arriving with a lot more background information and a lot more access to sort of the specialized language. And so I feel like I need to come prepared to engage at a much higher level.

And this means . . . in a 100 level class I'll spend half an hour reading the article that we're going to discuss, walk in and have no problem running discussion. An upper division class I'll read the text that we're all going to discuss and then spend three or four hours reading all the scholarship and then the sort of background material on that text. So in the classroom I need to be much more organized and prepared.

(Maier, TR at 1006-1007; See also Srinivasan, TR at 1290).

127. The University's requirements provide that faculty members in a bachelor's or graduate degree program have the ability to teach across the discipline and the entire range of programs in that discipline. (Driscoll, TR at 163). A terminal degree in the discipline is the best preparation for teaching across the course spectrum in that discipline. (Shepro, TR at 739). If they don't have a terminal degree, they don't have the "complete package." (Shepro, TR at 740-741). "So I didn't really understand transistors until I took a graduate course in transistors as an electrical engineer. (Driscoll, TR at 167-168). "[H]aving a Ph.D. gives you a broader view of the discipline that you're trying to teach, and I think it makes . . . for a better class." (Stekoll, TR at 1136).

128. Teaching upper division courses not only requires more preparation time but also requires a larger knowledge base than teaching lower division or introductory courses. Upper division teaching also requires faculty members to stay current with new developments. Professor Bogdan Hoanca explained:

The lower division course is a lot more static in the sense that it only changes wherein there is a major shift in the industry, for example, going from one version of Microsoft Office to the next one, which happens every few years or so.

In contrast, the upper division course is a lot more – or needs to be a lot more up to date, and we tend to talk a lot about what's happening in the news, obviously in the business news, what's happening on the technology forefront. Even small changes have the potential to have a significant impact.

And so either way, that course is never the same. Even looking at it two semesters in a row, students would essentially take a very different course because there is a lot of change that needs to be incorporated and the course needs to be kept up to date.

(Hoanca, TR at 974-975).

129. Because many upper division classes are on the cutting edge of the discipline, faculty members need to spend more time staying current in the discipline. (Stekoll, TR at 1134; 1163). Having a terminal degree puts a faculty member on the cutting edge of their discipline. (Henrichs, TR at 231). The terminal degree provides faculty members with essential ingredients, enabling them to interact effectively with students at the upper division and graduate level. (Duddleston, TR at 1070).
130. Vocational technical faculty members share a community of interest because of the technical training that they provide to students. This technical training differs from the academic teaching and course loads associated with the faculty teaching students in baccalaureate and graduate programs. Vocational technical education is focused on training students for specific trades and crafts, and skills. This education results in certificates and associate-level degrees. Vocational education is "not associated with the broader liberal arts and science curriculum that one would take as a baccalaureate or a graduate student." (Johnsen, TR at 433, 434). Vocational technical programs develop specific skills that are "significantly less that we would expect in terms of breadth of instruction for a student pursuing a four-year degree." (Driscoll, TR at 107-108).

Credentials and Academic Qualifications

131. Since certification of UAFT (ACCFT) in 1973, and even to a substantial extent since UNAC'S 1996 certification, credential requirements have increased due to new programs and degree offerings. This has occurred especially at the Community and Technical College (CTC) at UAA.⁴⁰ (Schmidtt, TR at 1474-

⁴⁰ Exhibit 10.

1475). Several of the CTC's divisions now offer baccalaureate and/or master's degree programs, including career and technical education (bachelor's and master's); health, physical education, and recreation (bachelor's); aviation (bachelor's); construction design and technology (bachelor's); allied health sciences (two different bachelor's); and culinary arts, hospitality, dietetics and nutrition (two different bachelor's). (Schmidtt, TR at 1466; Exhibit 10 at 1-4; Exhibit 46). These new programs and degrees had vocational technical origins. (Schmidtt, TR at 1475). Change continues at the CTC: there is pending approval for a baccalaureate degree in dental hygiene. (Schmidtt, TR at 1467).

132. The current faculty who teach in the CTC programs are represented by both UAFT and UNAC. (Exhibit 47 at 4-6).
133. Faculty with research responsibilities (researchers) and faculty without a research component often have similar credentials on hire. (Driscoll, TR at 122).
134. Credential requirements for initial appointment, promotion, and tenure are significantly different for tripartite and bipartite academic faculty compared to those for bipartite vocational technical faculty. (Exhibits 373 through 377B). The former are more stringent and require more education and experience than the latter. This means that the pertinent educational requirements for faculty teaching in vocational technical programs that lead to associate's degrees and certificates are less than the credential requirements for faculty teaching in programs that lead to bachelor's and graduate degrees. (*See* McKenna, TR at 1437-1438). We find that the difference in these requirements distinguishes vocational technical faculty from academic faculty teaching courses that lead to four-year and graduate degrees.

Evaluation for Promotion and Tenure

135. Base evaluation criteria for researchers and non-researchers is the same. (Driscoll, TR at 122).
136. The only distinction between tripartite and bipartite faculty members in evaluating tenure is the tripartite faculty member's research component. (Bult-Ito, TR at 872; Miranda, TR at 956-957). Both faculty who have a research component and those who do not have a research component have the ability to obtain tenure at UAA and UAS. (Driscoll, TR at 122; Exhibit 373).
137. At the UAF main campus, the tenure track encompasses tripartite faculty and the bipartite extension faculty associated with the Marine Advisory Program and the Cooperative Extension Service. (Henrichs, TR at 249, 259). Bipartite teaching faculty at all extended sites are also eligible for tenure. (Henrichs, TR at 259).

138. However, some bipartite research faculty at UAF are not eligible for tenure. (Henrichs, TR at 224, 235). Tenure is awarded to UAF faculty holding "academic rank." Those faculty holding "special academic rank," such as researchers and clinicians are not eligible for tenure.⁴¹ However, they are eligible for promotion if they hold qualified academic rank. (Exhibit 385 at 6, 15).
139. Promotion requirements distinguish tripartite and bipartite academic faculty from bipartite vocational technical faculty at UAA. (Exhibit 373 at 43-50). For example, promotion to full professor requires a terminal degree for both tripartite and bipartite academic faculty, but only a master's degree for vocational technical faculty seeking the promotion. (Exhibit 373 at 46-47).
140. At UAS, the promotion criteria reflect the same distinguishing characteristics as those at UAA. (Exhibit 377-B).⁴² Credentials differ between those faculty members who teach in academic programs leading to bachelor's or graduate degrees, and those faculty members who teach in vocational technical programs that lead to certificates and associate's degrees. The minimum criteria at UAS for appointment and promotion to associate professor for academic faculty who teach in bachelor's or graduate programs is a terminal master's degree or a doctorate degree, or the "appropriate master's degree, plus 30 hours within a particular area of study related to . . . the area in which they teach. Fifteen of those must be at the graduate level." (McKenna, TR at 1436; Exhibit 377-B at 1).
141. By contrast, academic qualifications for vocational technical faculty at UAS are less than those required of the academic faculty. Those faculty who seek appointment and promotion in a vocational technical trade must possess only a bachelor's degree "and 30 hours of systemic study, at least 15 of which are at the graduate level, and five years' experience beyond the apprentice level." (McKenna, TR at 1437-1438; Exhibit 377-B at 1). The UAS faculty handbook provides that vocational technical trades include "[o]nly trade and industry areas, such as welding, marine technology, construction, electronics, and power technology." (Exhibit 377-B at 1, fn. 1).
142. Bipartite, tripartite, and vocational technical faculty members interact on university committees and in the evaluation process. Evaluation committees have five members who consider promotion and tenure. If a faculty member is bipartite, the evaluation committee includes three bipartite, one tripartite, and one vocational faculty member. (Srinivasan, TR at 1303, 1305). Tripartite faculty members have three tripartite faculty members on their evaluation committee. (Srinivasan, TR at 1303, 1305). Vocational technical faculty have three vocational members, one bipartite, and one tripartite. (Srinivasan, TR at 1305).

⁴¹ The Board of Regents policy has the same restriction on tenure for faculty holding special academic rank. (Exhibit 381 at 6).

⁴² We intend in no way to minimize the importance of vocational technical faculty. They play a very important role in today's workforce training environment.

Faculty Workloads

143. The UNAC and UAFT bargaining units can no longer be distinguished by their teaching loads as tripartite (for UNAC) and bipartite (for UAFT). The majority of UNAC faculty, 640 out of 974, still carry a tripartite workload, but 320 UNAC faculty carry a bipartite workload. (Exhibit 43).⁴³ UNAC's bipartite faculty members include 168 bipartite academic and 102 bipartite research, with two bipartite clinical and two bipartite vocational. This is a significant change from the primarily tripartite faculty unit the agency certified in 1996. (*United Academics-AAUP/AFT, AFL-CIO vs University of Alaska*, Decision and Order No. 202 (April 29, 1996) (Exhibit 504). Most of the UAFT-represented faculty members do still carry a bipartite caseload. Of the 358 bargaining unit members, 237 are listed as bipartite academic and 112 are listed as bipartite vocational. (Exhibit 43).⁴⁴
144. The similarities between the research and non-research faculty outweigh the differences. "That's really a fundamental belief that I hold . . . Faculty are faculty, and they have significant responsibilities in the management, transmission, generation of knowledge, and the governance of the institution, and that's what we're all about. So the commonalities are much, much stronger than the differences." (Driscoll, TR 124).

Interaction

145. Since the merger, faculty interactions have increased by integrating community college faculty into the university system, improving technology, and making efforts to provide opportunities for interaction.
146. After the 1987 formation of the School of Fisheries and Ocean Sciences (SFOS), concern existed about interaction because the faculty members were scattered throughout Alaska. The School put a "lot of effort" into having annual face-to-face meetings, video conferencing, and joint research programs. (Henrichs, TR at 242-242).
147. Abel Bult-Ito, Ph.D., interacted with faculty members from all three major campuses. He was a member of the Faculty Alliance, which includes faculty leadership from all three campuses. (Bult-Ito, TR at 870). Members of the alliance worked in an advisory role to the University's president. (Bult-Ito, TR at 870).

⁴³ The UNAC bargaining unit includes two bipartite vocational faculty and fourteen with unknown status. (Exhibit 43).

⁴⁴ Exhibit 43 shows that the remaining nine UAFT faculty include six tripartite, two bipartite without other designation, and one bipartite research faculty.

148. Jill Dumesnil, Ph.D., is a tenured professor of mathematics at UAS in Juneau. She is a bipartite faculty member represented by UNAC. Professor Dumesnil teaches a mix of upper and lower division courses. She interacts "a lot" with UAFT-represented math faculty from the Sitka and Ketchikan campuses. She also interacts with other UAFT faculty from the UAS campus, through faculty senate and other university committee work. (Dumesnil, TR at 1035).
149. Tripartite and bipartite academic faculty members have a lot in common. Michael Stekoll, Ph.D., explained: "Well, one of the things I think is the program for getting students through to bachelor's degrees, and so that – whatever activities we need to do is to get the students through the lower and upper division classes. And . . . most of us are involved in helping undergraduates do some sort of undergraduate research, especially at UAF." (Stekoll, TR at 1161-1162). Other commonalities are preparing for upper division courses, staying current with textbooks and literature, and attending conferences. (Stekoll, 1162-1163).
150. Although a research component distinguishes a tripartite or bipartite research faculty member from non-research bipartite faculty members, bipartite faculty members may still conduct research as part of their teaching mission. (Gabrielli, TR at 415-416). Therefore, they may still interact, share ideas, and collaborate with research faculty.
151. Both researchers and non-researchers participate in university governance. (Stell, TR at 190). Bipartite non-research faculty can and do supervise tripartite faculty. (See Gabrielli, TR at 415).
152. Faculty members from both unions work side-by-side in many departments. (Rosnel, TR at 1797-1798). They are located together, are supervised by the department chair, attend meetings and share ideas, and collaborate. (Miranda, TR at 940; Kelly, TR at 1370; Rangarajan, TR at 1559-1560; Rosnel, TR at 1797-1798).
153. Jennifer Reynolds, Ph.D., is associate professor in the School of Fisheries and Ocean Sciences (SFOS) at the UAF main campus. (Reynolds, TR at 1312, 1317). She works in the graduate program in marine science and limnology. She has a tripartite assignment. She teaches, conducts research, and performs services. She interacts with both fellow tripartite and bipartite faculty members. The bipartite faculty in SFOS carry a bipartite research course load. (Reynolds, TR at 1337-1340). They "pay attention" to each other's research, attend seminars together, and participate on committees together. (Reynolds, TR at 1337-1338).

Location of Work and Faculty

154. For decades after its creation, the University offered students course instruction in a local, face-to-face environment. That mode of instructional offering still exists in a wide variety of locales throughout Alaska, regardless of faculty union affiliation. Faculty members teach courses at not only the three main university campuses but also at numerous community campuses and remote locations throughout Alaska's vast geography.
155. However, advancements in technology since UNAC's 1996 certification have created other modes of course delivery and therefore more educational opportunities for Alaskan students. (Driscoll, TR at 177-178). There is a move at the University to offer an increasing number of courses by distance education, via several different technologies. (Driscoll, TR at 178).
156. The changes in distance learning and related technologies are dramatic. (Driscoll, TR at 177-179). Courses may be taught in person on any main or community campus, or they may be taught by distance education via video conferencing. (Gabielli, TR at 420; Reichardt, TR at 672; Robinson, TR at 2000). The technology enables the University's faculty to teach virtually anywhere in the state that distance education technology is available.
157. Distance education teaching has created situations in which, for example, a UNAC-represented faculty member in Anchorage teaches a course by distance to students at extended sites, where former community college – UAFT – bargaining unit members historically taught. (Driscoll, TR at 178). Conversely, a UAFT-represented faculty member may teach a distance-delivered course from an extended site to areas that could include main campuses. (Behner, TR at 313).
158. The nursing program utilizes every mode of teaching, in person or by distance education. The UAA program now provides distance teaching from Anchorage to eleven sites throughout Alaska, with two more sites available soon. There is even a hybrid of classroom/distance teaching, where students take classes by video-conference, then travel to Anchorage for in-class, face-to-face instruction. (Stephenson, TR at 1829).
159. Marc Robinson, Ph.D., is assistant professor of elementary education with the University's College of Education, Department of Teaching and Learning. (Robinson, TR at 1997-1999, 2009, 2011). He started there in 2008. (Robinson, TR at 2013). His position is bipartite, tenure track. (Robinson, TR at 1998). He is in the bargaining unit that UAFT represents. (Robinson, TR at 2013).
160. Professor Robinson normally works at the Mat-Su community campus, primarily teaching upper division courses to juniors who have committed to become teachers. (Robinson, TR at 1999). However, he also teaches via distance learning technology. He has taught students from Anchorage, Kenai, and Bristol Bay. He

uses Blackboard and Polycom technologies to teach the distances courses. Blackboard is an online classroom where students participate electronically. (Robinson, TR at 1999-2000). Robinson teaches creative arts through Polycom, which is a combination audio/video conferencing. He broadcasts the class to sites where students participate from a classroom at various locations. (Robinson, TR at 2000).

161. This evolving technology has blurred the geographic distinction between extended site faculty and main campus faculty.
162. With the advent of distance education, location of work is an insignificant factor in this case, in determining community of interest. However, increased offerings of distance education courses promote the integration of faculty members.

Supervision

163. Since the 1987 merger, supervision of faculty members has become increasingly integrated. One example is UAFT's and UNAC's memorandum of understanding whereby a UAFT-represented faculty member may supervise a UNAC-represented faculty member in a department, and vice versa. Beginning in 1997, the parties agreed to this arrangement, which continues to the present. (Jennings, TR at 789, 830; Congdon, TR at 2234-2235; Behner, TR at 2511-2512; *See* Exhibit 509 at page 52). The evidence shows that whether faculty are bipartite or tripartite, or whether they teach all or part lower or upper division courses, they are subject to the same common supervision.
164. Department chairs from remote or extended sites may supervise other faculty members located on the main campuses. In the DANRD program, a bipartite UNAC-represented faculty member, whose office was located on an extended site, chaired the department and therefore supervised the other faculty members, all tripartites, who were located on the main Fairbanks campus.⁴⁵
165. Integration of supervision does not establish that a faculty member should be placed into either the UNAC-represented bargaining unit or the UAFT-represented bargaining unit because faculty members from both bargaining units supervise faculty in a unit other than the one in which their position is placed.

I. Wages.

166. The wages of faculty members are based on their credentials, including education and experience, course load, and the bargaining unit they belong to. They are also based in part on the salary schedules in the collective bargaining agreements. The salaries listed in the schedule in UNAC's collective bargaining agreement are

⁴⁵ Professor Mike Davis had an office on the Dillingham campus. (Gabrielli, TR at 412).

higher than those listed in the schedule in UAFT's agreement. (Exhibit 507 at 29; Exhibit 516 at 56).

167. A similarity is that both the UAFT and UNAC collective bargaining agreements each contain salary schedules that provide for minimum salary rates based on rank. (Exhibit 507 at 29; Exhibit 516 at 56). These CBA's provide generally that rank, appointment, and base academic year salary are based on the needs of the institution, the faculty member's education and experience, and prevailing market conditions.

UAFT	Salaries
Rank	Minimum/Year
Instructor	\$32,000
Assistant Professor	\$36,000
Associate Professor	\$43,500
Professor	\$50,000

UNAC	Salaries
Rank	Minimum/Year
Instructor	\$35,000
Assistant Professor	\$45,000
Associate Professor	\$50,000
Professor	\$55,000

(Exhibit 507 at 29; Exhibit 516 at 56).

168. Wages are also based on salary scales, which are determined in part by salary surveys. The University uses the Oklahoma Salary Survey to determine initial hire salary scales for faculty members in UNAC's bargaining unit. (Henrichs, TR at 251; Shepro, TR at 748; Jennings, TR at 814-815; Exhibit 29). The survey averages salary information received from participating land grant universities. (Henrichs, TR at 251). The salary scales in UNAC's collective bargaining

agreement are derived from the Oklahoma survey, based on an equation. (Shepro, TR at 749).

169. The College and Universities Professional Association for Human Resources (CUPA), conducts a survey of salaries at two-year institutions. (Shepro, TR at 749-750; Behner, TR at 2515-2516; Exhibit 30). The CUPA survey is used to determine UAFT's bargaining unit member salaries. (Powers, TR at 2419-2421, 2449). At one time, the University used a four-year CUPA survey, but in 2002, it began applying the two-year survey. (Powers, TR at 2419, 2422, 2429, 2448-2450; Behner, TR at 2516-2517).⁴⁶
170. Upon initial hire, UAA looks at salary surveys by discipline, not workload type. (Driscoll, TR at 121, 133). These data give the hiring staff some idea of a reasonable starting salary. (Driscoll, TR at 121). "So engineering faculty makes more money than an English faculty member in the Main than on specifics of workload." (Driscoll, TR at 121) (Grammar and capitalization in original). Salaries are then adjusted by such factors as across-the-board cost of living increases, opportunities for market-based or equity-based adjustments, and performance based possibilities when, for example, the University may match an instructor's salary offer from another university. (Driscoll, TR at 121; *See* Powers, TR at 2420).
171. Colleen McKenna is an assistant professor of computer information office systems (CIOS) at UAS in Juneau. (McKenna, TR at 1415). She is a bipartite appointment, with a teaching and service workload. (McKenna, TR at 1417). Upon hire in 2005 for this position, Professor McKenna was placed into UNAC's bargaining unit. She has taught mostly a mix of upper and lower division courses. (McKenna, TR at 1421-1422, 1444). However, she did not teach any upper division courses in 2008 or 2009. (McKenna, TR at 1422). Nonetheless, she remained in UNAC's bargaining unit this entire period of time.
172. Professor McKenna believes she would make less money if she were placed into UAFT's bargaining unit. She has discussed salaries with one of her colleagues who is represented by UAFT, and he makes \$20,000 less per year than she makes as a UNAC-represented bargaining unit member. The salary differences would depend in part on how many years a faculty member had been teaching. (McKenna, TR at 1441-1442).
173. Professor McKenna would find it "very frustrating" if the CIOS program was deemed a vocational technical program. She believes she would not have needed

⁴⁶ Oddly, the UNAC collective bargaining agreement salaries for unit members will be based in part on prevailing market conditions as indicated by annual salary surveys from both the Oklahoma State University study (Exhibit 29), and the CUPA survey (Exhibit 30). However, UAFT's collective bargaining agreement makes no reference to surveys. It provides that salaries will be based in part on "prevailing market conditions as provided in University policy." (Exhibit 507 at 29).

her second master's degree to achieve vocational technical status. (McKenna, TR at 1440).

174. Khrystyne Duddleston, Ph.D., is an assistant professor in the Biological Sciences Department on the UAA main campus. She is a member of the UNAC-represented bargaining unit. She is bipartite and tenured. By contract, her course load is four parts teaching and one part service. (Duddleston, TR at 1058-1059). However, UNAC's CBA allows a flexible workload, so Professor Duddleston is currently working under a tripartite workload. She has also proposed a tripartite load for the next academic year. (Duddleston, TR at 1059; Exhibit 233 at UA-00459-460).
175. Professor Duddleston believes she is more appropriately compared to her peers in UNAC. She would be concerned about salary issues if she was placed in UAFT's bargaining unit. (Duddleston, TR at 1075).
176. Faculty members with a research component receive the same salary during the academic year regardless of research obligations. (Exhibit 516 at 49, 61; Driscoll, TR at 120-121). With few exceptions, external grants for research are awarded to the University, not to an individual faculty member. The University administers the grant funds. (Reynolds, TR at 1328-1329). By contract, instructional work is paid on a per credit basis. (Exhibit 516, UNAC CBA, Section 15.6.2). Non-instructional work, such as research, is paid at the faculty member's regular salary even if funding for the work is generated from an external grant. (Exhibit 516; Stekoll, TR at 1157-1160).
177. In both bargaining units, the basis for determining salaries is similar. Salaries are based on the discipline taught, on educational and work credentials, and on course load. For example, although the salaries are lower on average for those faculty members in the UAFT-represented bargaining unit, the difference is attributable to many factors, including a different survey of salaries for two-year versus four-year institutions, the credentials required for the curriculum, and the complexity of the workload.

J. Hours.

178. The two unions' collective bargaining agreements require only that faculty or unit members "shall establish, post, and maintain reasonable office hours which will meet the programmatic needs" of the University or the students. (Exhibit 507 at 26; Exhibit 516 at 79). Faculty also spend time related to their course load assignment, for example – in faculty meetings (Gabrielli, TR at 401), service activities (Stekoll, TR at 1117-1118; Srinivasan, TR at 1291), and writing reports related to research grants (Stekoll at 1170). Teaching duties also require time in keeping abreast of the literature in the specialty being taught. (Srinivasan, TR at 1290).

179. The similarities in hours for the faculty in the two bargaining units' outweigh any differences.

K. Other Working Conditions.

180. Faculty in the UNAC and UAFT-represented bargaining units receive health and other benefits negotiated with the University. Their tenure track positions have benefits that are different from those in the adjuncts' bargaining unit. (Behner, TR at 345). There is no significant difference in the benefits for members of the two full-time faculty units. All university regular faculty members are eligible for educational benefits, insurance, health insurance, life insurance, disability insurance, retirement benefits, annual and sick leave, holiday and parental leave, and other benefits pursuant to Board of Regents policy. (Exhibit 382). This policy does not differentiate between benefits for UAFT or UNAC's bargaining unit members.
181. Other working conditions do not differentiate one group of the full-time, regular faculty members from another.

L. Desires of Employees.

182. There are 1,332 full-time faculty at the University, including 974 in UNAC's unit and 358 in UAFT's unit. (Exhibit 42; Ooms, TR at 573-575). There was no significant testimony that reflects the desires of employees or their bargaining unit preferences one way or the other. This factor did not weigh in this decision.⁴⁷

M. History of Collective Bargaining.

183. There is a lengthy history of collective bargaining between the University and both unions, particularly with UAFT/ACCFT.
184. The University and UAFT have negotiated collective bargaining agreements since 1974. The relationship between the University and UAFT often has been contentious throughout this lengthy period. (See Exhibit 41 at 205, and Exhibit 504 at 9, finding of fact 35⁴⁸). The parties negotiated three agreements between 1974 and 1987. When the University restructured and merged the community colleges into the university system in 1987, the University refused to negotiate with UAFT (then ACCFT), contending that after the merger, the only remaining

⁴⁷ However, some witnesses did express concern that placement into the other union's bargaining unit may negatively affect their salary.

⁴⁸ "The composition of the ACCFT unit has been the source of dispute." *United Academics-AAUP/AFT, AFL-CIO vs. University of Alaska*, Decision and Order No. 202 at 9, finding of fact number 35 (April 29, 1996).

part of the old community college bargaining unit was the six faculty members at Prince William Community College.⁴⁹

185. The parties ultimately agreed to arbitrate numerous issues related to the merger, and after several hearings, arbitrator Tim Bornstein issued three opinion and awards. (Exhibits 500, 501, and 502).
186. Bornstein concluded that the former community college bargaining unit remained intact. On July 1, 1987, Bornstein held that the University violated the parties' collective bargaining contract. (Exhibit 501 at 15, opinion issued on January 5, 1990). The University and UAFT subsequently stipulated to a new description of the former community college bargaining unit on May 26, 1992. The agency board granted the stipulation on June 11, 1992. (Exhibit 505 at 4).
187. In 1995, UNAC petitioned this agency to represent the University's remaining unrepresented full-time faculty members. (Exhibit 504 at 2) In its response, the University objected to the description of the bargaining unit, contending that the merger of the community colleges into the University system had resulted in an integrated faculty that should appropriately be a single bargaining unit. (Exhibit 504 at 3, 13). The agency board concluded that two separate units were appropriate.
188. The bargaining relationship between UAFT and the University continues to be contentious.
189. The University and UNAC have negotiated several collective bargaining agreements since 1996. There is no evidence of a contentious relationship other than the issues that resulted in this unit clarification proceeding.
190. The unit placement issues in this dispute have negatively affected some of the collective bargaining relationships.

N. Unnecessary Fragmenting.

191. There is no increase in the number of bargaining units in this particular unit clarification petition. There was no evidence submitted on unnecessary fragmenting.

⁴⁹ After 1987, Prince William Sound Community College was and is the only community college in the University of Alaska system.

ANALYSIS

1. Are there changed circumstances, since certification of the full-time faculty bargaining units at the University of Alaska, which require clarification of the unit boundaries between the UAFT and UNAC-represented units?

In this unit clarification proceeding, where unit composition and boundaries between the UAFT and UNAC units are disputed, we must first determine whether changed circumstances since certification of the bargaining units justify clarifying and reshaping the units.

Previously, this Agency addressed unit clarification:

A bargaining unit may be clarified if there is some confusion over the contours of a unit or the parties dispute whether a particular position belongs in the unit. A petition for clarification of the unit can be appropriate if circumstances have changed in the ownership or operations of the employer, such as reorganization, consolidation, abolition or creation of job classes, or if there has been a material change in the law. (citation omitted).

Northwest Arctic Education Association, NEA/Alaska v. Northwest Arctic Borough School District, Decision and Order No. 162 at 6 (June 30, 1993).

After initial recognition and certification of a bargaining unit, a bargaining agent or public employer may bring a petition for unit clarification to resolve a dispute over the unit's composition under 8 AAC 97.050(a), which provides in part: "A public employer or public employee representative may file a petition seeking (1) clarification of an existing bargaining unit, where no question concerning representation exists, in order to resolve a question of unit composition raised by changed circumstances since certification[.]"

Under this regulation, a threshold question is whether a question concerning representation exists. We find in this case that there is no argument and no evidence supporting a finding that a question concerning representation exists. Therefore, the first issue for analysis under this regulation is whether a question of unit composition needs resolution due to changed circumstances since certification; if so, we must then determine whether those changes justify clarification of the two, full-time, faculty units at the University.

After certification of a unit, this agency will generally not modify the scope of a unit absent changed circumstances raising a question of unit clarification. In *Lower Kuskokwim Education Association/NEA-Alaska vs. Lower Kuskokwim School District*, Decision and Order No. 172 (March 2, 1994) (D&O 172), this agency discussed changed circumstances in the context of the scope of a unit:

To change the scope of a unit to add a position historically excluded, some changed circumstances must be shown. Changes that would be relevant to a unit determination would be changes to factors listed in AS 23.40.090 – community of

interest, wages, hours, working conditions, history of collective bargaining, and desires of employees.

(D&O 172 at 8) (*See also Alaska State Employees Association, AFSCME Local 52, AFL-CIO vs. State of Alaska*, Decision and Order No. 237 at 8 (August 19, 1998).

We have previously emphasized the importance of community of interest in unit determinations.

Community of interest is the fundamental factor in bargaining unit determinations involving not only previously unrepresented employees but also attempts to sever a group of already represented employees from a larger bargaining unit. In *Kalamazoo Paper Box Corp.*, a unit-severance case, the Board enumerated the factors used in determining whether community of interest sets a group of employees apart from other employees:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs . . . ; the infrequency or lack of contact with other employees or interchange with them; and the history of collective bargaining.

City of Seldovia vs. International Brotherhood of Electrical Workers, Local 1347, AFL-CIO, Decision and Order No. 280 at 13 (August 22, 2006) citing 1 Patrick Hardin and John E. Higgins, Jr., *The Developing Labor Law* at 592 (4th Ed. 2001), and *Kalamazoo Paper Box*, 136 NLRB 134, 138 (March 6, 1962).⁵⁰

In *Union Electric*, the National Labor Relations Board discussed when unit clarification is appropriate:

Unit clarification, as the term implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category-excluded or included-that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken

⁵⁰ This Agency gives great weight to relevant decisions of the National Labor Relations Board and federal courts when making determinations under the Public Employment Relations Act. 8 AAC 97.450(b).

reasons or the practice has become established by acquiescence and not express consent.

Union Electric Company, 217 NLRB No 124, 217 NLRB 666 at 667, (May 1, 1975).

In *National Labor Relations Board v. Mississippi Power & Light Company*, 769 F.2d 276 (August 26, 1985) (*Mississippi Power*), the Circuit Court of Appeals discussed the mechanism of unit clarification:

Unit Clarification procedures permit the NLRB to add employees to a particular bargaining unit. The addition is accomplished without an election. The added employees are considered covered by the existing collective bargaining agreement. The theory of unit clarification, insofar as adding positions to the collective bargaining unit, is that the added employees functionally are within the existing bargaining unit but had not formally been included due to changed circumstances (for example, evolving or newly created jobs). See *NLRB v. Magna Corp.*, 734 F.2d 1057, 1061 (5th Cir. 1984); *Consolidated Papers, Inc. v. NLRB*, 670 F.2d 754, 756-57 (7th Cir. 1982); *Boston Cutting Die Co.*, 258 NLRB 771 (1981); *Massachusetts Teachers Ass'n*, 236 NLRB 1427 (1978); *Arthur C. Logan Memorial Hospital*, 231 NLRB 778 (1977); *Copperweld Specialty Steel Co.*, 204 NLRB 46 (1973).

Mississippi Power, 769 F.2d at 279.

In the context of the University, changed circumstances include, among other things, changes to program structure such as expanding programs from two-year certificates and degrees to baccalaureate and graduate degrees. They also include evolving changes in job duties and responsibilities that affect workload assignments for individual faculty positions as the University has changed and expanded programs over time, and changes needed for credentials to teach in evolving programs. Additional changes have occurred in teaching using distance learning technology.

We have reviewed the entire, massive record. We find this record shows that the structure of teaching in many programs at the University has changed since most community colleges were eliminated in the 1987 merger, and even since UNAC's 1996 certification. Primarily, many programs once considered vocational technical have evolved and changed so substantially that the question arises whether the teaching duties and responsibilities associated with those programs should still be considered vocational technical.

In addition to changed circumstances in many vocational technical programs – and the related teaching responsibilities - many of the former community college faculty members are now integrated into university programs that lead students to obtaining four-year – bachelors – and higher graduate degrees. They work with and interact with faculty members who teach the upper division courses in those programs. This integration has resulted in overlapping teaching duties, mutual supervision and evaluation tasks, and substantial interaction between many UAFT and UNAC-represented faculty members.

We find particularly that many course programs that were formerly part of the old community college curriculum have now evolved into bachelor's and graduate programs. These course changes have in turn sparked an evolution in course load duties and assignments. The University has recognized this change by shifting course load responsibilities as faculty members retire and are replaced by incoming faculty members.

This evolution has occurred over time, faster in some programs than in others, but it has nonetheless resulted in a substantial change in circumstances in teaching duties and responsibilities in many faculty positions. Expanding a program from a certificate or associate's degree program to include a bachelor's and (in some programs) graduate program is a substantial leap in scholastic requirements for students, and in educational credentials, qualifications, and scholastic endeavors for faculty members. Though these changes have occurred at different paces in different departments and programs at the University, the changes are nonetheless dramatic.

Major advances in distance learning have also resulted in changed circumstances, prompted integration in how and where courses are taught, and promoted integration in who teaches them. The University has increasingly utilized various technologies to bring students residing across the state into one common classroom. For the students who take these classes, location is no longer a factor in course selection and participation. As location has become less of a factor in teaching these courses, the need to separate faculty members into separate bargaining units --based on location--diminishes. Faculty now can and do teach classes from any site in the state that has distance learning capabilities.

Change in course loads is dynamic. When a faculty member leaves a position, the University reviews that position's duties and determines, based on department needs, whether the duties should remain the same, or whether program requirements necessitate a change in duties and course load. (*See Tullis, TR at 522*).

A major, post-merger change is integration of faculty members who teach courses leading to bachelor's and graduate degrees. A preponderance of the evidence shows that these faculty members, who teach lower and upper division courses, work together in the process that addresses students' educational needs to attain baccalaureate degrees and beyond.

The record reveals that substantial changes at the University have increased the integration of many faculty members into the University since the 1987 merger and UNAC's 1996 certification. These changes have rendered the two bargaining unit descriptions impractical, ambiguous, and inappropriate under the factors in AS 23.40.090.

Accordingly, we find there are numerous, substantial changed circumstances, since certification of the UAFT and the UNAC-represented bargaining units, which justify clarification and reconsideration of the effectiveness of the original bargaining unit descriptions, and modification is warranted. In this factual framework, the central question becomes "whether the evidence establishes that the units previously found appropriate . . . have, due to changed circumstances, now become inappropriate." *Ramada Inns, Inc. D/B/A Ramada Beverly Hills*, 278 NLRB No. 95, 278 NLRB 691 (February 25, 1986). We find that they have become

inappropriate, and that they do not effectively and efficiently meet the needs of the students and the University system.

2. If there are changed circumstances, what are the appropriate bargaining units for faculty members represented by UAFT and UNAC, for the purpose of collective bargaining?

In order to clarify the existing bargaining units, we must next determine the units appropriate for collective bargaining. This determination requires analysis of the factors under AS 23.40.090, which provides:

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.

In *National Labor Relations Board v. Magna Corporation*, 734 F.2d 1057 (1984), the United States Court of Appeals for the Fifth Circuit affirmed that the community of interest standard is applicable to unit clarification proceedings:

We do not agree with the NLRB's contention that the community of interest standard is inapplicable in unit clarification proceedings involving substantially changed job classifications. As Gorman states:

The Board considers [the community of interest] factors in all of the several different procedural settings in which a unit-determination issue presents itself: (a) *initial organizations*, when there is no history of collective bargaining; (b) *severance*, when there is an existing unit – either by informal recognition or certification – and a group of employees wish to split off from the larger group and to bargain separately; (c) *accretion*, the opposite of severance, when there is an existing unit and through merger or other acquisition a group of employees (whether organized or not) is absorbed into the existing business enterprise; and (d) *unit clarification*, when the creation of a new job or the change in description of an existing job (and accretion as well) creates uncertainty as to the inclusion of those jobs in or their exclusion from an existing unit.

Gorman at 70.

National Labor Relations Board v. Magna Corporation, 734 F.2d 1057, 1062, *citing* R. Gorman, *Labor Law: Unionization and Collective Bargaining* 69 (1976) (emphasis in original).

As a preliminary matter, we address the "one-unit" issue. We reopened the record and ordered the parties to brief "the appropriateness of one unit of non-adjunct faculty at the University. . . ." (October 4, 2011). Given our review of the record in this matter, and the substantial faculty and program integration that occurred since certification of the units, we found it important to get this briefing.

The University and UAFT opposed the notion of one bargaining unit of non-adjunct faculty. The University contended that finding appropriate a merged, united unit of full-time faculty would raise a question of representation, which is inappropriate in a unit clarification proceeding. The University also argued that the facts still supported two separate bargaining units.⁵¹

UAFT agreed with the University, although in its earlier briefing it contended that this agency has authority to completely reshape the units. UAFT requested that the units take on a new shape of bipartite faculty in one unit and research faculty in the other.

UNAC contended that this agency has authority to find one unit appropriate. In its December 9, 2011, Supplemental Briefing (corrected), UNAC asserted:

The ALRA has the authority to decide 'in each case' the unit appropriate for collective bargaining. AS 23.40.090. This includes the power to determine that changed circumstances render a previously certified unit inappropriate. *Ramada Inns, Inc.*, 278 NLRB 691 (1986). *See also United Academics v. University of Alaska*, Dec. No. 202 (April 29, 1996) (evidence of changed circumstances causing a unit to become inappropriate may trigger disruption of longstanding units). In 1996, the University argued against the creation of two separate labor units for its fulltime faculty. Dec & Order 202 (1996). Instead, with the support of both unions, the ALRA certified a large residual unit, United Academics, and retained a smaller unit of historically community college faculty, now UAFT. *Id.* If, based on changed circumstances, the ALRA determines that the perpetuation of two bargaining units is no longer appropriate, Alaska and NLRB authority empower the ALRA to remedy the situation.

UNAC December 9, 2011, Supplemental Briefing (corrected) at 4.

In its brief, UNAC further asserted:

Both the University and UAFT dedicate significant space in their briefing to the limited remedies available in a unit clarification. These arguments are unavailing because they do not address the possibility that continued separation of the bargaining units is inappropriate. An initial unit determination may be changed or wholly rejected if warranted by the facts. The ALRA may conclude on this

⁵¹ Although it argued against our finding one unit appropriate, the University has repeatedly suggested merger as a viable alternative for the regular, full-time faculty bargaining units. *See, e.g.*, March 30, 2010, Motion for Partial Dismissal at 2.

record that the consolidation of the community college and the university systems has now become a reality. If so, it could conclude that only an overall unit of all non-adjunct faculty is appropriate. The Agency would be well within its authority to so hold.

(UNAC January 13, 2012, Brief at 2. *See also* Brief at 6-7).

We concur that if we conclude that one unit is the unit appropriate for collective bargaining, we could be required to order an election. We further agree with UNAC that "[a]n initial unit determination may be changed or wholly rejected if warranted by the facts." (UNAC January 13, 2012, Supplemental Reply Brief at 2). If the initial bargaining unit descriptions are not working effectively, are subject to ongoing dispute over their meaning and application, and are not a reflection of current realities, we will determine appropriate units by applying the factors listed in AS 23.40.090.

Although it disputes that one merged unit is appropriate for collective bargaining, UAFT agrees that this Agency has authority to modify the descriptions of the two bargaining units. In fact, UAFT argues that not only does this agency have authority, it should exercise its authority to craft a major modification of the bargaining unit descriptions to divide the full-time faculty along a bipartite faculty and research faculty line. (UAFT Post-Hearing Response Brief at 5, 101-102 ("The evidence . . . clearly establish [sic] that the natural boundary between the two units is based upon the teaching/research divide." October 11, 2010)).

After considering the parties' arguments on the one-unit question, and the evidence in the record, we conclude that there has been significant progress toward integration of the faculty members in the two regular, full-time bargaining units, particularly since the 1986 merger and UNAC's 1996 certification. The boundary line between the two units has blurred significantly. Interaction among faculty members has increased substantially. The old geography between the community colleges and the main campuses has diminished to the point that it has little bearing on the unit determinations. Increased program and degree offerings, and reliance on distance learning technology have resulted in more changes, post-UNAC certification.

We are sensitive to the facts that show the state's primary institution of higher learning has been impacted negatively by the unit disputes arising out of the Agency's earlier decision in Decision and Order No. 202, which found two units appropriate for collective bargaining purposes for full-time faculty, when the University requested one bargaining unit. Some of the negative impacts, not only on the University, but also on students and faculty, include increased administrative overhead, students' needs not being met as easily as they could be, hiring adjunct faculty to teach when a qualified full-time faculty member is already available, negatively impacting the parties' time and relationships as they have attempted unsuccessfully to resolve numerous unit placement disputes, and denying existing faculty the opportunity to teach courses they are qualified to teach. (*See, e.g.*, pages 19-21, 27-30, 32, and 46, *supra*).

Likely, the University's evolution is incomplete, and additional changes could blur further the current unit boundaries we are clarifying in this petition. However, a finding that one unit is

appropriate would raise a question of representation, which cannot occur in a unit clarification proceeding. Therefore, the next best alternative is clarifying the boundaries of the two current units of regular full-time faculty by applying the factors in AS 23.40.090, based on the realities that exist currently, including the historical unit parameters. Therefore, the question for determination is, what are the appropriate parameters of the two units based on the evidence and testimony in this record?

We find that the record clearly shows that the bargaining unit descriptions are not working because the parties continue to dispute the meaning of terms in the descriptions. The terms in the descriptions are not as clear as they once were.⁵² When only one faculty bargaining unit existed for the community colleges, disputed placements were fewer, although they still existed. After UNAC was certified as 'mirror image' of ACCFT/UAFT, disputes steadily increased over placing new faculty members into the bargaining units. For example, UNAC laid claim to all faculty who taught upper division, and ACCFT/UAFT laid claim to its faculty members' right to teach upper division and remain in the ACCFT/UAFT-represented unit. The University was stuck in the middle and made multiple attempts to work out a solution. Years and years of discussions among the parties to resolve the disputes were fruitless.

Merger and reorganization, program expansion, and distance learning have all affected the community of interest of these units. These factors changed the circumstances in the bargaining units and raised the question of unit composition. Some terms in the unit descriptions, such as "vocational technical," never previously defined or described, were further muddled by the factors leading to changed circumstances.

Clarification of the units and their descriptions is therefore necessary for resolution. Accordingly, we next apply the factors in AS 23.40.090 to determine the units appropriate.

In determining appropriate units, AS 23.40.090 "does not require we give more weight to any one factor over other factors. Our responsibility is to insure that employees are placed in a unit that results in a community of interest based on the case's particular facts, and the factors outlined in AS 23.40.090." *Alaska Correctional Officers Association vs. State of Alaska*, Decision and Order No. 284 at 22 (February 28, 2008) (D&O 284); *Public Safety Employees Association, AFSCME Local 803, AFL-CIO vs. City of Wasilla*; *General Teamsters Local 959 vs. City of Wasilla*, Decision and Order No. 286, at 18 (June 3, 2008) (D&O 286).

The principal question on who shares a community of interest entails a review of such factors as:

- (1) similarity in the scale and manner of determining earnings;
- (2) similarity in employment benefits, hours of work and other terms and conditions of employment;
- (3) similarity in the kind of work performed;
- (4) similarity in the qualifications, skills and training of the employees;
- (5) frequency of contact or

⁵² Since the United Academics unit description is intended to be a mirror image of the UAFT description, the disputed parts of the UAFT description – such as 'vocational technical' – become disputed terms in the United Academics description.

interchange among the employees; (6) geographic proximity; (7) continuity or integration of production processes; (8) common supervision and determination of labor-relations policy; (9) relationship to the administrative organization of the employer; (10) history of collective bargaining; (11) desires of employees; (12) extent of union organization.

Northwest Arctic Education Association v. Northwest Arctic Borough School District, Decision and Order No. 162 (June 30, 1993) (*Northwest Arctic*), citing *NLRB v. Saint Francis College*, 562 F.2d 246, 249, (3d Cir. 1977) (*Saint Francis*), quoting R. Gorman, *Labor Law: Organization and Collective Bargaining* 69 (1976). This cite from the *Saint Francis* essentially includes and expands on the factors in AS 23.40.090: "community of interest, wages, hours, and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees." In applying the community of interest and other section 090 factors, a mechanical application is not possible. The various factors included in the community of interest analysis do not always point in the same direction.

In D&O 286, we further noted:

In *N.L.R.B. v. Catalytic Industrial Maintenance Co.*, 964 F.2d 513, 518 (5th Cir. 1992), the U.S. Court of Appeals stated that, "[t]he community of interests test recognizes that '[t]he most reliable indicium of common interest among employees is similarity of their work, skills, qualifications, duties and working conditions.' *DMR Corp.*, 699 F.2d at 792 . . . 'the crucial consideration is the weight or significance, not the number, of factors relevant to a particular case.' *Purnell's Pride*, 609 F.2d at 1156."

(D&O 286 at 19).

Wages. We first find that the wages and the scale and manner of determining those wages are similar for faculty members in both unions. All faculty members' wages are based on the discipline they teach in, their credentials – including education and experience – and their course load. Salary schedules in their respective bargaining unit contracts also affect their wages, and those schedules are based on salary surveys. The mere fact that different surveys are used for each bargaining unit does not create a significant distinction by itself. The evidence supports a finding that in terms of wages, full-time faculty members have generally become integrated in the university system.

Hours. There was no evidence that the hours worked by any one full-time faculty group are dissimilar to those of any other full-time faculty group. Although some faculty members work during the summer, and some nursing faculty work on a trimester basis, the working hours of faculty are similar: their hours are based on the work load schedule they carry. As noted at pages 44-45, faculty in both bargaining units must post and maintain reasonable office hours. We find no evidence supporting any significant distinction between any particular groups in the two bargaining units regarding the hours maintained by the faculty members represented by either unit.

Other Working Conditions. We find no distinction between the bargaining units regarding health and other benefits. Regarding other conditions of employment, such as factors noted in *Northwest Arctic*, we analyze them in the next section, community of interest.

Community of Interest. Based on our review of the evidence in the record, we find that the collective bargaining unit descriptions do not reflect the realities as they exist in the full-time faculty bargaining units. When we look at similarity in the kind of work performed, similarity in the qualifications, skills and training of various faculty members, and the frequency of contact or interchange among the faculty members, we conclude that the current unit descriptions need modification to clarify their boundaries. These descriptions should mirror, as closely as current realities allow, the traditional boundaries between the bargaining units, with consideration given to the ongoing evolution and program expansion at the University.

The traditional boundary between the old community colleges' bargaining unit and the then unrepresented faculty members was, for community colleges: vocational technical, community interest, and developmental courses, and all lower division that led to six-month and one-year certificates, or a two-year associate's degree. In contrast, the then unrepresented University faculty taught courses in programs that led to bachelor's and graduate degrees, and many carried a research component in their workload. We find that this divider still works.

Applying this divider, the current realities reflect two units, one represented currently by UAFT, which contains those faculty whose principal assignment is teaching in vocational technical programs, developmental education classes, and community interest courses, as well as faculty, librarians, and counselors of a community college established by the University of Alaska Board of Regents. The second unit, currently represented by UNAC, includes those faculty who teach any courses that lead to bachelor's and graduate degrees or certificates. The UNAC-represented unit would also include all research faculty, as it has since its 1996 certification, and even in the pre-certification years when those faculty members were not included in the old ACCFT-represented bargaining unit.

Vocational technical teaching differs significantly from teaching in the academic courses that lead to bachelor's and graduate degrees or certificates because vocational technical courses contain less breadth of instruction. Vocational technical programs have traditionally prepared students "for quick transition into the workforce . . . having a year or two . . . of study leading to a credential . . . an associate's degree [or] certificate, that provides them with specific skills pertinent to working in areas of the workforce." (Driscoll, TR at 107-108). Vocational technical courses and the resulting certificates and associate's degrees require more than the skills typically obtained in high school but significantly less breadth of instruction than that required for a student pursuing a four-year degree. (*See page 22, supra*).

This skill-specific instruction requires fewer credentials for successful teaching. This is reflected in the university's policies on minimum credentials required of vocational technical faculty.

By contrast, the University requires higher-degreed credentials for faculty teaching in the bachelor's and graduate programs. Credential requirements (qualifications, skills, and training) increase with the expected course load (*See* page 16-17, *supra*). Now, the University prefers recruiting and hiring faculty who have terminal degrees for bachelor's and graduate courses and programs. This includes those who teach lower division or upper division, or a mix thereof.

Thus, the type of instruction, as well as the qualifications, skills, and training differ significantly for teaching in vocational technical programs versus teaching in the bachelor's and graduate programs. Likewise, frequency of interaction distinguishes vocational technical faculty from the academic faculty. There was ample evidence that faculty teaching at the lower and upper division levels in the same programs have significant interaction. There was even evidence of interaction between main campus faculty and community campus (extended site) faculty (e.g., mathematics faculty interaction between UAS main campus and the Sitka and Ketchikan community campuses).

We infer from the evidence regarding program interaction that vocational technical faculty members interact together more than with the academic faculty who teach in the bachelor's and graduate programs, or with those who conduct research. Conversely, the academic faculty interact with each other frequently as part of teaching in their programs. This factor supports the vocational technical/academic boundary between the UAFT and UNAC-represented units.

Regarding location of teaching and classrooms, we find this geographic factor is less of a factor now than it was before the University increased use of technology. Distance learning has minimized location issues for both instructors and for students. Distance learning has promoted integration of university faculty. However, it does not distinguish vocational technical faculty from academic (bachelor's and graduate) faculty.

Looking at supervision, there was no significant evidence distinguishing one faculty group from another. The evidence on supervision showed a relatively integrated structure of supervision that disregarded bargaining unit membership. This factor does not weigh significantly in this decision.

Finally, the evidence shows a large degree of functional integration among regular, academic faculty at the University.

History of Collective Bargaining. The history of collective bargaining and the evidence in this case weighs in favor of a vocational technical/academic divide.⁵³ The ACCFT/UAFT-represented unit long has been the bargaining unit for faculty teaching in vocational technical, developmental, and community interest programs, and in community colleges. With few exceptions, faculty members teaching lower and upper division courses in the bachelor's and graduate programs were unrepresented until 1996, when they became represented by UNAC. The UAFT/ACCFT unit did not historically include faculty members who taught upper division

⁵³ Again, the "academic" faculty include those who teach in programs that lead to bachelor's and graduate degrees, and those who carry a research component in their caseload.

or graduate-level courses, although ACCFT and the University allowed, post-merger and with concurrence of each of them, occasional upper division teaching by former community college faculty. UAFT traditionally represented faculty who taught in the community college system.

Desires of Employees. There was little testimony on the employees' desires. This factor does not weigh in favor of placing faculty in either the academic or vocational technical bargaining unit.

The adjustment we are making to the unit boundaries does not remove collective bargaining rights from any employee. They remain represented for collective bargaining purposes, and they are eligible to choose a new representative for collective bargaining by filing an appropriate representation petition under AS 23.40.100.

The freedom to choose a bargaining representative is different from the issue of the appropriateness of the unit. This issue was addressed in Decision and Order No. 201.

PSEA is not persuasive. It confuses the issue of freedom of choice of a bargaining representative with the issue of the appropriateness of the unit. The appropriateness of the unit is a responsibility of the Agency. Employees have an important stake in the outcome of that determination, as do any potential bargaining representatives and the employer. The Agency is charged with taking the employees' preference into account in the initial unit determination. After the determination is made, the employees exercise the right to choose a bargaining representative in an election and the majority of those voting control the outcome.

Unsurprisingly, not being of one mind, all employees will not have chosen the representative certified. . . .

Public Safety Employees Association v. State of Alaska and Alaska State Employees Association, AFSCME Local 52, AFL-CIO, Decision and Order No. 201 at 10-11 (April 4, 1996).

Fragmentation. Because this decision does not create a new bargaining unit, fragmentation is not an issue.

We find, based on the record, that what remains of the UAFT-represented unit is that which historically has been the province of the community colleges – vocational technical programs; certificate and community interest programs, and developmental education programs; and faculty, librarians, and counselors of community colleges established by the University's Board of Regents. Integration of programs and degrees makes it appropriate to include all of the regular, full-time, academic faculty in the unit that UNAC represents currently.

3. Have vocational technical programs evolved to the point that some previously vocational technical faculty should be classified as academic faculty members, while others remain under the definition of principally vocational technical? If so, what is an appropriate definition of vocational technical instruction?

We have concluded that, based on the realities as they exist under the facts of this case, the appropriate units for collective bargaining are: 1) a unit of faculty whose principal assignment is to teach in the vocational technical, developmental, and community interest programs, and faculty, librarians, and counselors of community colleges established by the Board of Regents, currently represented by UAFT, and 2) a unit of academic faculty that includes research faculty and faculty teaching in programs that lead to bachelor's and graduate degrees or certificates, represented currently by UNAC.

The next question for decision is: what is "vocational technical" for the purposes of placement into the UAFT-represented bargaining unit?

The substantial changes in many programs traditionally deemed "vocational technical" under the old community college banner and in the responsibilities of faculty who teach classes in those programs raise the question whether the programs should still be considered vocational technical programs under the bargaining unit descriptions that we are modifying in this unit clarification decision. However, this question cannot be answered easily. There is no definition of "vocational technical" in the parties' collective bargaining agreements. The parties dispute what "vocational technical" should mean in the context of their contracts and placing vocational technical faculty members into those bargaining units.

The University and UNAC contend that programs are not vocational technical if the courses in those programs can lead to attaining a bachelor's or graduate degree.⁵⁴ Viewed another way, programs are vocational technical if they don't include courses leading to bachelor's or graduate degrees. These programs lead to attaining certificates and associate degrees as long as they do not include courses that lead to bachelor's and graduate degrees.

UAFT disagrees. It contends that,

What used to be called "Vocational/Technical is now known as Career & Technical. . . . As the field of knowledge expands, the expectation of the skilled work rises, so the way in which people are trained for jobs changes. . . Now there is a more philosophical approach to workforce development, driven by federal policies on how funding is awarded. . . This approach is to look at careers in terms of occupational areas or career clusters, with each area having entry level, technical and professional level skills, so that workers can use their education to advance up a career ladder.

(UAFT's Post-Hearing Response Brief at 12, October 11, 2010) (Citations omitted).

⁵⁴ See Behner, TR at 310.

UAFT seems to suggest that if a program was at any time in the past considered vocational technical, it remains vocational technical forever. (*See, e.g., UAFT's Post-Hearing Response Brief at 94-95*). In fact, UAFT admonishes this Agency to tread carefully in defining "vocational technical." (UAFT's Post-Hearing Response Brief at 95, f.n. 57). UAFT argues that "vocational technical" is not "indistinguishable from lower division instruction." (UAFT's Post-Hearing Response Brief at 95, f.n. 57). UAFT claims that vocational technical programs are evolving into three and four-year programs. (UAFT's Post-Hearing Brief at 95, f.n. 57).

In the end, the definition of vocational technical would be virtually irrelevant to UAFT in the alignment it proposes for the two bargaining units in this unit clarification petition. UAFT asserts that the facts support a new boundary that practically negates the necessity of including or defining vocational technical. This proposed boundary would place all bipartite faculty, vocational technical or not, and lower or upper division or not, into UAFT's bargaining unit. Only faculty with a research designation would remain in the UNAC-represented unit. UAFT argues that the "realities as they exist" support this configuration. (UAFT's Post-Hearing Response Brief at 96).

UAFT makes this proposal even though it flies in the face of the facts. UAFT ignores the evidence and testimony on the definition and parameters of "vocational technical." None of the documents or witnesses supports the proposition that vocational technical includes disciplines offering three-year, bachelor's, or graduate programs. Several witnesses testified otherwise: vocational technical is a course of studies leading to certificates, and one or two-year degrees. In fact, from its 1954 creation to its virtual disappearance in the 1987 merger, the entire community college system offered nothing "higher" than a two-year associate's degree. The primary focus of these community college offerings was vocational technical. The marker for vocational technical was certificates and associates degrees that required completing lower division courses. We find this is still a valid marker for vocational technical.

Now, not unlike the disappearance of all but one community college from Alaska's higher education system, many programs once deemed vocational technical have lost that marker. They have evolved into academic, non-vocational technical programs.

Accordingly, we conclude that, based on the evidence and testimony in this record, and under the facts of this case, the University's petition to clarify the UAFT and UNAC bargaining units is granted. The bargaining unit descriptions will be modified to reflect unit descriptions, noted above, that provide for a vocational technical/academic divide. The modified unit descriptions are attached to this decision and order.

THE UNIVERSITY'S REQUESTS IN ITS PETITION FOR CLARIFICATION

In its petition for clarification, the University requested clarification of five issues related to the parameters of the UAFT and UNAC-represented bargaining units. We address each issue now, in the context of the unit boundaries addressed and determined above. The University's petition is granted as indicated below.

1. Status of 16 existing "grandfathered" UAFT academic faculty teaching upper division classes on the UAA and UAS main campuses. The University seeks guidance as to which of the two bargaining units these faculty should be placed. (University's October 11, 2010, Post-Hearing Reply Brief at 30). Given our determination that the academic faculty teaching upper division courses belong in the UNAC-represented unit, these "grandfathered" faculty are placed into the academic unit currently represented by UNAC.

2. Current and future UAFT academic faculty on the UAA and UAS main campuses who may, in the future, teach upper division classes. (University's October 11, 2010, Post-Hearing Reply Brief at 30). Since upper division courses lead to and are related to completing bachelor's and graduate degrees or certificates, and since we have determined that the faculty teaching these courses are appropriately in the academic bargaining unit, these faculty are placed into the unit that UNAC currently represents.

3. Faculty in the UNAC-represented unit who work at remote sites, including the Department of Alaska Native and Rural Development (DANRD), the School of Fisheries and Ocean Sciences (SFOS), the School of Natural Resources and Agricultural Sciences (SNRAS), the Fishery Industrial Technical Center (FITC), and the Marine Advisory Program (MAP). (University's October 11, 2010, Post-Hearing Reply Brief at 30). The University seeks clarification that these faculty are and have been placed appropriately in the bargaining unit that UNAC represents because they were historically and intentionally excluded from the bargaining unit that UAFT represents. Like the earlier requests, this request seeks clarification of faculty who teach in courses that lead to bachelor's or graduate degrees or certificates, except for the Marine Advisory Program faculty, who perform duties similar to those of the cooperative extension faculty.⁵⁵ All of these faculty are appropriately placed into the academic unit that UNAC represents.

4. UAA & UAS Main Campus Faculty in programs at Community and Technical College (CTC), in Geomatics, Human Services, and in the Associate Degree Nursing program. (University's October 11, 2010, Post-Hearing Reply Brief at 30-31). Essentially, the University requests that, because these programs have evolved and expanded to now offer bachelor's and (in some cases) graduate degrees, they should no longer be considered vocational technical. Therefore, the University suggests these faculty belong in the bargaining unit UNAC represents. We agree. All of these programs lead to attaining bachelor's and (in some programs) graduate degrees. Even the classes in the nursing associate's degree program can be used for and lead to completing the bachelor's degree in nursing. The faculty in these programs are appropriately placed into the academic bargaining unit currently represented by UNAC.

5. UAF main campus faculty. (University's October 11, 2010, Post-Hearing Reply Brief at 31). The University seeks clarification and a finding that all University of Alaska Fairbanks (UAF) main campus faculty, excluding faculty in the Developmental Education program, are properly placed into the bargaining unit currently represented by UNAC. Faculty

⁵⁵ The cooperative extension faculty are already in the UNAC-represented bargaining unit. Under the modified unit description, these faculty will remain in that unit.

teaching in the Developmental Education program are properly placed into the vocational technical unit that UAFT represents. Those main campus faculty who teach in programs leading to the attainment of bachelor's or graduate degrees or certificates, and those faculty who carry a research component to their workload, are appropriately placed in the UNAC-represented academic unit. Those faculty who teach in vocational technical programs or certificate programs that cannot lead to completion of a bachelor's or graduate degree or certificate are appropriately placed into the vocational technical bargaining unit that UAFT represents.

CONCLUSIONS OF LAW

1. The petitioner, University of Alaska, is a public employer under AS 23.40.250(7). The University of Alaska Federation of Teachers, Local 2404, APEA/AFT, AFL-CIO, and United Academics-AAUP, AFL-CIO, are labor organizations under AS 23.40.250(5). The full-time instructional faculty members at the University of Alaska are public employees, as defined in AS 23.40.250(6). This Agency has jurisdiction under AS 23.40.090 and 8 AAC 97.050 to consider this petition.

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

3. Unit clarification proceedings are governed by 8 AAC 97.050. Appropriate unit issues in unit clarification proceedings are governed by AS 23.40.090.

4. The University has proven by a preponderance of the evidence that changed circumstances since certification of the University of Alaska Federation of Teachers and United Academics bargaining units justify clarifying the boundaries of the two bargaining units represented by the University of Alaska Federation of Teachers and United Academics.

5. Two full-time faculty bargaining units remain appropriate for collective bargaining purposes at the University of Alaska. The unit boundaries found to be appropriate at this point in the University's evolution are based on an academic versus vocational technical divide. Examining AS 23.40.090, we conclude that the community of interest and history of collective bargaining factors support the modified academic versus vocational technical unit boundaries in this decision and order. The factors wages, hours, and other working conditions of the employees do not support placing the full-time faculty members in one bargaining unit versus the other, and they are neutral. Since little evidence exists regarding the employees' desires, no weight is given to this factor. Both bargaining units are as large as is reasonable, and unnecessary fragmenting has been avoided as no new bargaining unit has been created. Due to course program evolution, integration of faculty, and distance learning, among other factors, the physical location at which teaching occurs is no longer relevant in determining the two bargaining units' boundaries, except if the faculty members are employed at a community college established by the University of Alaska's Board of Regents.

6. The vocational technical bargaining unit that the University of Alaska Federation of Teachers represents currently is clarified to include regular faculty whose principal

assignment is instruction in vocational technical programs or certificate programs; Developmental Education Program faculty including community interest faculty; and faculty, librarians, and counselors of a community college established by the University of Alaska's Board of Regents. A regular faculty member is responsible for a 50 percent or greater workload.

7. The academic bargaining unit that United Academics, AAUP, AFL-CIO, represents currently is clarified to include a statewide unit of all regular, non-adjunct, academic faculty who teach courses that lead to bachelor's or graduate degrees or certificates, and who are 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; School of Natural Resources and Agricultural Sciences faculty, School of Fisheries and Ocean Sciences faculty, Department of Alaska Native and Rural Development faculty, Fishery Industrial Technical Center faculty, and Marine Advisory Program faculty; Post-Doctoral Fellows; Librarians, Counselors, Rehabilitation faculty, Advisors, and other academically related personnel; Department Heads/Chairs, and those administrators who are elected by the faculty; faculty who teach in the geomatics, human services, and associate degree nursing programs, and other similar programs that evolve, or have evolved, to offer a baccalaureate or graduate degree or certificate; campus faculty (main campus faculty, extended site campus faculty, and remote site campus faculty) who teach in programs leading to baccalaureate or graduate degrees or certificates; and faculty who carry a research component in their workload. A regular faculty member is responsible for a 50 percent or greater workload.

8. The University proved each element of its case by a preponderance of the evidence.

ORDER

1. The petition of the University of Alaska is granted, as modified by this decision.

2. The collective bargaining unit descriptions of the University of Alaska Federation of Teachers and United Academics are modified in accordance with this decision. The modified bargaining unit descriptions are attached to this decision and order as Appendix A and Appendix B.

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 units affected by the decision and order are employed or, alternatively, serve each employee affected personally. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Gary P. Bader, Board Chair

Matthew R. McSorley, Board Member

Tyler Andrews, Board Member

APPENDIX A
VOCATIONAL TECHNICAL BARGAINING UNIT DESCRIPTION (UAFT)

DECEMBER 17, 2013, CLARIFICATION OF THE BARGAINING UNIT FOR FACULTY REPRESENTED BY THE UNIVERSITY OF ALASKA FEDERATION OF TEACHERS, LOCAL 2404, AFL-CIO, MODIFYING THE 1992 STIPULATION BY THE FORMER ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, LOCAL 2404, AFL-CIO AND THE UNIVERSITY OF ALASKA

The former Alaska Community Colleges' Federation of Teachers, Local 2404, AFL-CIO (ACCFT), is now known as the University of Alaska Federation of Teachers, Local 2404, AFL-CIO (UAFT). On June 10, 1992, the Alaska Labor Relations Agency approved the attached stipulation by the ACCFT and the University of Alaska, finding that the stipulated bargaining unit was "a unit appropriate for collective bargaining at the University of Alaska." *University of Alaska v. Alaska Community Colleges' Federation of Teachers, Local 2404, AFL-CIO*, Case No. 91-038-UC, Stipulation, at 3 (June 10, 1992).

University of Alaska vs. University of Alaska Federation of Teachers, LOCAL 2404, APEA/AFT, AFL-CIO and United Academics-AAUP, AFL-CIO, Decision and Order No. 301, issued on December 17, 2013, decided the issues in a subsequent unit clarification petition, Case No. 08-1537-UC. In this decision, the Alaska Labor Relations Agency amended the bargaining unit descriptions for the two regular, non-adjunct bargaining units represented currently by the University of Alaska Federation of Teachers, Local 2404, AFL-CIO (UAFT) and the United Academics-AAUP/AFT, AFL-CIO (UNAC). Decision and Order No. 301 modifies the bargaining unit that UAFT represents currently by including faculty who instruct in vocational/technical programs or certificate programs, and excluding faculty who instruct in academic programs that can lead to a baccalaureate or graduate degree. Teaching in a two-year program that offers an associate's degree, which can be credited toward a bachelor's or graduate degree or certificate, is defined as teaching in an academic program, not a vocational technical program. Faculty members with one or more research components in their workloads are included in the academic unit represented by UNAC. The unit description for the vocational technical bargaining unit represented currently by University of Alaska Federation of Teachers, Local 2404, AFL-CIO is amended as follows:

INCLUDED: Regular faculty whose principal assignment is instruction in Vocational/Technical Programs or Certificate Programs; Developmental Education Program faculty, and community interest faculty; and faculty, librarians, or counselors of a community college established by the University of Alaska Board of Regents. (A regular faculty member means having responsibility for a 50 percent or greater workload).

EXCLUDED: Faculty who are in the adjuncts' bargaining unit; Faculty who are in the academic bargaining unit represented currently by the United Academics-AAUP/AFT, AFL-CIO; and all other University of Alaska employees.

APPENDIX B
ACADEMIC BARGAINING UNIT DESCRIPTION (UNAC)

Based on University of Alaska vs. University of Alaska Federation of Teachers, LOCAL 2404, APEA/AFT, AFL-CIO and United Academics-AAUP, AFL-CIO, Decision and Order No. 301, issued on December 17, 2013, which decided the issues in unit clarification petition, Case No. 08-1537-UC, the Alaska Labor Relations Agency has amended the bargaining unit descriptions for both the units represented currently by the United Academics-AAUP/AFT, AFL-CIO, and the University of Alaska Federation of Teachers, Local 2404, AFL-CIO. Decision and Order No. 301 modifies the bargaining unit descriptions for the two non-adjunct faculty bargaining units by responsibility for academic instruction (academic bargaining unit) versus instruction in vocational technical programs or certificate programs (vocational technical bargaining unit). The unit description for the academic unit represented currently by United Academics-AAUP/AFT, AFL-CIO is amended as follows:

INCLUDED: A statewide unit of all regular, non-adjunct, academic faculty who teach courses that lead to bachelor's or graduate degrees, and who are 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; School of Natural Resources and Agricultural Sciences faculty, Department of Alaska Native and Rural Development faculty; School of Fisheries and Ocean Sciences faculty, Fishery Industrial Technical Center faculty, and Marine Advisory Program faculty; Post Doctoral Fellows; Librarians, Counselors, Rehabilitation faculty, Advisors, and other academically related personnel; Department Heads/Chairs, and those administrators who are elected by the faculty; faculty who teach in the geomatics, human services, and associate degree nursing programs, and other similar programs that evolve, or have evolved, to offer a baccalaureate or graduate degree or certificate; campus faculty (main campus faculty, extended site campus faculty, and remote site campus faculty) who teach in programs leading to baccalaureate or graduate degrees or certificates; and faculty who carry a research component in their workload. (A regular faculty member means having responsibility for a 50 percent or greater workload).

EXCLUDED: Faculty who are in the adjuncts' bargaining unit; faculty who are in the Vocational/Technical bargaining unit currently represented by the University of Alaska Federation of Teachers, Local 2404, AFL-CIO whose principal assignment is instruction in Vocational/Technical Programs or Certificate Programs; Developmental Education Program faculty, and community interest faculty; faculty, librarians, or counselors of a community college established by the University of Alaska Board of Regents, and all other University of Alaska employees.

OWENS & TURNER, P.C.
Thomas P. Owens, Jr.
Attorneys for Petitioner
University of Alaska
1500 West 33rd Avenue, Suite 200
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Alaska Labor Relations Agency

BEFORE THE
ALASKA LABOR RELATIONS AGENCY
AT ANCHORAGE

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UNIVERSITY OF ALASKA,)
)
Petitioner,) Case No. 91-038-UC
)
v.)
)
ALASKA COMMUNITY COLLEGES') STIPULATION
FEDERATION OF TEACHERS, LOCAL)
2404, AFL-CIO,)
)
Respondent.)
_____)

COME NOW the parties in the above-captioned matter, by and through counsel of record, and stipulate and agree as follows:

1. Upon issuance of an order by the Alaska Labor Relations Agency establishing the collective bargaining unit stipulated to and agreed to by the parties in

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paragraph 2 below, the Agency shall dismiss the above-captioned unit clarification petition with prejudice, with each party to bear its own costs and attorneys fees.

2. The parties hereto stipulate and agree that the bargaining unit of employees of the University of Alaska exclusively represented by the Alaska Community Colleges' Federation of Teachers, Local 2404, AFL-CIO for collective bargaining purposes shall be described as follows:

Employees of the University of Alaska who are faculty, librarians, or counselors of a community college established by the University of Alaska Board of Regents; faculty, academic counselors or librarians whose principle assignment is at an extended site of the University of Alaska; faculty whose principle assignment is vocational-technical instruction; or 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; but excluding department heads/chairs, supervisors, cooperative extension personnel, temporary personnel, aides, assistants, office clericals, those administrators who are not elected by the faculty and other persons not employed as instructional personnel or counselors as described above for at least sixty percent (60%) of a full-time workload assignment or of the full-time workload assignment for the

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counselors and librarians described above.

DATED at Anchorage, Alaska this 15th of May, 1992.

ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, LOCAL 2404, AFL-CIO - RESPONDENT

DATED: 5/26/92

By: William K. Jermol
William K. Jermol
By: Stephen A. McAlpine
Stephen A. McAlpine

UNIVERSITY OF ALASKA - PETITIONER

DATED: 5/15/92

By: Thomas P. Owens, Jr.
Thomas P. Owens, Jr.

ORDER

The unit described in paragraph 2 above, having been agreed to by the employer and the union is hereby declared to be a unit appropriate for collective bargaining at the University of Alaska. The unit clarification petition 91-038-UC is dismissed with prejudice with each party to bear its own costs and attorneys fees.

DATED at Anchorage, Alaska this 10th of June May, 1992.

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ALASKA LABOR RELATIONS AGENCY

By: *Jan Hart DeYoung*
~~Barrett Smith~~
Jan Hart DeYoung
Hearing Examiner

By: _____
Bill Gary Johnson

By: _____
James Elliott

This is to certify that on the
11th day of June, 1992, a true
and correct copy of the foregoing
was mailed, postage prepaid to

William K. Jermain

Stephen A. McAlpine

Thomas P. Owens, Jr.

Jan Hart DeYoung
Signature

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of mailing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true, and correct copy of the order in the matter of *University of Alaska vs. University of Alaska Federation of Teachers, Local 2404, APEA/AFT, AFL-CIO, and United Academics-AAUP, AFL-CIO*, Case No. 08-1537-UC, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 18th day of December, 2013.

Kathleen D. Wagar
Office Assistant III

This is to certify that on the 18th day of December, 2013,
a true and correct copy of the foregoing was mailed,
postage prepaid, to:

Thomas Wang, University of Alaska
Kathleen Phair Barnard, UAFT
Frank Freed and Beth Bloom, UNAC

Signature