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# Alaska Labor Relations Agency 2013 Annual Report

*State of Alaska  
Governor Sean Parnell*

*Department of Labor  
& Workforce Development  
Commissioner Dianne Blumer*



*Alaska Labor Relations Agency  
1016 West Sixth Avenue, Suite 403  
Anchorage, Alaska 99501-1963  
labor.relations@alaska.gov*

*Gary P. Bader, Chair  
Mark Torgerson, Administrator*

*Submitted June 5, 2014*

# 2013 ANNUAL REPORT

Submitted June 5, 2014  
(In accordance with AS 23.05.370)

## INTRODUCTION

The Alaska Labor Relations Agency, or ALRA, administers the Public Employment Relations Act (PERA) for public employers and employees, including the State, municipalities, public schools, and the University. The Agency also administers the railroad labor relations laws for the Alaska Railroad Corporation. ALRA investigates and processes petitions for certification or decertification of bargaining representatives, petitions to clarify the composition of public employee bargaining units and to amend the certification of units, and charges of unfair labor practices. The Agency also enforces collective bargaining agreements, determines employee strike eligibility, and rules on claims for religious exemption from the obligation to pay fees to a bargaining representative.

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## PERSONNEL

### BOARD MEMBERS

A board of six members governs the Agency. The board members serve staggered three-year terms and must have backgrounds in labor relations. Two members each must be drawn from management, labor, and the general public. AS 23.05.360(b). Members volunteer their time as they are unpaid, but they receive per diem. Not more than three members may be from one political party. The following Alaskans serve on the Board:

Gary P. Bader, Chair	Reappointed March 1, 2013	Public
Lynne Curry, Vice Chair	Appointed March 1, 2014	Public
Will Askren, Board Member	Reappointed March 1, 2014	Management
Tyler Andrews, Board Member	Reappointed March 1, 2012	Management
Matthew McSorley, Board Member	Reappointed March 1, 2012	Labor
Daniel Repasky, Board Member	Reappointed March 1, 2013	Labor

### STAFF

Mark Torgerson, Administrator/Hearing Examiner  
Jean Ward, Hearing Officer/Investigator  
Margie Yadlosky, Human Resource Consultant I  
Kathleen Duncan, Office Assistant III

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OFFICE

1016 W. Sixth Avenue, Suite 403  
Anchorage, Alaska 99501-1963

Phone: 907.269.4895

Fax: 907.269.4898

Website: <http://labor.alaska.gov/laborr/home.htm>

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STATUTES

Relevant statutes include AS 23.05.360--23.05.390; AS 23.40.070--23.40.260 (PERA); and AS 42.40.705--42.40.890 (railroad).

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REGULATIONS

The Agency's regulations appear in 8 AAC 97.010--8 AAC 97.990.

## 2013 HIGHLIGHTS.

***Board Appointments.*** During 2013, Governor Sean Parnell reappointed Board Chair Gary P. Bader to another three-year term on the Board. Chair Bader has served on the Board for more than ten years. Governor Parnell also reappointed Board Member Daniel Repasky to another three-year term. Repasky has served as a labor member for more than four years. In early 2014, the governor reappointed board member Will Askren to a management seat and appointed Lynne Curry to a public seat. Ms. Curry replaces Aaron Isaacs, Jr. who was initially appointed to a seat on the Alaska Labor Relations Board June 12, 2000. Mr. Isaacs served as Chair and Vice-Chair for almost 14 years.

***Interest Card Forgery Case.*** Since 2010, the Agency has spent considerable time working with and assisting investigators and prosecutors at the State's Office of Special Prosecutions in a criminal investigation related to forgery in a representation petition filed at the Agency. The investigation culminated in criminal charges filed in Alaska Superior Court on February 1, 2012, against a former union employee and a former state assistant attorney general. The former union employee was indicted on several felony forgery charges, and the former assistant attorney general was indicted on a charge of official misconduct, a Class A Misdemeanor.

On February 25, 2013, the former union employee pled guilty to forgery of legal documents. She was sentenced to 24 months in jail, with all time suspended, and ordered to pay the Department more than \$12,000 in restitution. The charge against the former assistant attorney general is still pending in criminal court.

**Caseload Trends.** Case filings in 2013 (14) equaled case filings in 2012 (14). This continues a short-term trend of fewer filings in recent years. (See "CASE LOAD COMPARISON BY YEAR" chart, page 6).

As shown by the "OVERVIEW" table on page 7, the number and type of cases filed each year is unpredictable. The Agency has no direct control over case filings. Factors that affect filings include organizing efforts, expiration of collective bargaining agreements, economic factors, and changes to statutes and regulations.

**Appeals to Alaska Courts.** There were no appeals of agency Decision and Orders to the Superior or Supreme Courts during 2013. However, an appeal was filed in Superior Court on January 17, 2014, concerning unit disputes at the University of Alaska. Until this appeal, there had not been an appeal of an agency decision since 2007.

**Unit Clarification Petitions.** In 2013, one unit clarification (UC) petition was filed. (See "CASES FILED" on page 7 for a year-by-year comparison). Except in 2006 when 4 UC's were filed, UC case filings have decreased in recent years. Historically, UC petitions once outnumbered all other case filings combined.

Historically, UC petitions typically have involved a dispute over the extent of an employee's supervisory or confidential duties. The employee's actual duties affect bargaining unit placement. Most UC disputes have involved the State of Alaska, the Alaska State Employees Association (ASEA) (the largest state union, representing the general government unit), and the Alaska Public Employees Association (APEA) (representing the state supervisors' unit). The unit clarification petition filed in 2013 involved a position at the Denali Borough School District represented by the Denali Educational Support Professional Association, NEA-AK/NEA. In recent years, issues on UC petitions include whether a position should be excluded from all bargaining units, or whether a position belongs in a certificated unit of teachers or support staff.

**Unfair Labor Practice Complaints.** Unfair labor practice (ULP) charges filed in 2013 (12) increased from 2012 (8). (See "CASES FILED" on page 7 for a year-by-year comparison). The completion of unfair labor practice cases is generally the most time-consuming duty in the Agency's workload because the process requires investigations, prehearing conferences, and hearings. Like other case types, ULP case filings are unpredictable in their nature and complexity. (See "CASES FILED" page 7, analysis at page 12, and chart on page 14). In 2013, 33% of ULP filings were education-related while 67% were State-related cases. There were no political subdivision or railroad cases filed during 2013. (See "Unfair Labor Practice Charges Filed" page 13).

In 2013, 41% of unfair labor practice charges concerned bad faith bargaining, followed by domination or interference with formation, existence or administration of a labor organization at 17%, interference with employee's protected rights at 17%, duty of fair representation cases at 17%, Weingarten<sup>1</sup> cases at 8%. Bad faith bargaining charges usually arise in the context of collective bargaining: one party believes the other party has failed to bargain in good faith under the law. Five ULP investigations were completed in an average of 98 days compared to a 150-day average in 2012. This is a 35% decrease in the average number of days to complete investigations.

**Elections.** There were no representation petitions filed or conducted in 2013. The number of representation petitions has steadily decreased since 2010 when 11 representation petitions were filed. There have been no decertification petitions filed for seven years. (See "CASES FILED" page 7).

**Strike Petitions.** No strike notice or strike class petitions were filed in 2013. (See "CASES FILED" page 7).

**Emphasis on Informal Resolution.** The Agency continues to encourage informal resolution through mediation and other means. The Agency's hearing officer works with parties to settle unfair labor practice charges. When successful, informal resolution saves the parties and the Agency the time and expense required to litigate disputes at a hearing. The Agency continues to resolve some disputes informally. In 2013, the hearing officer resolved five unfair labor practice cases informally.

**Website.** The Agency provides information on its Internet web site, accessible through the State of Alaska's home page (<http://www.alaska.gov>) or directly at <http://labor.alaska.gov/laborr/home.htm>. The site contains a link to contact the Administrator by e-mail, information about Agency programs and resources, and access to a searchable database of all Agency decisions. The Agency continues to add new materials to the website and welcomes public suggestions.

**Training.** The ALRA Board has four members who are currently employed in related fields and two members who are retired from related fields. The Board is supported on a day-by-day basis both legally and administratively by ALRA staff who have both certificated legal experience and many years of on-the-job experience. It is important that the Board and staff participate in periodic continuing education to allow a professional and objective response to the myriad of complex and ever-evolving labor relations issues that arise before the Agency. Due to a lack of funding, however, no board member has attended training or continuing education for several years. This lack of training could place the ALRA and its work at risk over the long term.

The Agency again provided training to a law student intern during the summer of 2013. This intern program, initiated in 2008, is an effort by Seattle University Law

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<sup>1</sup> Employee right to union representation at investigatory interview that could lead to discipline.

School, the University of Alaska Anchorage, and Alaskan governmental entities to provide legal experience and training to law students. The Agency previously shared responsibility to train two interns with the Alaska Workers' Compensation Appeals Commission. In 2013, the Agency assumed sole training responsibility for one intern.

Interested law students apply through the Seattle University Law School as part of its "Study Law in Alaska" program. Students are selected by the Administrator. Since Alaska does not have a law school, the program gives law students an opportunity to work in the labor law field and to experience a summer in Alaska. Due to limited funding, interns are no longer reimbursed for their plane fare or other expenses. Interns do not receive any compensation from the State for their training and work for the Agency.

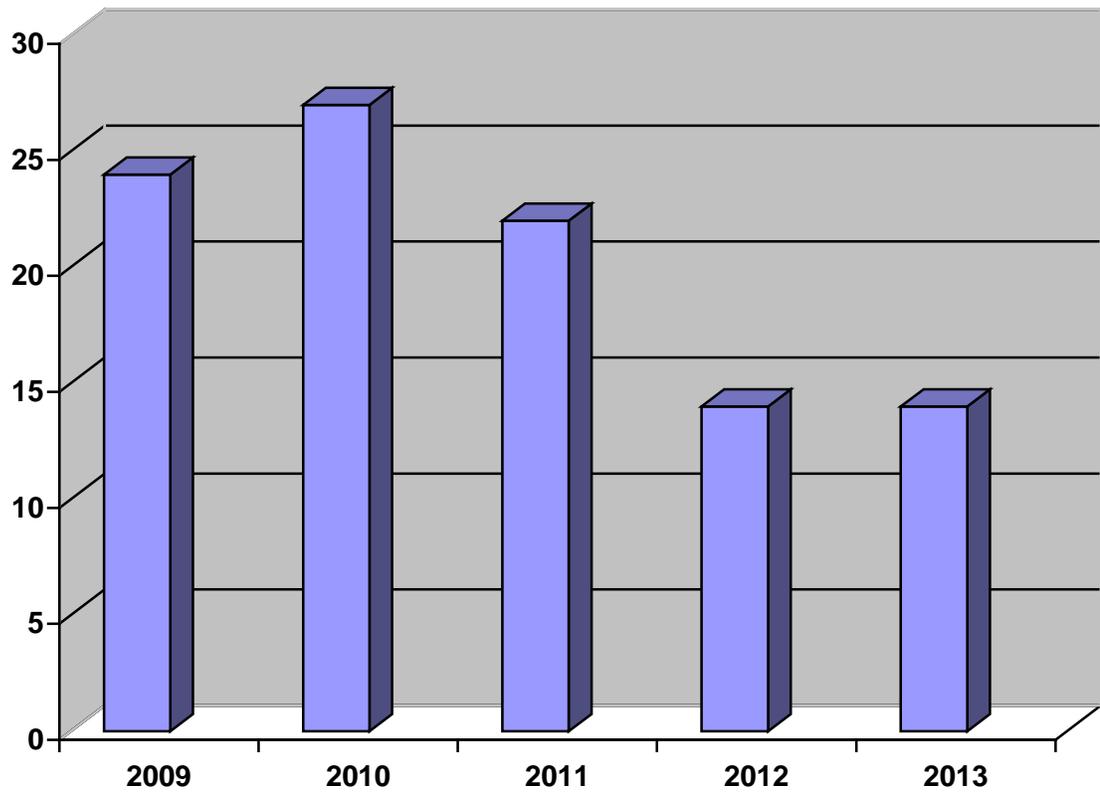
The program's goal is to encourage law students to consider relocating to Alaska and work in labor law. The Agency has received positive reviews from participating students and from Seattle University Law School's program director. Last year's summer intern was John Ditore from Seattle University Law School. Thus far, three of the eleven interns who have completed the program have either moved to Alaska or plan to move here. Two former interns have passed the Alaska Bar exam and are now practicing law in Alaska.

***Outreach.*** Agency Hearing Officer Jean Ward gave a presentation during 2013 to the Department of Labor and Workforce Development's Wage and Hour state-wide staff members. She spoke on ALRA and the Public Employment Relations Act it enforces. She also shared insights gained through 23 years of experience at ALRA about the importance of parties' relationships, particularly after they experience long, difficult negotiations. After her presentation, Jean answered participants' questions.

**CASE STATUS SUMMARIES**

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**CASE LOAD COMPARISON BY YEAR**



**OVERVIEW**

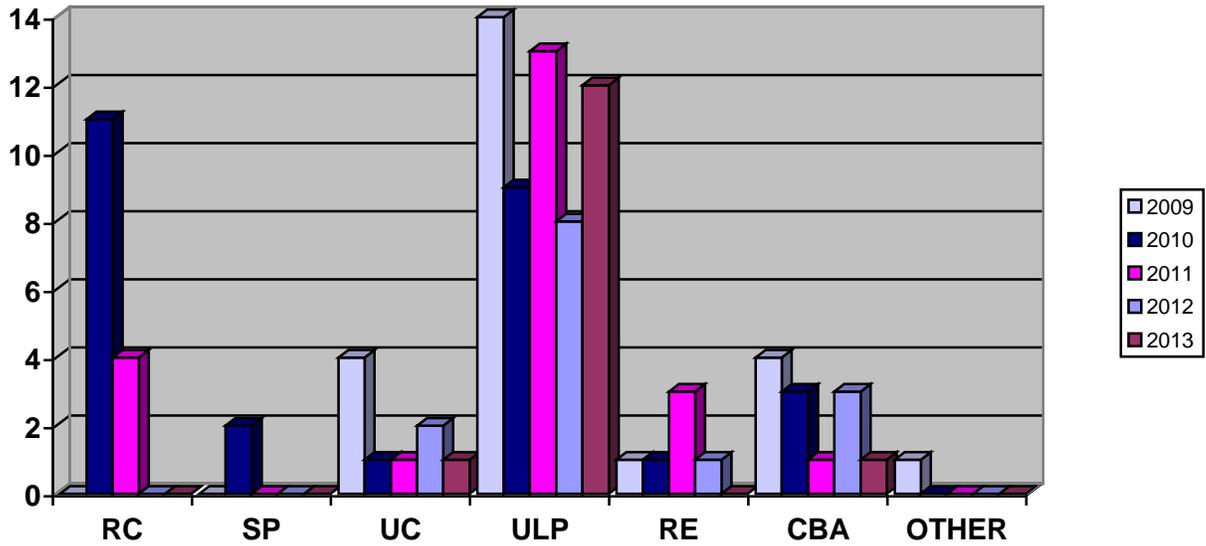
<b>CASES FILED</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Amended Certification (AC)	0	1	0	0	0
Representation (RC)	0	7	2	0	0
Decertification (RD)	0	0	0	0	0
Decert. to certify a new rep.(RC/RD)	0	3	2	0	0
Strike notice or strike class petition (SP)	0	2	0	0	0
Unit Clarification (UC)	4	1	1	2	1
Unfair Labor Practice Charge (ULP)	14	9	13	8	12
Religious Exemption Claims(RE)	1	1	3	1	0
Contract Enforcement (CBA)	4	3	1	3	1
Other (OTH)	1	0	0	0	0
<b>TOTAL</b>	<b>24</b>	<b>27</b>	<b>22</b>	<b>14</b>	<b>14</b>

<b>AGENCY ACTIVITY</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Unfair Labor Practice Investigations	11	8	8	8	5
Unit Clarification Investigations	0	0	4	1	1
Decisions and Orders Issued	2	2	5	1	4
Other Board Orders Issued	3	2	6	2	2
Hearing Officer Orders Issued	1	3	6	4	1
Elections Conducted (includes AC)	0	1	5	1	0
<b>TOTAL</b>	<b>17</b>	<b>16</b>	<b>34</b>	<b>17</b>	<b>13</b>

<b>FINAL DISPOSITION</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Notices of dismissal issued	3	6	9	4	2
Cases settled or withdrawn	12	10	8	10	4
Cases that went to hearing	1	1	5	3	0
Impasse matters settled or withdrawn	0	0	0	0	0
Cases deferred to arbitration	0	1	0	0	0
<b>TOTAL</b>	<b>16</b>	<b>18</b>	<b>22</b>	<b>17</b>	<b>6</b>

CHARTS

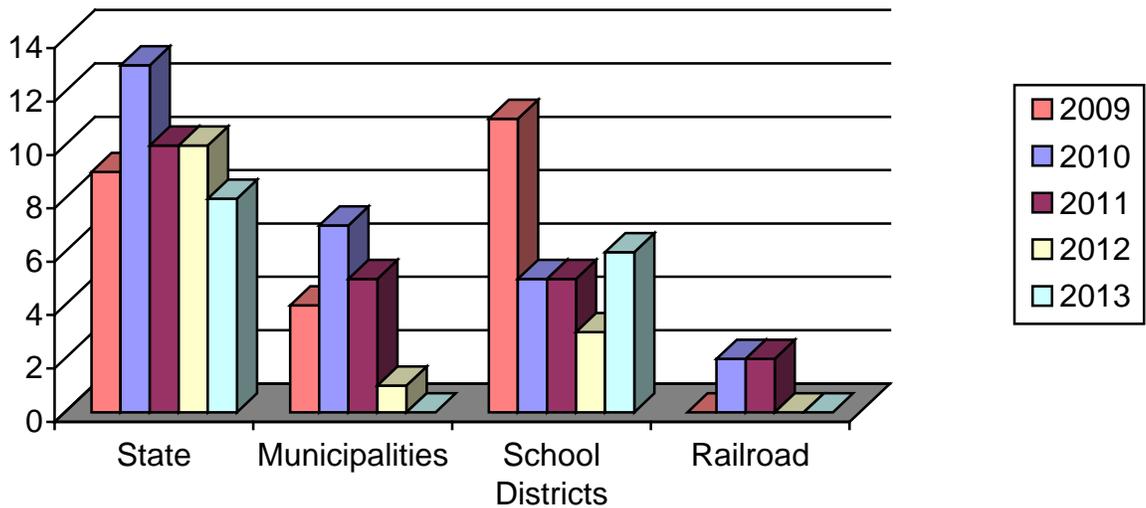
PROGRAM COMPARISON BY YEAR



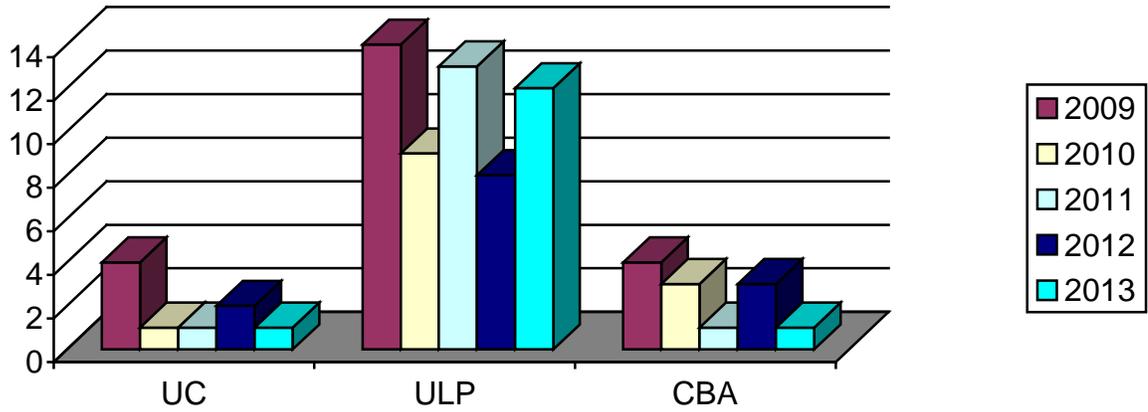
RC Representation petitions  
 SP Strike notices and petitions  
 UC Unit clarification petitions

ULP Unfair labor practice charge  
 RE Religious exemption claim  
 CBA Contract Enforcement

EMPLOYER COMPARISON BY YEAR

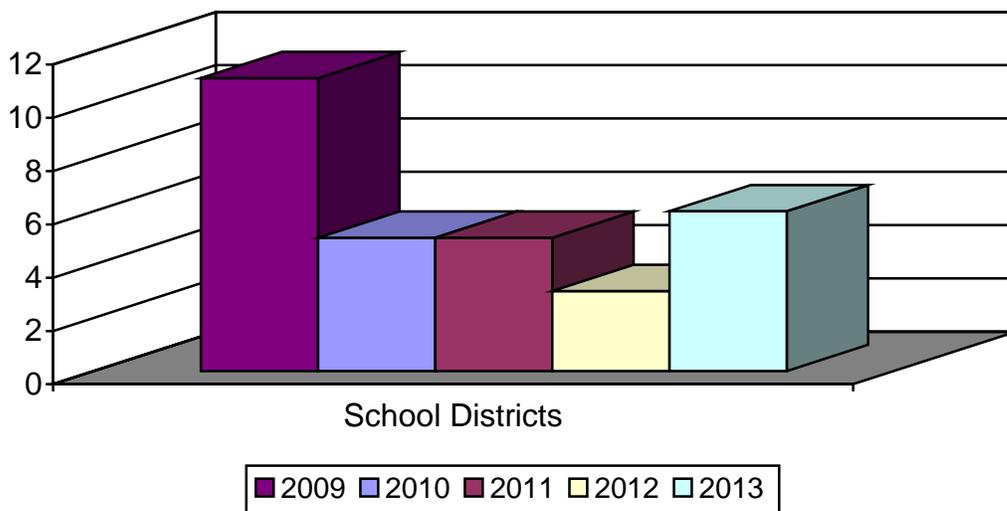


**PROGRAM FIVE YEAR TRENDS**



UC Unit clarification petitions  
 ULP Unfair labor practice charges  
 CBA Contract Enforcement petitions

**SCHOOL DISTRICT ACTIVITY FROM 2009 TO 2013  
 FOR ALL CASES FILED**



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REPRESENTATION PETITIONS (AS 23.40.100; AS 42.40.750)

Labor organizations, employers, or employees may file petitions to initiate a secret ballot election for certification or decertification of a labor or employee organization for collective bargaining. Parties may also notify the Agency that the employer consents to the labor organization's exclusive representation of a particular unit of employees. When this occurs, no election is required if investigation verifies the majority status of the labor organization.

Prior to conducting an election, the Agency resolves any objections raised by a party. If a party files an objection, a hearing is conducted before the agency board which issues a decision and order that resolves disputes and clarifies who gets to vote in the election.

Although the Agency fielded numerous questions on organizing and decertifying efforts in 2013, there were no actual representation petitions filed in 2013. The last election conducted and certified was in 2012.

Petitions for recognition by mutual consent are a type of representation petition filed to change a bargaining unit's name, affiliation, site, or location. None were filed in 2013.

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STRIKE AND STRIKE CLASS PETITIONS (AS 23.40.200; 8 AAC 97.300  
REPEALED; AS 42.40.850)

Under the Public Employment Relations Act (PERA), the Agency hears disputes about strike classifications and impasse matters. Strike classification is important to employees and employers because it essentially determines whether employees have the legal right to strike. PERA divides public employees into three separate classes for purposes of authorization to strike. Class I's, like police and fire fighters, are prohibited from striking. Class II's, like snow removal workers, may strike for limited periods of time until a court determines that public safety and health are affected. Class III's, which include a wide range of public employees, have a broad right to strike.

There were no strike class petitions filed or hearings held in 2013.

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## UNIT CLARIFICATION AND UNIT AMENDMENT PETITIONS (8 AAC 97.050)

Unit clarification (UC) and unit amendment petitions are filed to resolve disputes over unit composition. An employer's reorganization of its staff, or adding or eliminating positions can raise a question of the appropriate unit for the positions. Representation may not be an issue in a unit clarification petition, and unit issues that come up in the process of handling a representation petition are not counted here.

In 2013, one new unit clarification petition was filed, leaving three open UC cases by year's end. Historically, most unit clarification disputes arise as objections to transfers of state employees from one state bargaining unit to another. This typically occurs when the State changes a position's job duties, and the State proposes to move the position to the supervisory or confidential unit from the general government unit. If agency investigation shows there is reasonable cause to believe that a question of unit clarification exists, the case is scheduled for hearing. Otherwise, the case is dismissed.

There were no unit clarification petitions heard by the ALRA board in 2013. However, the Board did issue a decision and order in 2013 on a case involving a unit clarification dispute between the University of Alaska and two faculty bargaining units: the University of Alaska Federation of Teachers, (formerly the Alaska Community Colleges Federation of Teachers) and United Academics. This long-simmering dispute concerned the appropriate bargaining unit placement of a multitude of positions, and the appropriate boundary between the two bargaining units. The ALRA Board issued a decision granting the University's request for clarification and also modified the two bargaining unit descriptions of the faculty units. (See decision summary at page 22 for more details). The University of Alaska Federation of Teachers appealed the decision to the Alaska Superior Court. (Two related unfair labor practice complaints are in abeyance pending the ultimate outcome of this unit clarification dispute.

<b>UNIT CLARIFICATION PETITIONS FILED</b>	<b>1</b>
Employer	
State	0
Public Schools	1
Municipalities	0
Railroad	0
Hearings conducted	0

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## UNFAIR LABOR PRACTICE CHARGES (AS 23.40.110; AS 42.40.760)

Employers, labor organizations, or individual employees may file unfair labor practice (ULP) complaints (charges). Types of charges against employers include retaliation for union membership or exercise of employee rights, coercion, domination or interference with an organization, and bad faith bargaining. Charges against unions include coercion, bad faith bargaining, dues disputes, and interference with the employer's selection of its own collective bargaining representative.

Unfair labor practice filings in 2013 increased 50% over those filed in 2012. (See "CASES FILED" page 7 for longer-term trends). Except for 2010 and 2012, the filings the past few years indicate a short-term rising trend. (See "PROGRAM COMPARISON" page 8). Of the 12 charges filed in 2013, 41% concerned bad faith bargaining, 17% concerned domination or interference with formation, existence or administration of a union, 17% concerned interference with protected rights, 17% concerned duty of fair representation charges and the remaining 8% concerned alleged violation of Weingarten rights. There were no filings related to discrimination in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage union membership.

The Agency ranks ULP's by level of priority for determining which cases are investigated first. For example, disputes that affect a large number of employees usually receive high priority. There were no high priority ULP's filed in 2012 or 2013 compared to one each filed in 2010 and 2011, but five were filed in 2009.

One pending ULP case was placed in abeyance at the complainant's request. Parties often request a case be put on hold as they attempt to reach settlement. A case may also be put in abeyance because jurisdiction may lie in the appellate courts. During 2013, the Agency completed five ULP investigations in an average of 97 days, a 35% decrease over 2012's average. (See "TIMELINESS" page 16). Of the five investigations, all were normal priority, but they varied in length and complexity. A Kenai Peninsula Education Association investigation was particularly lengthy and complex.

While priority ranking affects which cases are investigated first, the nature and complexity of a case and the extent of the parties' cooperation affect the time it takes to complete unfair labor practice investigations. The Agency's ability to complete investigations timely is affected negatively when case filings rise significantly or other workload components such as extensive public records requests take priority.

If the investigating hearing officer finds there is probable cause that a ULP violation occurred, and informal resolution is unsuccessful, the case is scheduled for hearing. However, cases scheduled for hearing sometimes settle prior to hearing. There were no unfair labor practice hearings conducted in 2013, compared to three in 2012.

**UNFAIR LABOR PRACTICE CHARGES FILED**

12

Employer	
State	8
Municipalities	0
Public Schools	4
Railroad	0
Type	
Arbitration related	0
Bad faith bargaining	5
Retaliation	2
Interference with protected rights	2
Domination or interference (a)(2)	2
Union duty of fair representation	0
Employer action without bargaining	0
Information request	0
Scope of bargaining	0
Weingarten	1
Discrimination	0
Impasse	0
Other	0
Unilateral	0
Investigations	5
Hearings conducted	0
Other resolution	
Dismissals (no probable cause)	0
Deferrals to arbitration	0
Settled or withdrawn	3
Dismissed, inaction	2
Dismissed, final order	0
Dismissed, Insufficient	0
Remand	0
Other	0

<b>Complainant</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Alaska Public Employees Ass'n	0	2	0	0	3
Alaska State Employees Ass'n	0	0	1	1	1
School Unions	3	0	0	2	0
Ferry Unions/Marine	0	2	3	0	5
Other Unions	9	2	8	2	1
Individuals	0	3	0	1	2
Employers	2	0	10	2	0
<b>Total ULPs filed</b>	<b>14</b>	<b>9</b>	<b>13</b>	<b>8</b>	<b>12</b>

**COMPARISON BY ULP COMPLAINANT**

	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
UNION	12	6	12	5	10
EMPLOYER	2	3	1	2	0
INDIVIDUAL	0	0	0	1	2
<b>Total ULPs filed</b>	<b>14</b>	<b>9</b>	<b>13</b>	<b>8</b>	<b>12</b>

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**CLAIMS FOR RELIGIOUS EXEMPTION (AS 23.40.225; AS 42.40.880)**

AS 23.40.225 and AS 42.40.880 allow a public employee to seek an exemption from union membership or agency fee payment on the basis of bona fide religious convictions. There were no such claim's filed for exemption in 2013, compared to one in 2012. The 2012 claim was granted in 2013.

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**PETITIONS TO ENFORCE THE COLLECTIVE BARGAINING AGREEMENT  
(AS 23.40.210; AS 42.40.860(b); 8 AAC 97.510)**

Upon petition of a party, the Agency has statutory authority to enforce the terms of a collective bargaining agreement. All agreements must contain a grievance/arbitration procedure, which the parties must exhaust before filing a petition to enforce the agreement.

There was one CBA petition filed in 2013, compared to three in 2012. The highest annual total of CBA case filings during the past decade was in 2003, when parties filed 9 petitions.

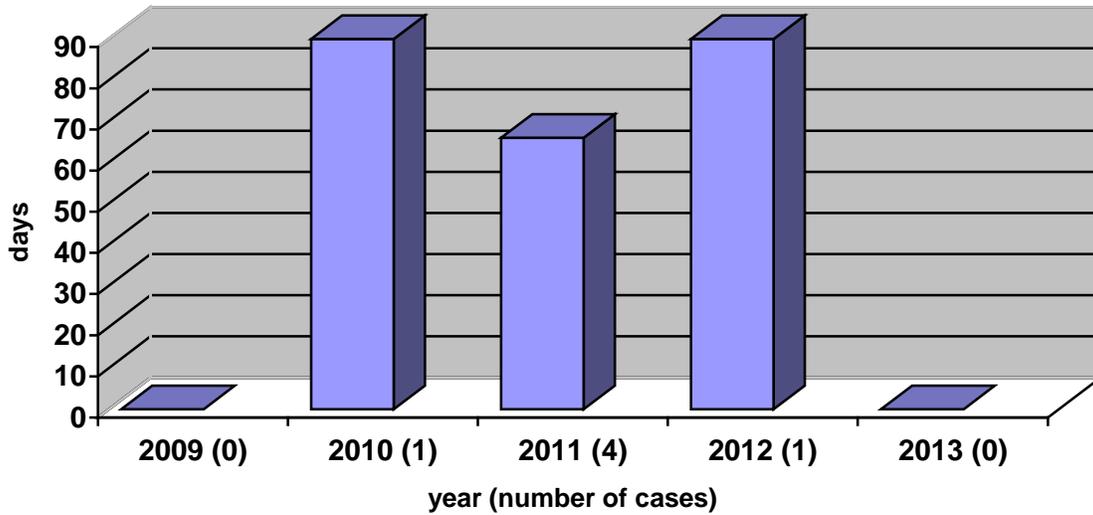
<b>CBA PETITIONS FILED</b>	<b>1</b>
Employer	
State	0
Municipalities	0
Public Schools	1
Railroad	0
Hearings conducted	0

# TIMELINESS

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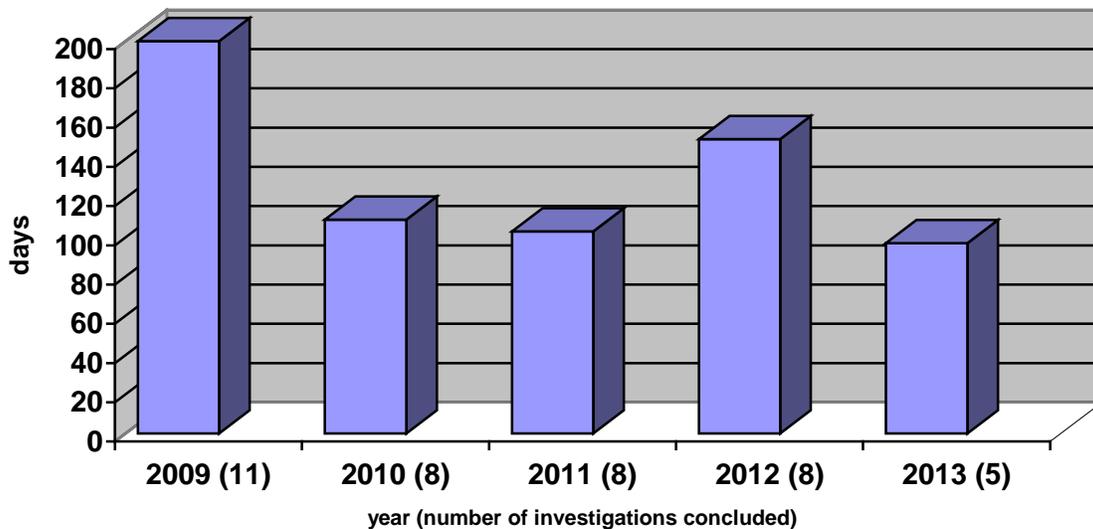
## ELECTIONS

**NUMBER OF DAYS TO CERTIFICATION OF ELECTION.**



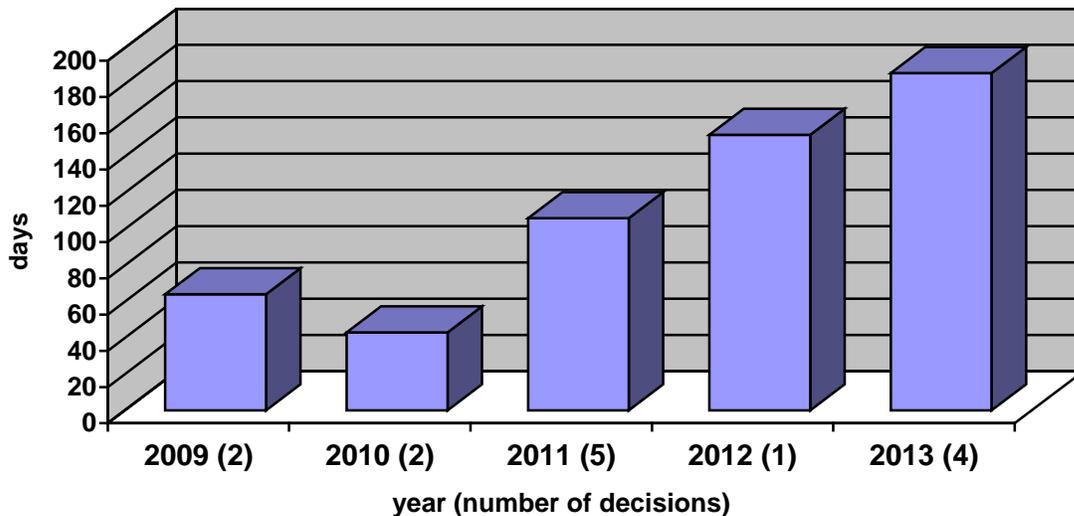
## UNFAIR LABOR PRACTICE INVESTIGATIONS

**NUMBER OF DAYS TO CONCLUSION OF INVESTIGATION.**



DECISION AND ORDERS

NUMBER OF DAYS FROM CLOSING OF RECORD TO DECISION



In 2013, the Board did not meet its goal of issuing 90% of decision and orders within 90 days. Board decision and orders were issued in an average of 186 days from record closure to issuance.

DECISIONS AND ORDERS ISSUED

**1. General Teamsters Local 959, International Brotherhood of Teamsters vs. Anchorage School District, Case No. 11-1609-ULP, Decision and Order No. 298 (May 6, 2013).** The Teamsters filed an unfair labor practice charge against the Anchorage School District, alleging that the District refused to negotiate over the effects of the installation of global positioning system (GPS) devices on vehicles driven by maintenance workers. The Teamsters argued that the effects of the installation of the GPS devices are a term or condition of employment and therefore a mandatory subject of bargaining.

The District disagreed. It contended that it had no obligation to bargain over the effects of GPS devices because the management rights clause in the parties' collective bargaining agreement gave the District managerial authority to install and use the devices since they are "machinery" or "equipment." The District argued that by agreeing to the language in the management rights clause of the parties' collective bargaining agreement, the Teamsters waived any right it may have had to bargain this subject.

The management rights clause provides in pertinent part:

"Nothing in the Agreement shall be construed to limit or impair the right of the District to exercise its own discretion on all management matters, including by way of illustration but not limited to the following matters, whatever may be the effect upon employment, when in its sole discretion it may determine it advisable to do any or all of the following:

a. To manage the District generally . . . to decide all machines, tools, and equipment to be used . . . to decide the method and place of providing its services . . . to maintain order and efficiency in its facilities and operations . . . to make such reasonable rules and regulations not in conflict with this agreement, as it may from time to time deem best for the purposes of maintaining order, safety and/or effective operation of its facilities . . . .

b. Management shall have all other rights and prerogatives including those exercised unilaterally in the past, subject only to express restrictions on such rights, if any, as are provided in this Agreement."

The Board found that the management rights clause was broad. It gives the District broad authority to choose and install equipment, machinery, and tools it deems necessary for its operations. The Board further found that GPS devices are machinery.

The Board rejected the Teamsters' argument that the management rights clause only applies to selecting the "types of vehicles driven . . . heavy equipment used by them, the hand tools and power tools that are purchased." The Board found that, like power tools and the types of vehicles driven, the use of GPS is a matter of time and fuel efficiency and provides valuable information in the work environment.

The Board concluded that by agreeing to, signing, and ratifying the collective bargaining agreement that included the broad management rights clause, the Teamsters' maintenance and warehouse workers unit waived its right to bargain the effects of equipment and machinery that the District decides to use in its operations. The language in the management rights clause was found sufficient to constitute a waiver of the right to bargain the effects of the installation of the GPS devices. The Board denied and dismissed the case.

**2. Marine Engineer's Beneficial Association, AFL-CIO vs. State of Alaska, Case No. 11-1613-ULP, Decision and Order No. 299 (August 5, 2013).** The Marine Engineers filed an unfair labor practice complaint against the State, alleging that the State unilaterally changed a mandatory subject of bargaining without negotiating to impasse. Specifically, the Marine Engineers charged that the State implemented a new policy concerning the transporting of unaccompanied vehicles on the State's marine highway system without negotiating the change. The State disputed the Marine Engineers' claim,

arguing that the new policy was not a change but rather a clarification of the existing policy.

The primary issue for decision was whether the shipping of the bargaining unit members' vehicles unaccompanied, on pass (for free), on State vessels was a mandatory or permissive subject of bargaining. The board panel applied the balancing test announced by the Alaska Supreme Court in *Kenai Peninsula Borough School District v. Kenai Peninsula Education Association*, 572 P.2d 416 (Alaska 1977) (*Kenai I*) and *Alaska Public Employees Association v. State*, 831 P.2d 1245 (1992) (*APEA 1992*). In *Kenai I*, the court held that "a matter is more susceptible to bargaining the more it deals with the economic interests of employees and the less it concerns professional goals and methods." (*Kenai I* at 422). In *APEA 1992*, the Supreme Court adopted the *Kenai I* balancing test in a State case "where the government employer's constitutional, statutory, or public policy prerogatives significantly overlap the public employees' collective bargaining prerogatives." (*APEA 1992*, 831 P.2d 1245, at 1251). Paraphrasing *Kenai I*, the Court provided that "a matter is more susceptible to categorization as a mandatory subject of bargaining the more it deals with the economic interests of employees and the less it concerns the employer's general policies." (831 P.2d at 1251).

MEBA contended that the decades-long practice of shipping vehicles unaccompanied on employee pass was a significant economic benefit for employees. This long practice became an important working condition and therefore a mandatory subject of bargaining.

A two-member majority disagreed, concluding that the shipping of unaccompanied vehicles is not addressed in the parties' agreement, and "the mere history of a practice does not automatically make an item a mandatory subject of bargaining." The majority also concluded there was no past practice as alleged, because the practice was not an "established and recognized custom between the parties."

The board majority concluded that this unaccompanied vehicle process was a permissive subject of bargaining. They held: "Because the [Alaska Marine Highway System] and the State have a strong interest in developing policies that allow the AMHS to competently and proficiently manage the complex travel system, we find those interests outweigh the economic interests of the employees."

Board member Daniel Repasky dissented. In his determination of the evidence and law, he found that the shipping of the unaccompanied vehicles was a mandatory subject. He noted that the realm of "other terms and conditions of employment" requires greater interpretation than does wages or hours. Repasky noted that testimony of a MEBA member showed that employees enjoyed an economic benefit of up to \$900, depending on trip length. This amount is not insignificant. Without this benefit, employees must pay to ship their vehicles unaccompanied, or make alternative plans.

Repasky asserted that the fact the State "clarified" an existing policy to eliminate a practice that had occurred hundreds of times over the years shows that the State knew

unaccompanied vehicles were being shipped. Otherwise, there would have been no need to "clarify" the policy. He concluded that the majority mistakenly diminished the employees' economic benefit, and the employees' economic benefit outweighs the State's policy prerogatives. The unilateral change without bargaining to impasse therefore constituted an unfair labor practice.

**3. International Organization of Masters, Mates and Pilots, AFL-CIO vs. State of Alaska, Case No. 11-1610-ULP, Decision and Order No. 300 (August 6, 2013).**

The Masters, Mates, and Pilots (MM&P) filed an unfair labor practice complaint against the State, alleging that the State committed a violation by unilaterally changing a mandatory subject of bargaining without negotiating to impasse. Specifically, the Masters, Mates, and Pilots charged that the State unilaterally implemented a new policy directive for the transporting of unaccompanied vehicles on the State's marine highway system without negotiating the change. The State disputed the claim, arguing that the new policy was not a change but rather a clarification of the existing policy.

The primary issue for decision was whether the shipping of the bargaining unit members' vehicles unaccompanied, on pass (for free), on State vessels was a mandatory or permissive subject of bargaining. The board panel applied the balancing test announced by the Alaska Supreme Court in *Kenai Peninsula Borough School District v. Kenai Peninsula Education Association*, 572 P.2d 416 (Alaska 1977) (*Kenai I*) and *Alaska Public Employees Association v. State*, 831 P.2d 1245 (1992) (*APEA 1992*). In *Kenai I*, the court held that "a matter is more susceptible to bargaining the more it deals with the economic interests of employees and the less it concerns professional goals and methods." (*Kenai I* at 422). In *APEA 1992*, the Supreme Court adopted the *Kenai I* balancing test in a State case "where the government employer's constitutional, statutory, or public policy prerogatives significantly overlap the public employees' collective bargaining prerogatives." (*APEA 1992*, 831 P.2d 1245, at 1251). Paraphrasing *Kenai I*, the Court provided that "a matter is more susceptible to categorization as a mandatory subject of bargaining the more it deals with the economic interests of employees and the less it concerns the employer's general policies." (831 P.2d at 1251).

A two-member majority of the panel concluded that the unaccompanied vehicle process was a permissive subject of bargaining. The majority concluded: "Because the [Alaska Marine Highway System] and the State have a strong interest in developing policies that allow the AMHS to competently and proficiently manage the complex travel system, we find those interests outweigh the economic interests of the employees.

MM&P contended the decades-long practice of shipping vehicles unaccompanied was an economic benefit for employees and became an important working condition and therefore a mandatory subject. The majority disagreed, concluding that the shipping of unaccompanied vehicles is not addressed in the parties' agreement, and "the mere history of a practice does not automatically make an item a mandatory subject of bargaining." The majority also concluded there was no past practice as alleged, because the practice was not "established and recognized custom between the parties."

Board member Daniel Repasky dissented. In his determination of the evidence and law, he found that the shipping of the unaccompanied vehicles was a mandatory subject. He noted that the realm of "other terms and conditions of employment" requires greater interpretation than does wages or hours. He also asserted that the fact that the State "clarified" an existing policy that occurred hundreds of times showed that the State knew employees were shipping unaccompanied vehicles.

Repasky noted that testimony supported a finding that the ability to ship vehicles unaccompanied was a substantial economic benefit, providing up to \$1913 in value to employees for some trips. The benefit had occurred over a long period of time. Without this benefit, employees must pay to ship their vehicles unaccompanied, or make alternative plans. He concluded that this change to a "term of condition of employment" happened unilaterally, constituting an unfair labor practice.

**4. 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, Decision and Order No. 301 (December 18, 2013).** The University of Alaska filed a petition to clarify the unit boundaries and composition of the full-time faculty bargaining units represented by the University of Alaska Federation of Teachers (UAFT) and United Academics (UNAC). UAFT was the former community college union that represented faculty who taught lower division courses or in programs that lead to associate's degrees and certificates (such as in welding and surveying). UAFT was formed in 1973. Through the ensuing decades, some UAFT faculty occasionally taught upper division courses.

In 1996, UNAC was created and certified. UNAC's unit description provides that it represents all full-time faculty *not* represented by UAFT. Eventually, a rift developed between UNAC and UAFT primarily because UNAC believed it should have all faculty teaching upper division courses in its unit. UAFT disagreed, contending that its collective bargaining agreement with the University allows its faculty to teach upper division courses, if its faculty member and the University agree in writing.

The parties' dispute arose in the early 2000's and continued off and on until 2008, when the University filed a petition for clarification of unit boundaries and composition. After numerous attempts through the years at mediation and settlement, the parties went to hearing. At hearing, the University contended that due to the evolution and expansion in some programs, such as those that formerly offered only lower division courses or certificates but now offered upper division courses that led to bachelor's and graduate degrees, faculty teaching in these programs should be placed in UNAC. UNAC agreed with the University.

UAFT disagreed. UAFT contended that UNAC should get all faculty who have a research component in their caseload and UAFT should get all faculty teaching bipartite (two-part) caseloads. This would be a dramatic shift in the units' compositions.

The hearing lasted three weeks. The parties filed exhibits and pleadings totaling 7,500 pages, and 44 witnesses testified.

The ALRA Board ultimately concluded that changed circumstances since certification of the units, including course evolution, change in university structure and technology (such as distance learning), and the merger of the community college system into the University system, resulted in substantial changes that justified clarifying the unit boundaries and descriptions of the two bargaining units. The Board found the current units inappropriate and modified the unit descriptions by applying the factors in AS 23.40.090.

The Board determined that the units should be modified so UNAC includes 'academic' faculty who teach courses that lead to bachelor's and graduate degrees, and those who engage in research. UAFT's unit under the modified unit description includes all faculty who teach in vocational technical programs that lead to certificates or associate's degrees as part of their workload.

UAFT subsequently appealed the Board's decision to the Alaska Superior Court. (3AN14-04472 CI). The case is still pending there. Briefing is due by late summer 2014.

## APPEALS

There were no appeals of agency decisions filed in the appellate courts during 2013. (See above: one 2013 board decision was appealed in early 2014).

## OTHER AGENCY BUSINESS

The Agency did not conduct a business meeting during calendar year 2013.

## LEGISLATION

The Agency did not propose legislation for consideration by the Governor in 2013, and no legislation was enacted that affected the Agency.

## REGULATIONS

Agency regulations appear in 8 AAC 97.010 -- 8 AAC 97.990. Copies are available upon request. The Board did not propose or adopt any new regulations during 2013.

## BUDGET

The agency budget remains lean. The Agency has requested a maintenance budget from 2014 to 2015. The principal component in the budget is the wages and benefits for the four full-time staff members. To stay abreast of its caseload under current staffing and budget limitations, the Agency streamlines procedures when possible while assuring due process. To minimize costs, the Agency schedules in-person hearings in Anchorage when possible, schedules multiple hearings on successive days, and relies on telephone conferences for persons participating outside the Anchorage area. The Agency also hears disputes for decision on the written record where appropriate. However, board members strongly believe that in-person hearings are the best way to conduct hearings. They prefer in-person hearings so they have the opportunity to listen to and question witnesses face-to-face, to judge witness credibility in person, and to give the parties the opportunity to see who is deciding their case. The board believes it is important to participate in continuing education and keep board members and agency staff skills current. Therefore, the Board recommends requesting additional funds for training.

The Agency conducts elections by mail ballot, avoiding travel costs and loss of productive employee time during travel.

### FISCAL YEAR 2014

TOTAL	594.1
Personnel	527.2
Travel	6.3
Services	49.4
Commodities	11.2

## SUMMARY OF SERVICES AVAILABLE

Requests for services can be made either personally at the Agency's office in Anchorage, by telephone at 907.269.4895, by fax at 907.269.4898, or by e-mail to [mark.torgerson@alaska.gov](mailto:mark.torgerson@alaska.gov), unless otherwise indicated.

Board decisions.

Board decisions from 1973 to present are now available for download from the Agency's web site. Also available is a cross-reference list of Agency cases appealed to the Alaska Superior and Supreme Courts. Board decisions are also

available by request from the Agency electronically or in hard copy by mail. Parties may pick up copies at the Agency office.

#### Business meetings.

The Board conducts business meetings at 1016 West 6th Avenue, Suite 403, in Anchorage. A meeting agenda is available upon request to the Agency two weeks before the meeting. The Agency can accommodate requests to participate at the meeting by telephone. Such requests should be made seven days before the scheduled date for the meeting.

#### Facsimile filings.

The Agency will accept filing by fax, but the person filing by fax must still mail or personally serve the required number of copies of the document upon the Agency.

#### Filings.

The Agency maintains a record of all filings. The record is available for review in the office of the Agency, or by telephone at 907.269.4895.

#### Forms.

The Agency has forms available to assist persons filing unfair labor practice charges, representation petitions, petitions for recognition by mutual consent, claims for religious exemption, petitions for unit clarification, and petitions to enforce the collective bargaining agreement. Parties are not required to use Agency forms, but the forms are provided for the convenience of the public. Persons can pick up these forms at the Agency's office or by telephoning 907.269.4895. In addition, the forms are available for download from the Agency's web site at <http://www.labor.alaska.gov/laborr/forms.htm>.

#### Information.

Staff members are available between the hours of 8:00 a.m. and 4:30 p.m. to answer questions about Agency process and procedure.

#### Library.

The Agency maintains a non-circulating library of labor relations texts. The library is open for public use.

Mediation.

Agency staff members are available to answer questions about the mediation process and Agency mediation services. Parties interested in mediation may request mediation, which is conducted by the Agency's hearing officer.

Publications.

**Pamphlet.** The Agency publishes a pamphlet containing the laws and regulations the Agency administers. Persons may request a copy of Pamphlet 900. The most recent pamphlet was published in July of 2007 and contains updated state labor relations laws and regulations.

**Report to Governor and the Legislature.** The Agency is required to report to the governor annually. AS 23.05.370(a)(3). Copies of the annual report are available upon request.

**Representation Services pamphlet.** This pamphlet is a basic description of the Agency's representation process and is available at no charge.

**Unfair Labor Practices pamphlet.** This pamphlet is a basic description of unfair labor practices and related Agency proceedings. The pamphlet is available at no charge.

**Practice Handbook.** This handbook provides information on practice before the Agency and is intended for use by persons who must file or respond to petitions and unfair labor practice charges.

Speakers.

Agency staff members are available to speak to groups about the Agency, its programs, and topics on labor relations.

Electronic copies of agency proceedings.

Copies of CD's of Agency case proceedings are available upon request. Please call Agency staff to arrange copying. Generally, there is no charge if the appropriate type and number of CD's are provided.