

DEPARTMENT OF LABOR
ALASKA LABOR RELATIONS AGENCY

United Academics –)
AAUP/AFT, Local 4996,)
)
Complainant,)
)
vs.)
)
University of Alaska,)
)
Respondent.)
_____) Case No. 22- _____ ULP

COMPLAINT OF UNFAIR LABOR PRACTICE

I. PARTIES

United Academics – AAUP/AFT, Local 4996 (“United Academics”) is the certified bargaining representative of regular non-adjunct faculty¹ employed by the University of Alaska (“the University”). United Academics is represented in this action by Ryan Stuart and Sarah Josephson of Jermain, Dunnagan & Owens, P.C., 3000 A Street, Ste. 300, Anchorage, Alaska 99503, telephone: (907) 563-8844, fax: (907) 563-7322.

The University is a public employer in the state of Alaska.

¹ More specifically, United Academics is the sole and exclusive bargaining representative for “all regular non-adjunct faculty in the following ranks: Instructor, Assistant Professor, Associate Professor, Professor; Research Assistant 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 and department heads/chairs.” Article 3.1, Collective Bargaining Agreement between the University of Alaska and United Academics – AAUP/AFT, January 1, 2017 – December 31, 2019 (subsequently extended to December 31, 2021 by mutual agreement), available at <http://unitedacademics.net/wp-content/uploads/UNAC-2017-2019-CBA.pdf> (last accessed Aug. 26, 2022).

II. JURISDICTION

The Alaska Labor Relations Agency has jurisdiction in this matter pursuant to AS 23.40.110. Labor relations of the University of Alaska is governed by Alaska law.

III. STATEMENT OF CLAIM

1. As required by their collective bargaining agreement, the parties are presently engaged in bargaining over the terms of a new agreement to replace the agreement that expired by its terms on December 31, 2021.

2. In accordance with AS 23.40.110(a)(5), the University has a duty to bargain collectively in good faith. Failure to do so is an unlawful labor practice. The University has refused to bargain collectively in good faith with United Academics in violation of AS 23.40.110(a)(5).

3. In accordance with AS 23.40.110(a)(1), the University may not interfere with, restrain, or coerce an employee in the exercise of the employee's rights guaranteed in AS 23.40.080. Engaging in this prohibited conduct is an unlawful labor practice. The University has interfered with employees in the exercise of guaranteed rights in violation of AS 23.40.110(a)(1).

4. In accordance with AS 23.40.110(a)(2), the University may not dominate or interfere with the formation, existence, or administration of United Academics. Engaging in this prohibited conduct is an unlawful labor practice. The University has interfered with United Academics' existence and/or administration in violation of AS 23.40.110(a)(2).

5. The collective bargaining agreement between the Union and the University expired by its terms on December 31, 2021. The parties agreed to ground rules for the

present contract negotiations providing that the status quo CBA would remain “in full force and effect.” **Exhibit 1.**²

6. On August 30, 2021, the parties began bargaining for a successor agreement. The parties met and bargained between August 30, 2021 and April 26, 2022. In this time, the University delayed responding to proposals by United Academics regarding nearly every subject of bargaining. Most notably, the University failed to respond to United Academics’ proposals on Article 15 (“Compensation”) and Article 16 (“Benefits”) for more than three months (October 18, 2021 – February 2, 2022), despite the parties participating in sixteen bargaining sessions in that time.

7. On April 25, 2022, the University presented United Academics with a Best and Final Offer (“BAFO”).³ Also on April 25, 2022, the parties agreed to participate in voluntary mediation to assist bargaining efforts.

8. On April 26, 2022, the parties requested voluntary mediation through the Federal Mediation and Conciliation Service (“FMCS”). The parties participated in mediated bargaining sessions with FMCS mediator Ligia Velasquez on May 9, 12, 18, 25, June 20, 23, July 11, 28, and August 22. These mediation efforts are presently ongoing, with additional sessions scheduled for August 31, September 19 and 28, 2022.

9. Notwithstanding the ongoing mediated bargaining efforts, at 4:57 pm on Thursday, May 12, 2022, the University unilaterally declared impasse in the CBA

² “University of Alaska and United Academics –AAUP/AFT Local 4996 Negotiations Grounds Rules Fall 2021”

³ “University of Alaska Best and Final Offer, United Academics – AAUP/AFT Local 4996, Collective Bargaining Terms, January 1, 2022 – December 31, 2024,” available at https://www.alaska.edu/hr/labor/files/labor_relations/unac/UA%20Best%20and%20Final%20Offer%20UNAC%20Collective%20Bargaining%20Terms%202022-2024.pdf (last accessed Aug. 26, 2022).

negotiations. **Exhibit 2.**⁴ The following day, United Academics responded to the University’s declaration, specifically disagreeing that the parties were at impasse and stating that United Academics intended to participate in the next mediated bargaining session already scheduled at that time for May 18, 2022. **Exhibit 3.**⁵ The parties did in fact participate in the May 18 mediated bargaining session, as well as subsequent sessions in the summer and fall of 2022.

10. At 9:18 am on Monday, May 16, 2022 – i.e. one business day after unilaterally declaring impasse in the contract negotiations – the University announced it was implementing the terms of its April 25, 2022 BAFO. **Exhibit 4.**⁶ University President Pat Pitney stated in the implementation announcement that “there was no other way to get monetary terms in front of the legislature before the end of the [2022 legislative] session without this action.”

11. On May 18, 2022 – while the parties were in a bargaining session with mediator Velasquez – the University announced that the Alaska State Legislature had not funded the University’s implemented BAFO and, in fact, had not even taken up the University’s funding request. **Exhibit 5.**⁷ The University has subsequently made clear its position that the terms and conditions of employment in the BAFO are in exclusive force

⁴ T. Ferguson email to A. Rickard of May 12, 2022.

⁵ A. Rickard email to T. Ferguson of May 13, 2022.

⁶ P. Pitney email to “University of Alaska community” of May 16, 2022.

⁷ P. Pitney email to “university colleagues” of May 18, 2022.

and effect “for the next three years, or until a full agreement can be reached” except that “monetary terms are not in effect until appropriated by the legislature.” **Exhibit 6.**⁸

12. Between April 25, 2022 and August 22, 2022, University President Pat Pitney published nine statements directly to United Academics’ members regarding the status of the ongoing contract negotiations.⁹ While dissemination of factual information can be permissible in that context, advocacy is not. Several of President Pitney’s statements represent advocacy by the University directly to United Academics’ members. Most notably, her statement in the May 16, 2022, implementation announcement (Exhibit 5) that “there was no other way to get monetary terms in front of the legislature before the end of the [2022 legislative] session without this action” is both factually inaccurate¹⁰ and impermissibly bypassed United Academics to advocate directly to its members.

13. The same factual misrepresentation – and other advocacy statements – have been communicated by the University directly to United Academics’ members in the form of an FAQ document (Exhibit 7) maintained on the University’s Labor and Employee Engagement website.¹¹

14. Under AS 23.40.110(a)(5), an employer is required to bargain collectively in good faith with the organization that is the exclusive representative of employees in an

⁸ “University of Alaska and United Academics Collective Bargaining Negotiation FAQs, revised July 11, 2022,” ¶ 11.

⁹ Between April 25, 2022 and August 22, 2022, Pitney published 13 UA system-wide messages. Of these 13 messages, seven exclusively addressed the contract negotiations with United Academics, two addressed the negotiations among other topics, and four exclusively addressed topics unrelated to the negotiations. *See*, “President’s Communications” available at <https://www.alaska.edu/pres/communications/index.php> (last accessed on Aug. 26, 2022).

¹⁰ In fact, the parties could have agreed upon a contract to present to the Alaska State Legislature. Pitney’s representation to United Academics’ members that implementation was “the only way to get monetary terms in front of the legislature” is simply untrue.

¹¹ <https://www.alaska.edu/hr/labor/labor-relations/bargaining.php>

appropriate unit. Good faith has been described as “an open mind and a sincere desire to reach an agreement” and “a sincere effort....to reach a common ground.” I John E. Higgins, Jr., *The Developing Labor Law* 13-33 (7th ed. 2017)(citations omitted). The Supreme Court has stated that “the essential thing [for good faith bargaining] is...the serious intent to adjust differences and to reach an acceptable common ground.” *NLRB v. Insurance Agents International Union*, 361 U.S. 477, 485 (1960).

15. For “Class II” employees under AS 23.40.200 – such as the bargaining unit members represented by United Academics – “impasse occurs when the parties have reached a good faith impasse and the mediation process has been exhausted.” *Alaska Public Employees Ass’n v. State, Department of Administration*, 776 P.2d 1030, 1033 (Alaska 1989). A finding by ALRA that a good faith impasse was reached “requires a determination that meaningful progress is not likely to be made on mandatory subjects of bargaining.” *State of Alaska v. Alaska State Employees Ass’n*, ALRA Decision and Order No. 178, at Conclusion of Law No. 5 (1994). Such a determination is factually specific. *Alaska Public Employees Ass’n*, 776 P.2d at 1033.

16. The University may not unilaterally implement contract terms for “Class II” employees unless a good faith impasse has been reached and the mediation process has been exhausted. *Alaska Public Employees Ass’n*, 776 P.2d at 1033. An employer may not “purposefully negotiate in bad faith in order to cause an impasse and then impose a unilateral change in working conditions.” *Alaska Public Employees Ass’n*, 776 P.2d at 1033 (citing *NLRB v. Southwest Sec. Equip. Corp.*, 736 F.2d 1332, 1337 (9th Cir. 1984).

17. The issue for ALRA to consider is whether the totality of the circumstances establishes behavior “which is in effect a refusal to negotiate, or which directly obstructs or inhibits the actual process of discussion, or which reflects a cast of mind against reaching agreement.” *NLRB v. Katz*, 369 U.S. 736, 747 (1962). The question is whether a party’s overall conduct constitutes merely lawful hard bargaining or unlawful bad faith bargaining.

18. Here, the facts do not support a determination that the parties reached impasse on May 12, 2022, as unilaterally declared by the University. United Academics’ position is that the parties have never been at impasse in these negotiations, not on May 12, 2022, or at any time before or after that date. On May 12, 2022, the parties were in the midst of ongoing mediated bargaining efforts, and the parties remain in that status to this day. In order to determine that a good faith impasse was reached on May 12, 2022, ALRA must conclude that the mediation process was “exhausted” at that time (after only two mediation days), despite the fact that the parties were already scheduled for and participated in another mediation session on May 18, 2022 (and numerous additional sessions subsequently).

19. By improperly declaring impasse and implementing the BAFO, the University deprived United Academics of the opportunity to go before the legislature and advocate for its members in a united front with the University to request legislative funding for an agreed-upon contract. Such a request may well have secured legislative funding, whereas the legislature declined to even take up the University’s funding request following its unilateral implementation of its BAFO. Following its failure to secure legislative

funding, the University also did not back down from its unilateral implementation despite the fact that securing funding was the University's sole alleged basis for implementation.

20. By unilaterally declaring impasse where the parties were not deadlocked and where the mediation process was not exhausted, and by bypassing United Academics and advocating directly to its members, the University failed to bargain in good faith and thereby committed an unfair labor practice in violation AS 23.40.110(a)(5).

21. By unilaterally implementing the terms of its BAFO in the absence of a good faith impasse and exhaustion of the mediation process, the University interfered with and impeded one of United Academics' most essential functions: protecting public employees' "right to share in the decision-making process affecting wages and working conditions[.]" AS 23.40.070. In so doing, the University impermissibly interfered with the exercise of rights guaranteed to public employees under AS 23.40.080, an unfair labor practice in violation of AS 23.40.110(a)(1).

22. By improperly declaring impasse and improperly implementing the terms of its BAFO, and by bypassing United Academics and advocating directly to its members, the University interfered with and impeded United Academics' statutory role in bargaining on behalf of its members. In so doing, the University impermissibly interfered with United Academics' existence and/or administration, an unfair labor practice in violation of AS 23.40.110(a)(2).

IV. PRAYER FOR RELIEF

United Academics prays for relief as follows:

1. For a determination that the parties were not at impasse in negotiations on May 12, 2022.
2. For an order requiring the University to reinstate the status quo CBA.
3. For an order finding that the University of Alaska has: failed to bargain in good faith in violation of AS 23.40.110(a)(5); interfered with the exercise of rights guaranteed to public employees under AS 23.40.080 in violation of AS 23.40.110(a)(1); and interfered with the existence and/or administration of the union in violation of AS 23.40.110(a)(2).
4. For an order directing the University to publish a letter of apology to its faculty for the unfair labor practices.
5. That the Agency retain jurisdiction and monitor the University in the event of future breaches in its duty to bargain in good faith.
6. For such other and further relief as will be necessary to fully and completely remedy the unfair labor practices committed by the University in this case.
7. For an award of costs and attorney fees.

Dated at Anchorage, Alaska this 28th day of August, 2022.

JERMAIN, DUNNAGAN & OWENS, P.C.
Attorneys for United Academics – AAUP/AFT,
Local 4996

By: /s/ Ryan A. Stuart
Ryan A. Stuart
Alaska Bar No. 0706036
Sarah E. Josephson
Alaska Bar No. 9705017

VERIFICATION

I have read the above complaint. The facts stated therein are true.

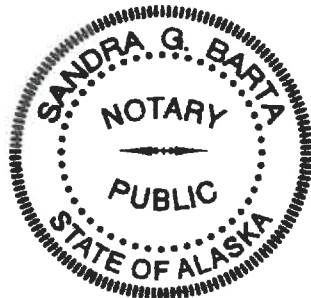
JERMAIN, DUNNAGAN & OWENS, P.C.
Attorneys for United Academics– AAUP/AFT,
Local 4996

Date: 08/29/2022

By: *Sarah E. Josephson*

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

SUBSCRIBED AND SWORN to or affirmed before me at Anchorage, Alaska,
on this 29th day of August, 2022.



Sandra Barta
Notary Public in and for Alaska
My Commission Expires: 09-19-2024


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CERTIFICATE OF SERVICE

The undersigned certifies that on August 29, 2022, a true and correct copy of the foregoing will be served via email and First Class mail on the following:

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Sandra Barta