
Alaska Labor Relations Agency 2015 Annual Report

*State of Alaska
Governor Bill Walker*

*Department of Labor
and Workforce Development
Commissioner Heidi Drygas*



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*Lynne Curry, Chair
Mark Torgerson, Administrator*

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2015 ANNUAL REPORT

Submitted June 22, 2016
(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.

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:

Lynne Curry, Chair	Appointed March 1, 2014	Public
Jean Ward, Vice Chair	Appointed March 1, 2016	Public
Will Askren, Board Member	Reappointed March 1, 2014	Management
Tyler Andrews, Board Member	Reappointed March 1, 2015	Management
Lon Needles, Board Member	Appointed March 1, 2015	Labor
Matthew McSorley, Board Member	Appointed August 13, 2015	Labor

STAFF

Mark Torgerson, Administrator/Hearing Examiner
Tiffany Thomas, Hearing Officer/Investigator
Margie Yadlosky, Human Resource Consultant I

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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).

REGULATIONS

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

2015 HIGHLIGHTS.

Board Appointments. During 2015, Governor Bill Walker appointed Lon Needles to a labor seat. Daniel Repasky, who was appointed to a labor seat on March 10, 2010, resigned on May 31, 2015. Governor Bill Walker appointed Matthew McSorley to that labor seat on August 13, 2015 and affirmed his appointment in early 2016. McSorley had previously served on the Board from December 2005 to March 2015. In early 2016, Governor Walker also appointed Jean M. Ward to a public seat replacing Gary P. Bader, who retired on March 1 after serving as board chair for almost twelve years. Governor Walker appointed current board member Lynne Curry as Chair to replace retiring Chair Bader. The Alaska Labor Relations Agency now enjoys a full board.

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 and Appeals 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 was ordered to pay the Department more than \$24,000 in restitution. The charge against the former assistant attorney general was heard in criminal court in October 2015, with three agency employees testifying. A jury found the former assistant attorney general guilty of this charge. The defendant appealed the verdict in November 2015, and the appeal is pending in Alaska Supreme Court (appellate case number A12443) at this time.

Caseload Trends. Case filings in 2015 (16) decreased slightly from 2014 (17). This suggests the caseload is relatively stable. (See “CASE LOAD COMPARISON BY YEAR” chart, page 8).

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. One appeal of an agency Decision and Order was filed in Superior Court on December 9, 2015, concerning a funding dispute of an approved collective bargaining agreement between the City of Fairbanks and the Public Safety Employees Association. One appeal of an agency Decision and Order filed in Superior Court in January 17, 2014 concerning unit disputes at the University of Alaska was decided in early 2016. Until this 2014 appeal, there had not been an appeal of an agency decision since 2007.

Unit Clarification Petitions. In 2015, one unit clarification (UC) petition was filed. (See “CASES FILED” on page 7 for a year-by-year comparison). UC case filings have decreased in recent years.

Historically, UC petitions typically involved a dispute over the extent of an employee's supervisory or confidential duties, and these petitions outnumbered all other filings combined. The primary factor in bargaining unit placement is the employee's actual duties. 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 2015 involved positions at the Yakutat School District represented by the Yakutat Education Association. In recent years, two issues on UC petitions included 1) whether a position should be excluded from all bargaining units, or 2) whether a position belongs in a certificated unit of teachers or support staff.

Unfair Labor Practice Complaints. Unfair labor practice (ULP) charges filed in 2015 (10) increased from 2014 (9). (See “CASES FILED” on page 7 for a year-by-year comparison). Completing unfair labor practice cases generally consumes a substantial percentage of the Agency's workload duties because the process requires agency

investigations, prehearing conferences, and board hearings. Like all case types, ULP case filings are unpredictable in their nature and complexity because of each case's unique facts. (See "CASES FILED" page 7, analysis at page 13, and chart on page 15. In 2015, 50% of ULP filings were education-related, 30% were State-related cases, and 20% were political subdivision-related cases. There were no railroad cases filed during the year. (See "Unfair Labor Practice Charges Filed" page 15).

Bad faith bargaining charges arise in the context of collective bargaining: one party believes the other party has failed to bargain in good faith under the law. In 2015, 70% of unfair labor practice charges concerned bad faith bargaining, while 10% dealt with domination or interference with formation, existence or administration of a labor organization and 20% concerned the duty of fair representation or Weingarten rights¹. There were no cases filed that concerned the interference with employee's protected rights. Four ULP investigations were completed in an average of 147 days compared to a 133-day average to finish five investigations in 2014. As indicated above, case nature, complexity and workload size can affect the time to conclude investigations.

Elections. There were four representation petitions filed during the year, two for certification of a unit, one to decertify a unit, and one to decertify the current bargaining representative and certify a new representative. The number of representation petitions has steadily decreased since 2010 when parties filed 11 such petitions. The decertification petition filed in 2015 was the first such petition filed in eight years. (See "CASES FILED" page 7).

Strike Class Petitions. There were no strike class petitions filed in 2015. (See "CASES FILED" page 7).

Emphasis on Informal Resolution. The Agency continues to encourage informal resolution through mediation and other means. To this end, the Agency's hearing officer works with parties to resolve unfair labor practice disputes. When successful, this informal resolution saves parties and the Agency the time and expense required to litigate these disputes through the hearing process. The Agency continues to resolve disputes informally. In 2015, the hearing officer successfully resolved seven unfair labor practice cases.

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 for contacting 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. The Agency also seeks feedback on the public's experience with the searchable database.

¹ Employee's legal right to union representation at investigatory interview that could lead to discipline.

Training. The ALRA Board is supported on a day-by-day basis both legally and administratively by ALRA staff who have certificated legal experience and many years of on-the-job experience. It is important that the Board and staff members participate in 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. Training provides information and tools that increase the Board and staff's ability to produce a quality work product for the public. However, due to a lack of funding, no board member has attended training or continuing education for several years. This lack of training funding will most likely result in some board members losing knowledge of current case law, rules, and regulations pertinent to their decisions.

However, the Agency again provided training for a law student intern during the summer of 2015. This intern program, started in 2008, is a combined effort by Seattle University Law School, the Alaska Pacific University, and primarily Alaskan governmental entities to provide legal experience and training to law students. Last year's summer intern was Gregory Palsbo from Denver University Law School.

Interning at the Agency requires law students to apply through the Seattle University School of Law as part of its "Study Law in Alaska" program. This program gives law students an opportunity to work in the labor law field and to experience a summer in Alaska. Students are selected by the ALRA Administrator. 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 at the Agency.

Among other things, the intern program encourages law students to consider relocating to Alaska and working in labor law or other legal fields. The Agency has received positive reviews from participating students and from Seattle University Law School's program director. This program allowed the intern to explore public labor laws, conduct labor relations research, write legal memoranda, read and digest opinions, briefs, motions and extract excerpts to points of law, write summaries of published agency decisions, and confer with agency staff on performing other technical duties they may encounter as a new lawyer. Thus far, four 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.

Alaska now enjoys its first law school connection in state. Starting with the 2015 fall semester, Seattle University School of Law opened a satellite campus at Alaska Pacific University (APU) in Anchorage. This program, offering students the opportunity to spend their third year of law school in Alaska, provides a variety of Alaska-related courses taught by Alaska's bench and bar and by faculty from Seattle University's School of Law. One former agency intern intends to attend his third year at law school at APU.

Outreach. Although there were no Agency presentations during 2015, Agency staff provided information about the Public Employment Relations Act (PERA) and discussed the difference between it and the National Labor Relations Act (NLRA) with

new representatives from public employee labor organizations and public employers. ALRA staff provided a history of the evolution of public labor relations in Alaska and at the Agency and shared insights gained through their years of experience at the Agency. They emphasized the importance of parties' developing and maintaining good relationships, particularly after they experience long, difficult negotiations.

OVERVIEW

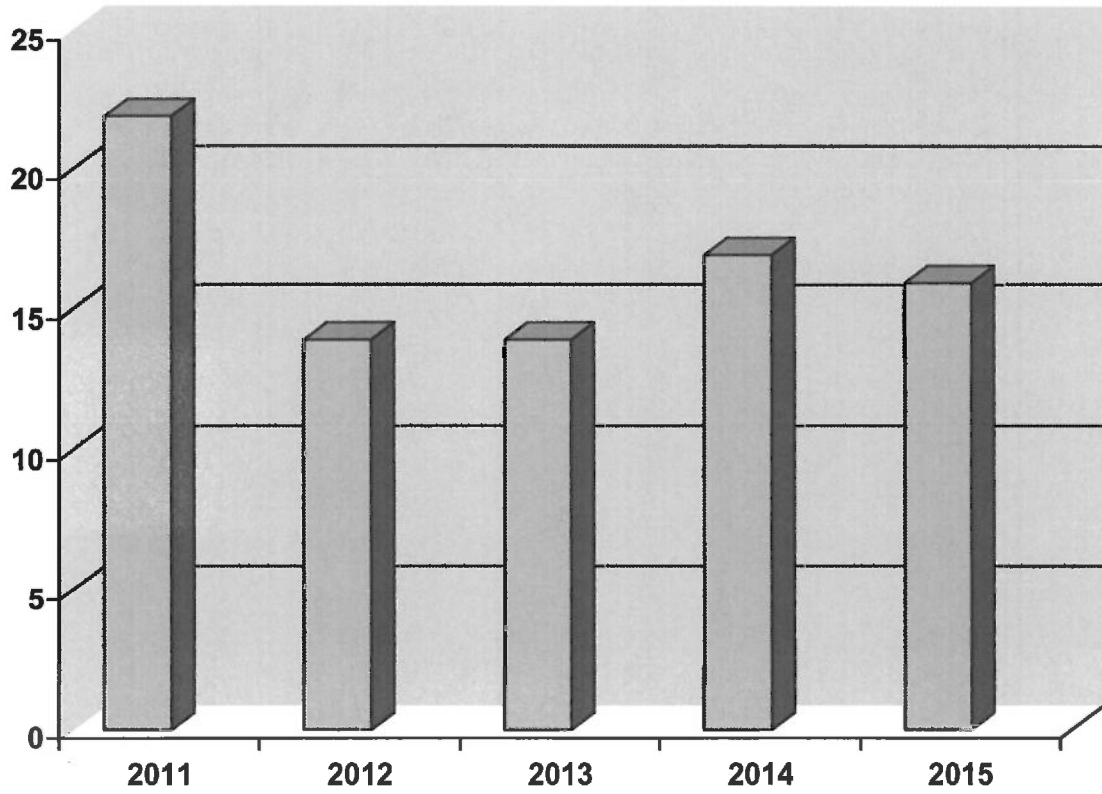
CASES FILED	2011	2012	2013	2014	2015
Amended Certification (AC)	0	0	0	0	0
Recognition by Mutual Consent (RM)	0	0	0	1	0
Representation (RC)	2	0	0	1	2
Decertification (RD)	0	0	0	1	1
Decert. to certify a new rep.(RC/RD)	2	0	0	0	1
Strike class petition (SP)	0	0	0	1	0
Unit Clarification (UC)	1	2	1	1	1
Unfair Labor Practice Charge (ULP)	13	8	12	9	10
Religious Exemption Claims(RE)	3	1	0	2	0
Contract Enforcement (CBA)	1	3	1	1	0
Other (OTH)	0	0	0	0	1
TOTAL	22	14	14	17	16

AGENCY ACTIVITY	2011	2012	2013	2014	2015
Unfair Labor Practice Investigations	8	8	5	9	4
Unit Clarification Investigations	4	1	1	1	0
Decisions and Orders Issued	5	1	4	2	3
Other Board Orders Issued	6	2	2	5	3
Hearing Officer Orders Issued	6	4	1	4	2
Elections Conducted (includes AC)	5	1	0	2	1
TOTAL	34	17	13	23	13

FINAL DISPOSITION	2011	2012	2013	2014	2015
Notices of dismissal issued	9	4	2	5	4
Cases settled or withdrawn	8	10	4	7	6
Cases that went to hearing	5	3	0	4	2
Impasse matters settled or withdrawn	0	0	0	1	0
Cases deferred to arbitration	0	0	0	1	0
TOTAL	22	17	6	18	12

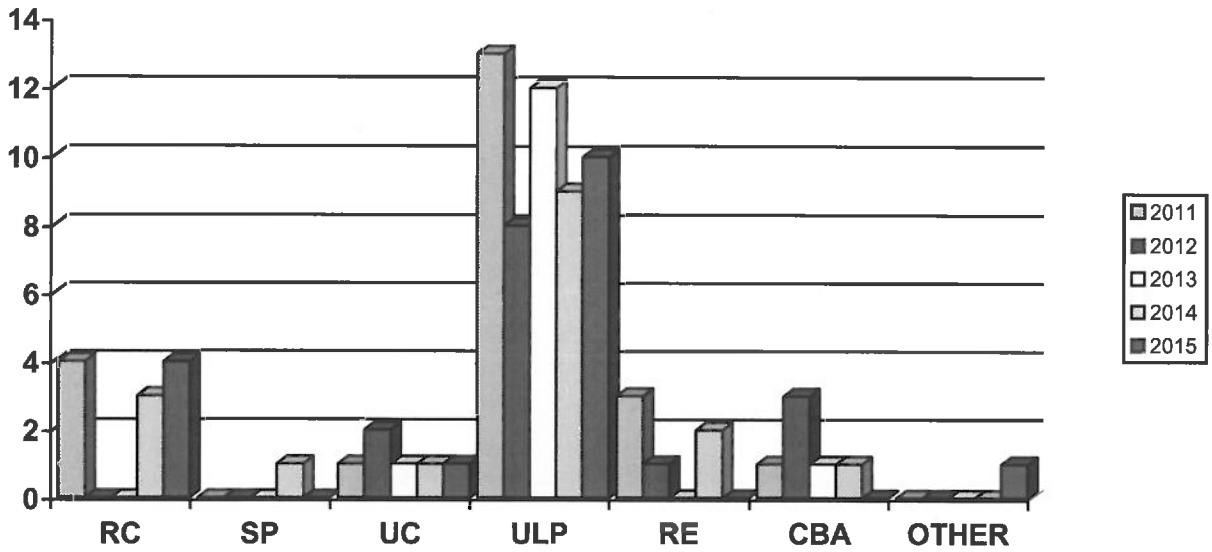
CASE STATUS SUMMARIES

CASE LOAD COMPARISON BY YEAR



CHARTS

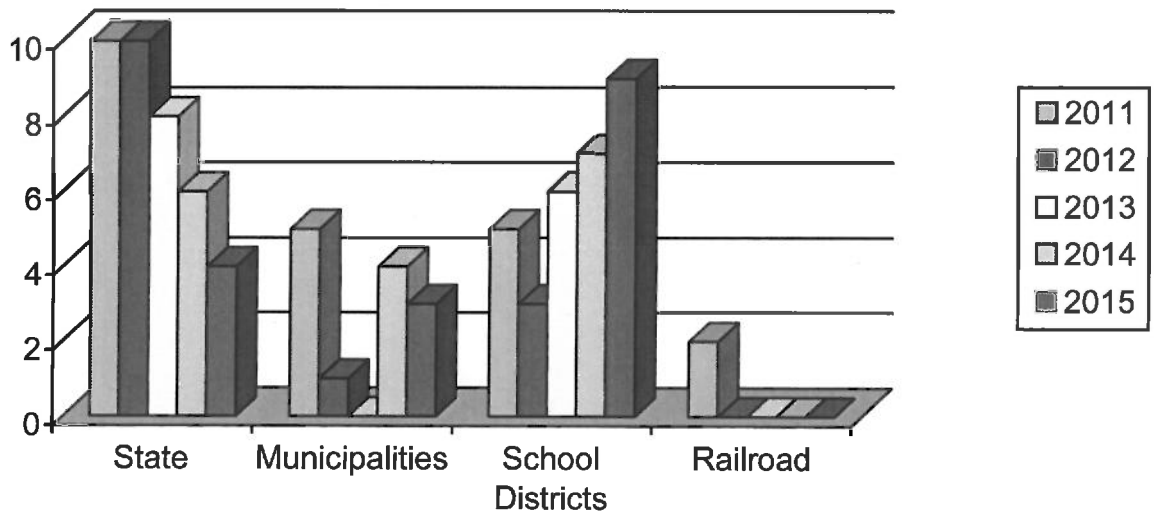
PROGRAM COMPARISON BY YEAR (FILED)



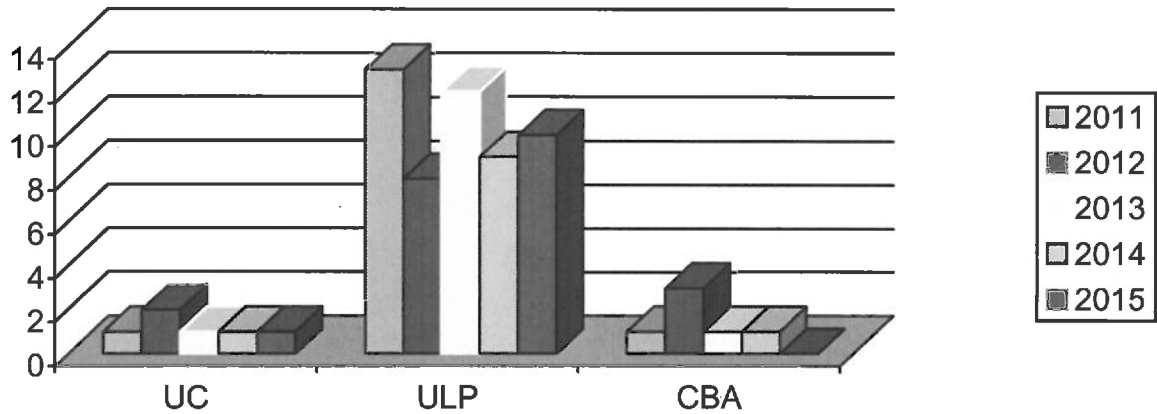
RC Representation petitions
 SP Strike notices and petitions
 UC Unit clarification petitions

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

EMPLOYER COMPARISON BY YEAR (FILED)

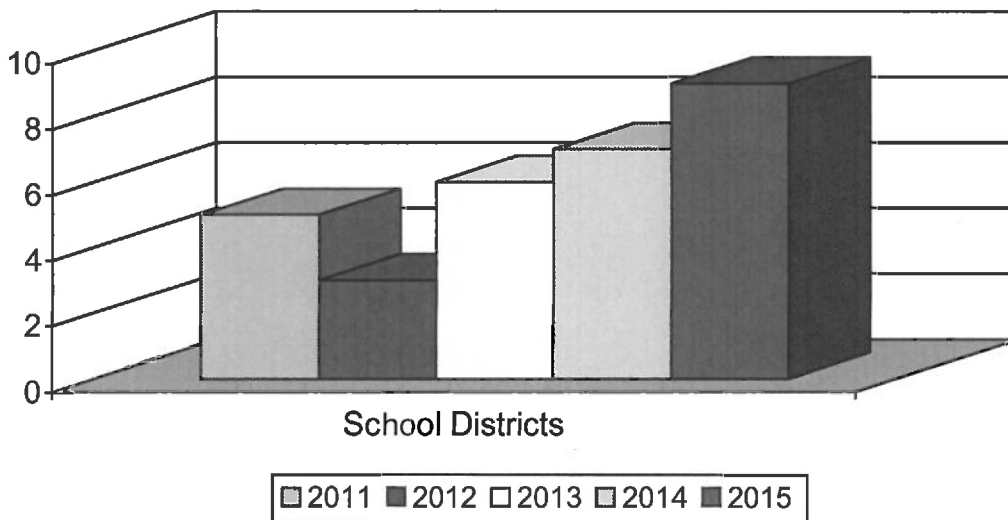


PROGRAM FIVE YEAR TRENDS



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

**SCHOOL DISTRICT ACTIVITY FROM 2011 TO 2015
 FOR ALL CASES FILED**



REPRESENTATION PETITIONS (AS 23.40.100; AS 42.40.750)

Labor organizations, employers, or employees may file a petition to initiate a secret ballot election for certification or decertification of a labor or employee organization for collective bargaining. Alternatively, parties may 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 and no current collective bargaining agreement exists.

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 clarifies who gets to vote in the election.

During 2015, the Agency fielded numerous questions on organizing and decertifying efforts. There were four representation petitions filed in 2015. One representation petition resulted in certification of a new labor representative, the Chevak Education Association Support Personnel Association, NEA-AK/NEA, at the Kashunamiut School District. A second petition was filed in 2015 and was certified in January 2016 after employees voted for decertification of the current labor representative and certification of a new labor representative. In this case the bargaining unit members voted to decertify the Ketchikan Education Association, NEA-AK/NEA and certify the Ketchikan Gateway Borough School District Technology Staff Labor Organization as their new labor representative for collective bargaining. A third representation petition filed in 2015 had an objection to the bargaining unit composition. In that case the ALRA board issued Decision and Order No. 307 in February 2016 that determined the bargaining unit petitioned for was not appropriate and was dismissed. The fourth representation petition filed in 2015 was a petition for decertification of a small unit at the Pelican City School District. The election was held and ballots were tallied on April 7, 2016. The choice of "No Bargaining Representative" received a majority of the votes cast in the election. ALRA issued its certificate of election and certified the results of the election effective April 13, 2016.

Petitions for recognition by mutual consent are a type of representation petition filed where the employer consents to the labor organization's exclusive representation of a particular unit of employees. There were no petitions for recognition by mutual consent filed in 2015, compared to one filed in 2014 which resulted in a Certification of Representative for a unit represented by the Hydaburg Education Association, NEA-AK.

Unit amendment petitions are filed to change the unit's name, affiliation, site, or location. There were no unit amendment petitions in 2015.

REPRESENTATION PETITIONS FILED 4

Employer		
	State	0
	Municipalities	1
	Public Schools	3
	Railroad	0
Type		
	To certify a new unit	2
	To decertify the unit	1
	To change representatives	1
	To amend certificate	0
Hearings conducted		1
Petitions that proceeded to election		1
Mutual Consent Petitions certified		0

STRIKE CLASS PETITIONS (AS 23.40.200; 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, such as police and fire fighters, are prohibited from striking. Class II's, such as 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 in 2015.

STRIKE PETITIONS FILED 0

Employer		
	State	0
	Municipalities	0
	Public Schools	0
	Railroad	0
Hearings Conducted		0

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's duties, 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 arise in the process of handling a representation petition are not counted here.

In 2015, one new unit clarification petition was filed and one was resolved, leaving two 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 2015. 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 a more detailed decision summary at page 22). The University of Alaska Federation of Teachers appealed the board's decision to the Alaska Superior Court. (Two related unfair labor practice complaints are in abeyance pending the ultimate outcome of this unit clarification dispute.) The Alaska Superior Court affirmed Agency Decision and Order No. 301 on February 11, 2016. UAFT appealed the Superior Court Decision and Order to the Alaska Supreme Court on March 11, 2016. This case is pending in the Alaska Supreme Court in case number S16243.

UNIT CLARIFICATION PETITIONS FILED 1

Employer

State	0
Public Schools	1
Municipalities	0
Railroad	0
Hearings conducted	0

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 representative for collective bargaining or adjustment at grievances.

Unfair labor practice filings in 2015 increased 11% from those filed in 2014. (See "CASES FILED" page 7 for longer-term trends). Total filings for the year (10) approximated the five-year average of 10 per year. (See "PROGRAM COMPARISON" page 9). Of the 10 charges filed, 70% concerned bad faith bargaining, 20% were filings based on allegations of duty of fair representation charges, and 10% concerned domination or interference with formation, existence or administration of a union. Continuing a trend from 2013, there were no violation of Weingarten rights cases filed in 2015. As in the past five reporting years, there were again 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 have not been any high priority ULP cases filed for the past four years compared to one each filed in 2010 and 2011, and five in 2009.

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

During 2015, the Agency completed four ULP investigations in an average of 147 days, a 37% increase in completion rate over 2014's average. (See "TIMELINESS" page 18). Of the four investigations, all were normal priority, but they varied in length and complexity. One case was especially complex, requiring the hearing officer to investigate more than 30 different issues. One pending ULP case was placed in abeyance at the parties' 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. The agency's hearing officer also conducts formal and informal mediation which can result in settlement of unfair labor practices. There were two informal mediations conducted in 2015. There were no formal mediations conducted in 2015 although informal discussions occurred.

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, some cases scheduled for hearing will resolve prior to hearing.) Hearings may be either oral or be based upon the written record. In one case originally scheduled for a two-day oral hearing, the parties agreed to have the board decide the matter on the written record. By comparison, there was one lengthy four-day hearing in 2014, no ULP hearings in 2013, and three ULP hearings in 2012.

UNFAIR LABOR PRACTICE CHARGES FILED	10
Employer	
State	4
Municipalities	4
Public Schools	2
Railroad	0
Type	
Arbitration related	0
Bad faith bargaining	7
Retaliation	0
Interference with protected rights	0
Domination or interference (a)(2)	1
Union duty of fair representation	2
Employer action without bargaining	0
Information request	0
Scope of bargaining	0
Weingarten	0
Discrimination	0
Impasse	0
Other	0
Unilateral	0
Investigations	4
Hearings conducted	1
Other resolution	
Dismissals (no probable cause)	1
Deferrals to arbitration	0
Settled or withdrawn	4
Dismissed, inaction	0
Dismissed, final order	0
Dismissed, Insufficient	2
Remand	0
Other	0

Complainant	2011	2012	2013	2014	2015
Alaska Public Employees Ass'n	0	0	3	0	0
Alaska State Employees Ass'n	1	1	1	2	0
School Unions	0	2	0	4	3
Ferry Unions/Marine	3	0	5	0	2
Other Unions	8	2	1	2	1
Individuals	0	1	2	0	3
Employers	1	2	0	1	1
Total ULPs filed	13	8	12	9	10

COMPARISON BY ULP COMPLAINANT

	2011	2012	2013	2014	2015
UNION	12	5	10	8	6
EMPLOYER	1	2	0	1	1
INDIVIDUAL	0	1	2	0	3
Total ULPs filed	13	8	12	9	10

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 claims filed for exemption in 2015, compared to two in 2014 and none in 2013.

CLAIMS FOR RELIGIOUS EXEMPTION FILED 0

Employer	
State	0
Municipalities	0
Public Schools	0
Railroad	0
Hearings conducted	0

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

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 (CBA).

There were no CBA petitions filed in 2015. This compares to one filing in 2014 and one in 2013. The highest annual total of CBA case filings during the past decade was in 2003, when parties filed 9 petitions.

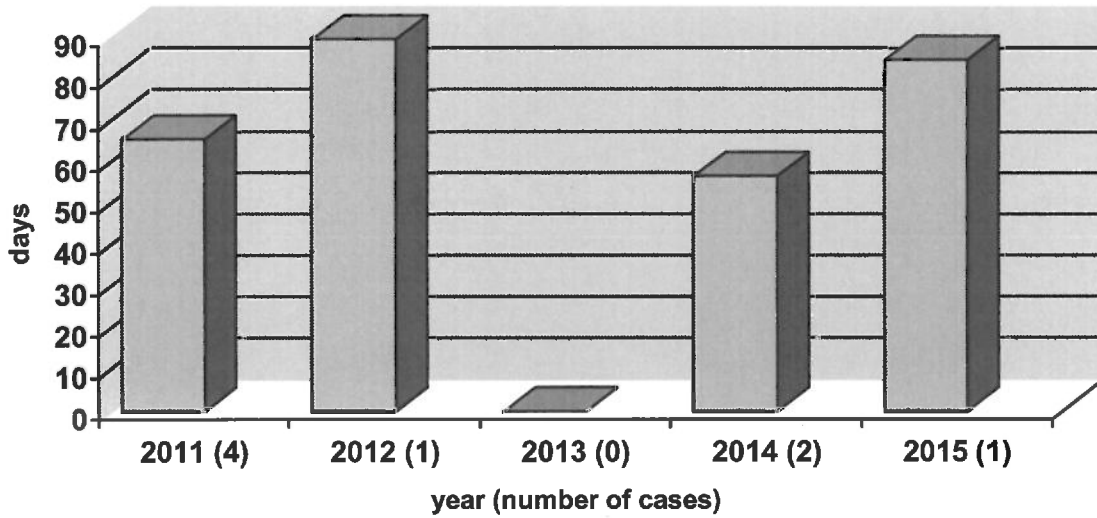
CBA PETITIONS FILED 0

Employer	
State	0
Municipalities	0
Public Schools	0
Railroad	0
Hearings conducted	0

TIMELINESS

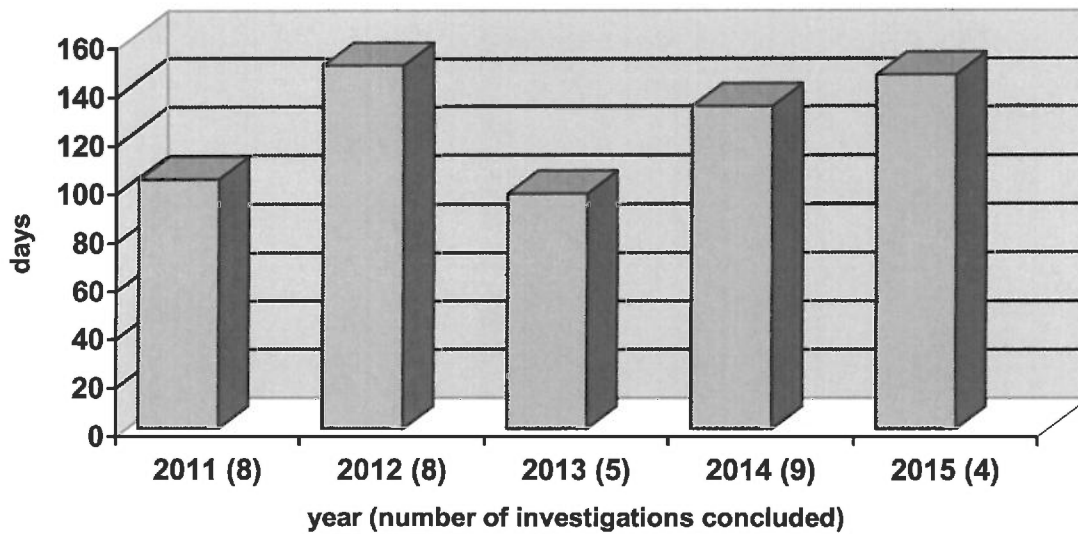
ELECTIONS

NUMBER OF DAYS TO CERTIFICATION OF ELECTION.



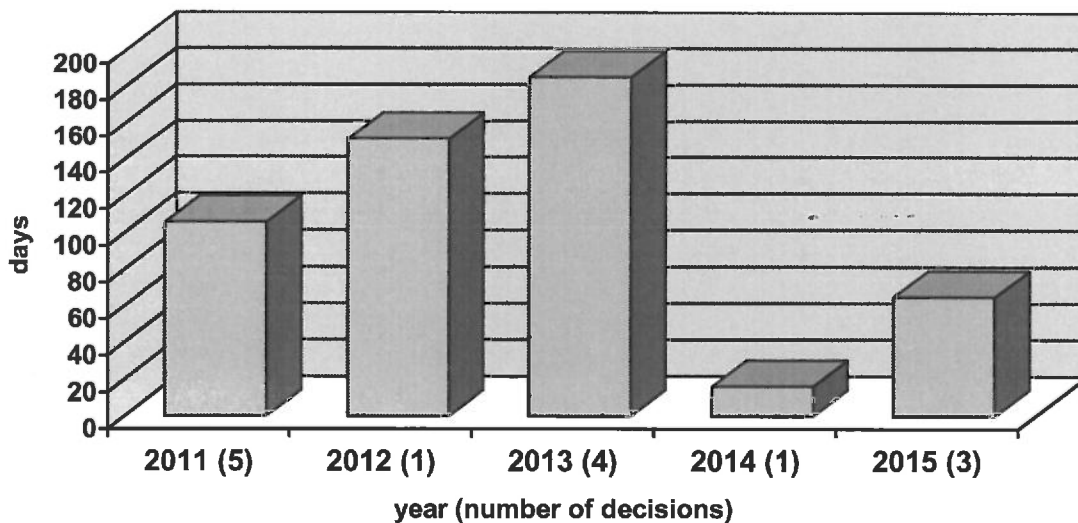
UNFAIR LABOR PRACTICE INVESTIGATIONS

NUMBER OF DAYS TO CONCLUSION OF INVESTIGATION.



DECISION AND ORDERS

NUMBER OF DAYS FROM CLOSING OF RECORD TO DECISION



In 2015, the Board met its goal of issuing 90% of decision and orders within 90 days from record closure. The board decision and orders were issued in an average of 65 days after record closure.

SUMMARY OF DECISION AND ORDERS ISSUED

1. *International Organization of Masters, Mates & Pilots, AFL-CIO vs. State of Alaska, Case Nos. 13-1633-ULP, 13-1635-ULP; Inlandboatmen’s Union of the Pacific, Alaska Region 1, International Longshore and Warehouse Union vs. State of Alaska, Case No. 13-1636-ULP; Marine Engineers’ Beneficial Association, AFL-CIO vs. State of Alaska, Case No. 13-1637-ULP (Consol.), Decision and Order No. 303 (February 27, 2015).*

In this case, the three marine unions representing Alaska State ferry system employees filed an unfair labor practice charging that the State of Alaska unilaterally changed a mandatory subject of bargaining without negotiating the change. Specifically, the unions contended that the State stopped a long-term practice of providing free food and beverages during employees’ work shifts.

The unions alleged that from the time the State began using the ferry system’s new fast vehicle ferries on the Alaska Marine Highway System in 2004, until May 2013, the

State carried on an open and notorious practice of allowing fast ferry employees access to free food and beverages aboard the fast vehicle ferries. Among other supporting evidence, the unions pointed to emails from State labor relations staff that indicates the State was aware of and did not object to employees consuming food during their work shift. The State argued that no past practice developed notwithstanding any emails or other evidence to the contrary. The State also acknowledged that it has traditionally provided free food and beverages on the mainline ferries, but it argued that the mainline boats differ from the fast vehicle ferries, which are day boats.

The Board concluded that access to food and drink during the employee's work day on board the fast ferries is a substantial and important interest. The Board found that even though the employees generally departed and arrived back at their home port daily, this was different than an employee on land who drives to work and back home each day. After further analysis, the Board found that access to the food court and food services on board the fast vehicle ferries was a condition of employment and a mandatory subject of bargaining. The Board concluded that the State committed an unfair labor practice violation by failing to negotiate with the unions before it notified the employees represented by the unions that they must pay for food and drink purchases aboard the fast ferries.

The next question was whether a past practice developed of allowing crew access to the fast ferry food courts. The Board held that "through the Alaska Marine Highway's neglect over the better part of a decade to manage the situation, access to the food courts developed into a practice and became bargainable" Testimony from witnesses for both parties indicated that Alaska Marine Highway management was aware of crew consumption of food and beverages on the fast ferries.

The Board rejected one union's (Masters, Mates & Pilots) contention that the State retaliated against it for filing an unfair labor practice. The Board found that although there appeared to be a causal connection between the filing of one unfair labor practice complaint and the State's action in discontinuing free food on board the M/V Chenega, there was insufficient evidence supporting a finding of retaliation.

Finally, the Board reviewed the evidence to determine an award for food court access. The Board found that food on board the fast ferries consisted of muffins, coffee, and lights snacks such as salad or a sandwich. Based on monetary amounts provided, the Board awarded payment of \$7.94 per employee per shift. It ordered the State to pay this amount from the date of the decision.

2. *International Organization of Masters, Mates & Pilots, AFL-CIO vs. State of Alaska, Case Nos. 13-1633-ULP, 13-1635-ULP; Inlandboatmen's Union of the Pacific, Alaska Region 1, International Longshore and Warehouse Union vs. State of Alaska, Case No. 13-1636-ULP; Marine Engineers' Beneficial Association, AFL-CIO vs. State of Alaska, Case No. 13-1637-ULP (Consol.) (15-1688-OTH), Decision and Order No. 304 (October 1, 2015).*

In this case, the three marine unions representing state ferry system employees filed a "motion for clarification" of *International Organization of Masters, Mates & Pilots, AFL-CIO vs. State of Alaska*, Case Nos. 13-1633-ULP, 13-1635-ULP; *Inlandboatmen's Union of the Pacific, Alaska Region 1, International Longshore and Warehouse Union vs. State of Alaska*, Case No. 13-1636-ULP; *Marine Engineers' Beneficial Association, AFL-CIO vs. State of Alaska*, Case No. 13-1637-ULP (*Consol.*), Decision and Order No. 303 (February 27, 2015). In Decision and Order No. 303, the Board panel concluded that the State of Alaska committed an unfair labor practice by failing to negotiate a mandatory subject of bargaining, which was access to the fast vehicle ferry food courts and consumption of food and beverages for free. The Board panel ordered the State to pay each affected employee \$7.94 per day for food and beverages for each shift employees work, starting with the date of the decision and order. The Board also ordered the parties to return to the bargaining table and negotiate an agreement on employees' access to the food courts.

The parties subsequently negotiated regarding food court access, but a dispute arose over how to calculate the \$7.94 amount: should the value basis of the State's payment to employees be based on the wholesale or retail value of the food. The unions filed a motion for clarification requesting that the ALRA Board order the State to pay based on the wholesale value of the food. The State responded that the motion was untimely and in the alternative, the value should be based on the retail value of the food and beverage.

The Board panel found the motion timely because, under 8 AAC 97.390, there is no specified time limit for filing motions either before or after a decision and order. The Board then determined that the amount it ordered the State to pay was for purchase of items in the food court at the retail amount charged by the State. The fast vehicle ferries may use the \$7.94 amount for purchase of items in the food court and vending machines at the same cost as that charged by the State to members of the public.

3. *Public Safety Employees Association, AFSCME Local 853, AFL-CIO vs City of Fairbanks*, Case No. 14-1658-ULP, Decision and Order No. 305 (November 24, 2015). Appealed to Alaska Superior Court on December 9, 2015.

In this unfair labor practice dispute, the Public Safety Employees Association (PSEA) alleged that the City of Fairbanks committed an unfair labor practice when the Fairbanks City Council ratified the parties' tentative collective bargaining agreement, then reversed its decision and rejected the agreement more than two months later. PSEA argued that the parties had a binding and enforceable agreement after the City initially ratified the agreement. The City denied any wrongdoing and contended that its ultimate rejection of the agreement was valid. A majority of the board panel concluded there was an unfair labor practice violation.

During the negotiating process, the City's negotiating team would take monetary agreements it reached to the City Council for approval. Only after approval would the

City then tentatively agree (TA) to the item. PSEA called this "pre-approving" the monetary terms.

After the parties agreed on all monetary and non-monetary terms, the City's Mayor presented the collective bargaining agreement to the City Council for approval at a public meeting. The Mayor advocated approval of the agreement. After taking public testimony and discussing the matter at a publically scheduled meeting, the City Council voted to ratify the agreement.

Two days later, a council member requested reconsideration of the vote to ratify the agreement. The mayor denied the request because he said that under the rules, the request was made more than 24 hours after the meeting. Two weeks later, the city councilman requested suspension of the rules for the purpose of reconsidering the ratification vote. The council members voted in favor of suspension of the rules.

The reconsideration was then taken up at a meeting two months later. After again taking testimony and discussing the matter, the City Council voted to reject the tentative agreement. PSEA then filed an unfair labor practice complaint.

The Board majority found an unfair labor practice violation. The Board concluded first that because of the City Council's active involvement in negotiations, its actions should be considered in determining whether a violation occurred. The Board concluded that the City Council invoked unusual procedures and then, "by striking a deal, ratifying that deal, and then stringing out and delaying the reconsideration process to ultimately attempt to deny PSEA its due, the City violated the duty to bargain in good faith. . . ." The majority ordered the City to execute the original contract it ratified at its council meeting on August 25, 2014.

The dissent concluded the City Council was a legislative body and not a "public employer," and that without specific statutory authority, legislative bodies are outside the purview of this board's authority. Second, the dissent asserted that even if the board did have jurisdiction, PSEA failed to prove its case. The dissent would dismiss the unfair labor practice complaint on these bases and order the parties back to the bargaining table.

APPEALS

There was one appeal of an agency decision filed in the Alaska Superior Court during 2015. This is the second appeal since 2007. The first appeal filed since 2007 was filed in 2014. This 2014 appeal was affirmed by the Superior Court in early 2016 and is on appeal to the Alaska Supreme Court. A summary of the cases follow.

- 1. 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). Appealed to Alaska Superior Court on January 17, 2014. 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 unit composition. After numerous attempts through the years at mediation and settlement, the parties went to hearing. The hearing lasted three weeks. The parties filed exhibits and pleadings totaling 7,500 pages, and 44 witnesses testified.

At hearing, the University contended that due to the evolution and expansion in some course programs (such as those formerly offering only lower division courses or certificates but now offering upper division courses that lead to bachelor's and graduate degrees), faculty teaching in these programs should be placed in UNAC. UNAC agreed with the University's contention.

UAFT disagreed with the University and UNAC. 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 result in a dramatic shift in the units' compositions.

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 where the case is still pending. (3AN 14-04472 CI). On February 11, 2016, Superior Court Judge Andrew Guidi affirmed the Board's decision. UAFT filed an appeal to the Alaska Supreme Court on March 11, 2016.

- 2. Public Safety Employees Association, AFSCME Local 803, AFL-CIO vs. City of Fairbanks, Case No. 14-1658-ULP, Decision and Order No. 305 (November 24, 2015). Appealed to Alaska Superior Court on December 9, 2015.** The appeal is still pending. (See "SUMMARY OF DECISION AND ORDERS ISSUED" at pages 21 - 22).

OTHER AGENCY BUSINESS

The Agency conducted two business meeting during 2015.

LEGISLATION

The Agency did not propose legislation for consideration by the Governor in 2015, 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 2015.

BUDGET

The Agency budget has been very lean and has become more so with the recent legislative emphasis on reduction of unrestricted general funds (UGF). The principal component in the budget is the wages and benefits for the three full-time and one part-time staff members. As a result of budget reductions, the Agency was required to reduce the Office Assistant III position from full-time to part-time in FY2016 and eliminate the position completely from the FY2017 budget. 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 2016

TOTAL	558.3
Personnel	473.3
Travel	9.6
Services	57.1
Commodities	18.3

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, 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 3301 Eagle Street at the Department of Labor building 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.