

HB

549

FISCAL NOTE

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

No. 1
Bill Version: HB 549
(H) Publish Date: 2/19/92

Revision Date:
Title: Exempt U of A from Admin. Procedures Act

Department Affected: University of Alaska
BRU:
Component:

Sponsor: Governor
Requestor: University of Alaska

Component Serial No.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)	FY93	FY94	FY95	FY96	FY97	FY98
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:	FY93	FY94	FY95	FY96	FY97	FY98
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

There is no cost associated with passage of this legislation. However, if this legislation fails to pass, the cost to the University to administer faculty/staff and student grievances, could add tens of thousands of dollars in litigation costs each year.

Prepared by: Wendy Redman
Division: Statewide Administration

Phone: 474-7582
Date: 12/23/91

Approved by: Brian Rogers, Vice President for Finance
Agency: University of Alaska

Date: 12/23/91

WALTER J. HICKEL
GOVERNOR

HB 549

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 19, 1992

*The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Speaker Grussendorf:

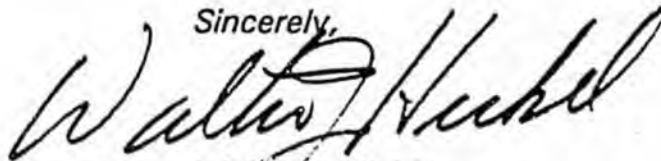
Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would exempt University of Alaska student and employee grievances from the Administrative Procedure Act (APA).

The Alaska Supreme Court recently ruled that, under AS 44.62.330(a)(45), the administrative adjudication procedures of the APA (AS 44.62.330 - 44.62.630) apply to the university. Internal disputes such as employee and student grievances traditionally have been resolved through the university's grievance procedure. That procedure is built around a process of peer review, with a multi-step appeal process. Compared to the university's grievance procedure, in which grievances are often resolved with little or no expense in the earlier stages, the APA procedure is cumbersome and expensive, and not as readily accessible to the individual grievant. Therefore, the bill simply deletes the university from the list of state agencies that must use those procedures.

This legislation would permit the university to continue to use its longstanding dispute resolution and grievance process, which is consistent with practices found in the public sector and with the collegial atmosphere that characterizes a university setting.

I urge your prompt and favorable attention to this bill.

Sincerely,



Walter J. Hickel
Governor

METRO

WEDNESDAY

SECTION B June 23, 1991

Anchorage Daily News

Wednesday, June 26, 1991

B3

Faculty wins hearing in tenure case

Court finds teachers denied forum for complaints during merger with UAA



Chief Justice Rabinowitz

By PETER BLUMBERG
Daily News reporter

Former Anchorage Community College faculty members absorbed into the University of Alaska in a 1987 merger have won their case before the state Supreme Court in a longstanding controversy over academic rank and tenure.

The high court, in reversing a 1988 Superior Court ruling, asserts that about 73 faculty members were deprived of a proper forum for airing complaints that the merger unfairly denied them

tenure when they gave up their community college positions.

The university offered to address the complaint under its own grievance procedures, but refused to honor the faculty members' request for a formal hearing governed by Alaska's Administrative Procedure Act, according to court documents.

Two faculty members, Ralph McGrath and Don Mohr, then asked the court to order an administrative hearing, but their case was

dismissed by Superior Court Judge Brian Shortell.

The Supreme Court, in a 5-0 opinion written by Chief Justice Jay Rabinowitz, said McGrath, Mohr and all other former community college instructors denied tenure are entitled to an impartial hearing under the Administrative Procedure Act.

In that hearing, the instructors will be guaranteed the right to be represented by lawyers, as well as the right to use documents and

Please see Page B-3, TENURE

TENURE: Staff victory

Continued from Page B-1

witnesses to make their case before a hearing officer, said Robert Royce, the attorney for McGrath and Mohr.

"It comes down to basic fairness in the procedures," Royce said. "They will now have a better chance and will be better protected."

No hearing date has been scheduled. McGrath, president of the community college faculty members' union, said he is unsure how many of the 73 instructors who initially complained about the tenure process are still employed by the university.

In the merger, all community college instructors were allowed to keep their jobs, but only those with seven years of employment were offered tenure, and none was offered full professorship, according to court papers.

UNIVERSITY OF ALASKA FAIRBANKS



Governance Office
Fairbanks, Alaska 99775-0680
(907) 474-7964 • FAX: (907) 474-5213

MEMORANDUM

TO: Pat Carney
Georgianna Lincoln
Bettye Davis
Cheri Davis
John Gonzales
Mark Hanley
Mike Miller
Health, Education and Social Services

FROM: Lois Hildenbrand, President
UAF Staff Council

DATE: April 8, 1992

SUBJECT: Administrative Procedures Act

Attached is a resolution regarding the Administrative Procedures Act passed by the UAF Staff Council today. Staff Council is in favor of House Bill 549. If you would like to discuss this matter further, do not hesitate to contact me at 747-7043.

LH/kam

Attachment

cc Tom Moyer

The UAF Staff Council approved the following at its meeting #43 on April 8, 1992:

RESOLUTION PASSED (2 nays and 1 abstention)

WHEREAS, The Alaska Administrative Procedures Act (APA) adjudication procedures apply to boards and commissions listed in Sec. 44.62.330, in third party actions dealing with the granting or denying "...a right, authority, license, or privilege....," and

WHEREAS, AS 14.40 gives the Board of Regents the right to "...adopt reasonable rules, orders, and plans for the good government of the University," and

WHEREAS, Title 14, Article VII, Section 3 of the Alaska Constitution, indicates that the Board has plenary authority to govern and manage the University, and

WHEREAS, Transcripts of the legislative history of the APA statute reveal that the legislators had no intention that the quasi-judicial proceedings included in the APA be used for employee or student grievances, but rather for what are essentially licensing decisions and disputes involving state boards and commissions, and

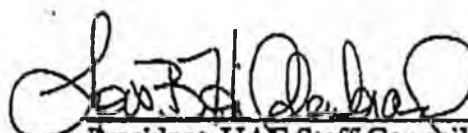
WHEREAS, The APA grievance procedures do not apply to any other employee group in the state, and

WHEREAS, The majority of University grievances, traditionally built around a process of peer review and consideration with appeal rights at several levels all the way to the President, are resolved at an early stage of review and are done so at little or no cost to the grievant or to the University, and

WHEREAS, APA requirements will increase cost, complexity, and formality of grievance procedures and are therefore contradictory to the resolution of student and employee grievances, and

WHEREAS, If HB 549/SB441 is not passed, it is anticipated that the University will have to pay approximately \$200,000 per year for hearing officers, and associated costs involved with this complex process, now

THEREFORE BE IT RESOLVED, That the UAF Staff Council supports the passage of HB 549/SB441 to exempt UA grievance from APA.

 4/8/92
President, UAF Staff Council Date

Juneau Central Labor Council

AFL-CIO

124 Front St. • Juneau, AK 99801 • (907) 586-9711

April 8, 1992

Representative Bettye Davis
House Health & Social Services Committee
Room 409
State Capitol
Juneau, AK 99801-1182

Re: Opposition to HB 549

Dear Representative Davis:

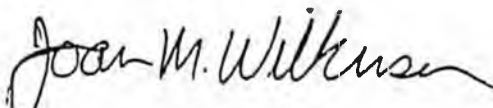
The Juneau Central Labor Council strongly opposes HB 549.

The Administrative Procedures Act was created by the legislature for the purpose of ensuring due process to persons adversely affected by administrative action, such as adverse employment or personnel actions. With HB 549, the Governor is suggesting that the University of Alaska be permitted to disregard these due process concerns. This bill thus represents a direct attack upon employee rights.

When the state community college system merged into the state university system, the Alaska Supreme Court addressed the issue of the applicability of the APA to a grievance brought by community college instructors in McGrath v. University of Alaska, 813 P.2d 1370 (Alaska 1991). The Supreme Court held that the use of the APA was appropriate and, in fact, "... the University's academic freedom is strengthened, rather than undermined, by the existence of a grievance procedure for adverse employment decisions which comports with the basic requirements of the APA and due process."

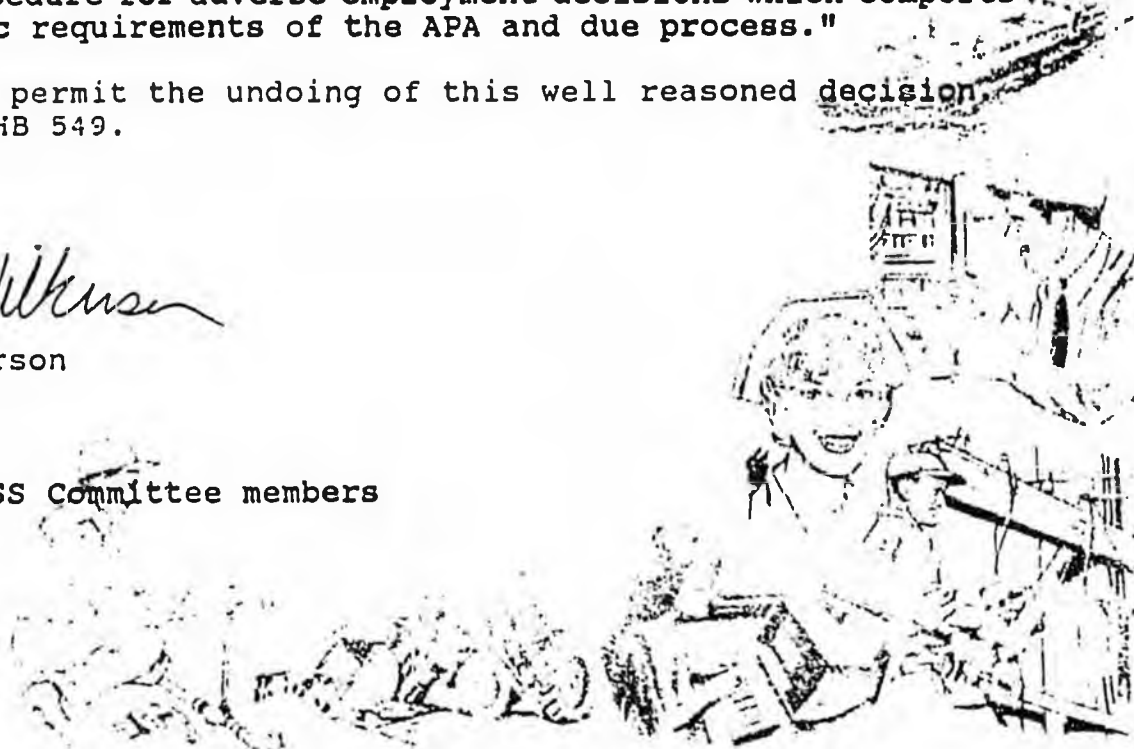
Please do not permit the undoing of this well reasoned decision.
Vote against HB 549.

Sincerely,



Joan M. Wilkerson
President

cc: House H&SS Committee members



Juneau Central Labor Council

AFL-CIO

124 Front St. Juneau, AK 99801 • (907) 586-9711



Mr. Charles Mahlen
Commissioner, Department of Labor
POB 21149
Juneau, AK 99802

RE: Division of Worker's Compensation

Dear Commissioner Mahlen:

The Legislature just conducted its fourth hearing on the Division of Worker's Compensation. We have watched the proceedings on television. We have read numerous articles in newspapers across the state. We have all but memorized the cases of alleged interference on the part of the Director, and we watched in dismay while the Director released copies of grievances in an attempt to impugn the reputation of her employees. We would like to add our voice calling for her resignation.

As members of the Central Labor Council, we would like you to know that we are disturbed that this has become a "labor" issue as several legislators would have you believe. Although our member unions represent the hearing officers as well as many of the injured workers who have filed claims, this has become an issue of public policy. With so many doubts from so many people, hearing officers, the former director, and board members representing both management and labor, we question whether or not the integrity of the division can easily be restored. Whenever legislative bodies or institutions or boards carry out their duties, there must never be a shadow of doubt hanging over the proceedings. Employees and employers are wondering if they will receive a fair hearing under the present circumstances. It is imperative that faith in the process be restored. This can only be accomplished if the present Director of Workers Compensation leaves.

Thank you for your fair and considerate handling of this situation over the last few weeks.

Sincerely,

Joan Wilkerson, President

cc: All Legislators

Anchorage Alaska
April 6, 1992

House Health, Education and Social Services
Co-Chairman Pat Carney
Co-Chairman Georgianna Lincoln
Vice-Chairman Bettye Davis
Members Cheri Davis, John Gonzales, Mark Hanely, M.A. Miller

We the undersigned are all former faculty members of Anchorage Community College and current faculty members of the University of Alaska Anchorage. We wish to indicate our strong support for House Concurrent Resolution No. 55 and our strong opposition to House Bill No. 549 exempting the University of Alaska from the Administrative Procedures Act.

Ray Noble *Ray Noble*

Paul Alexander *Paul D. Alexander*

Brian Williams *Brian Williams*

John Mears *John Mears*

Vince Claydon *Vince Claydon*

Emil Remus *Emil Remus*

Frank Gross *Frank Gross*

Mike Buesseler *Mike Buesseler*

IN THE LEGISLATURE OF THE STATE OF ALASKA

S. B. 441

HB. 549

We the undersigned oppose "An Act exempting the University of Alaska from the administrative adjudication provisions of the Administrative Procedure act. and providing for an effective date.

Walt Pittman Instructor 4-4-92

Larry Larry Layzell Assoc. Prof- 4-4-92

Paul H. Esob.

4/3/92



4/3/92

Paul Gemmel

4-3-92

Chubasco

4-3-92

IN THE LEGISLATURE OF THE STATE OF ALASKA

S. B. 441

H. B. 549

We the undersigned oppose "An Act exempting the University of Alaska from the administrative provisions of the Administrative Procedure act, and providing for an effective date."

Nuke Anderson

J. C. Winfield

Don K. Swamer

John F. Allen
William Lewis

Joe J. Thomas

Walt Behr

Richard Leonard

*File
opponent*

H B 579

IN THE LEGISLATURE OF THE STATE OF ALASKA

S. B. 441
H. B. 549

We the undersigned oppose "An Act exempting the University of Alaska from the administrative provisions of the Administrative Procedure act. and providing for an effective date."

- Brigid Cammack 3040 Riverview Dr Hts. AK 99709*
- Michael R. Boudreau 2249 King Rd. FBS AK 99709*
- Eugene [Signature] Box 22067 FARA 99707*
- Candi [Signature] P.O. Box 81453 Fairbanks 99708*
- Jud A. Dyer 4578 Drake Street, Fairbanks, AK 99709*

April 5, 1992

The Honorable Pat Carney
Pouch V
Juneau, AK 99801

RE: House Bill 549

Dear Representative Davis:

- * The purpose of the Administrative Procedures Act is to insure responsible government

The University is obligated to act equally responsibly toward employees and the general public. The procedures for ensuring compliance are clear under the adjudicative procedures of the Administrative Procedures Act.

As the recent court case, McGrath v. University of Alaska (813 P2d 1370) demonstrates, the UNIVERSITY OF ALASKA HAS REPEATEDLY FAILED TO INSTITUTE EQUITABLE ADJUDICATION PROCEDURES FOR EMPLOYEES under policies and regulations of the Board of Regents.

The CITIZENS of the State of Alaska RELY UPON the adjudicative procedures of THE ADMINISTRATIVE PROCEDURES ACT AS APPLIED TO EMPLOYEES OF THE UNIVERSITY OF ALASKA. The adjudicative procedures of the APA make it possible for an employee to seek resolution when internal practices of the University are against public policy. They provide the protection employees need to "blow the whistle" when necessary. EMPLOYEES SHOULD HAVE THE OPPORTUNITY TO APPEAL BEYOND THE UNIVERSITY PRESIDENT TO AN EXTERNAL AUTHORITY.

- * Is the University seeking exemption from the discipline provided by the adjudicative procedures of the APA?

If University practices are fair and reasonable, expense to the University in providing protection under the procedures of the APA will be the same for employees as to the general public.

Contrary to assumptions made and distributed at University expense by the governance body of the University of Alaska (see enclosures), THE IMPOSITION OF THE ADJUDICATIVE PROCEDURES OF THE APA WILL NOT IMPOSE A QUASI-JUDICIAL PROCEEDING ON ALL UNIVERSITY GRIEVANCES, NOR WILL THEY REQUIRE UTILIZATION OF A FORMAL HEARING OFFICER for all grievances. As noted, most grievances are resolved at early stages, with little or no cost to either party. IF University practices are fair and reasonable, little change should occur.

Please recommend and vote against passage of this bill.

Lois Foster

Lois Foster, 513 East Street, Juneau, AK 99801

From: JAN M HENDERSON

TO: GOVERNANCE LEADERS

FROM: JAN HENDERSON
UAA GOVERNANCE OFFICE

SUBJECT: UNIVERSITY GRIEVANCE PROCEDURES
ALASKA ADMINISTRATIVE PROCEDURES ACT

Please share this information with other faculty, staff and students. If you have any questions, call me at 786-1945.

POMs (Public Opinion Messages) need to be sent WEDNESDAY, JANUARY 29, 1992, to the Governor's office regarding introduction of a bill exempting the UA from the APA. Please take five minutes out right now and encourage the Governor's office to introduce this important legislation. Your voice message or fax message is urgently needed today.

Send to: Governor Walter J. Hickel
Anchorage phone: 561-4228
Anchorage fax: 561-4356.

Remember, do not use university letterhead. This bill has not been assigned a number, but is entitled:

"AN ACT EXEMPTING THE UNIVERSITY OF ALASKA FROM THE ADMINISTRATIVE ADJUDICATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT".

Rationale: The Alaska Administrative Procedures Act (APA) grievance procedures do not apply to any employee group in the state, and there is a substantial body of evidence from legislative hearings that there was not intent that the AAPA be applied to University grievance procedures. The proceedings included in the AAPA are not intended for employee or student grievances, but rather for citizen grievances against state boards and commissions. Employee and student grievance procedures are traditionally built around a process of peer review and consideration with appeal rights at several levels all the way to the President. The majority of University grievances are resolved at an early stage of review, and are done so at little or not cost to the grievant or to the University. The imposition of the AAPA procedures, however, will now impose a quasi-judicial proceeding on all university grievances, including the utilization of a formal hearing officer. The additional cost, complexity and formality of the AAPA requirements are contradictory to the resolution of student and employee grievances and are contradictory to the collegial approach that characterizes a university setting.

Attachment 5

Classified Employees' Association
University of Alaska Southeast
11120 Glacier Highway
Juneau, Alaska 99801

Walter J. Hickel, Governor
State of Alaska
Pouch A
Juneau, Alaska

Dear Governor Hickel:

The Classified employees of the University of Alaska Southeast support the legislation which would exempt the University of Alaska from the Alaska Administrative Procedures Act. Our reasons are:

- 1) The Alaska Administrative Procedures Act grievance procedures do not apply to any employee group in the state and there is a substantial body of evidence that there was not intent to apply the AAPA to the University grievance procedures.
- 2) The proceedings included in the AAPA are not intended for employee or student grievances, but rather for citizen grievances against state boards and commissions.
- 3) Employee and student grievance procedures are traditionally built around a process of peer review and consideration with appeal levels all the way to the President.
- 4) The majority of University grievances are resolved at an early stage of review, and are done so at little or no cost to the grievant or the University.
- 5) The imposition of the AAPA procedures will impose a quasi-judicial proceeding on all university grievances, including utilization of a formal hearing officer.
- 6) The additional cost, complexity and formality of the AAPA requirements are contradictory to the resolution of student and employee grievances and are contradictory to the collegial approach that characterizes a university setting.

We urge you to proceed with the introduction of this important bill which has our complete support.

Sincerely,

Donna Chantry, President
UAS Classified Employees Association

cc: Paul Fuchs

Date of Committee Action: 4/10/92

The HEALTH EDUCATION AND SOCIAL SERVICES Committee considered: HB 549

HOUSE BILL NO. 549 EXEMPT U OF AK FROM APA PROCEDURES

"An Act exempting the University of Alaska from the administrative adjudication provisions of the Administrative Procedure Act; and providing for an effective date."

RECOMMENDATIONS: the same title
be replaced with _____ a new title

have attached amendmen:s(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note U. of A. 2/19/92

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
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<i>[Signature]</i>	<input checked="" type="checkbox"/>				

[Signature]
- CHAIRMAN'S SIGNATURE

UNIVERSITY OF ALASKA AND THE ACCFTBACKGROUND

In response to dramatic declines in state revenue that reduced the University budget by nearly 15%, the Board of Regents implemented an organizational restructuring plan on July 1, 1987. Following many months of discussion and debate as to possible alternatives, the Board implemented a plan that called for the restructuring of the system's three universities and 10 community colleges into three newly organized regional universities. Because it retained required local funding, Prince William Sound Community College in Valdez maintained its separate status as an independent community college. This restructuring resulted in an annual cost savings of nearly \$6 million and included the layoff of dozens of individuals in administrative and staff positions. The overriding principle of the Board of Regents in implementing this plan was to protect the instructional delivery capacity of the University and to maintain the missions inherent in both the university and the community college programs. As a result, no faculty positions were eliminated, the level of course offerings was maintained, and substantial administrative savings were realized.

New mission statements for the three universities were created that recognized the expanded instructional responsibilities of these newly created institutions. New policies and procedures were developed at each university that recognized the integration of the faculties of the former universities and community colleges. Common curriculums were established within each regional university resulting in the elimination of many of the transfer difficulties previously experienced by students moving between the community colleges and the universities.

BORNSTEIN I

Prior to the restructuring of the University of Alaska system the community college and rural education faculty were represented by the ACCFT, while faculty at the university campuses in Anchorage, Fairbanks and Juneau were not represented by any union. The University took the position that the collective bargaining agreement ceased to apply to the transferred faculty at the same time that the community colleges themselves ceased to exist. The ACCFT rejected offers by the University to negotiate concerning the effects of the restructuring and, in fact, directed their members to refuse participation in all discussions and decisions regarding the restructuring process. The ACCFT subsequently contended through a series of grievances that: 1) the University had no right to implement a restructuring plan that eliminated the separate identity of the community colleges, 2) that the University restructuring was the result of "anti-union animus", and 3) the union's representative status and collective bargaining contract should continue into the restructured universities. These issues were placed before Mr. Tim Bornstein for arbitration. A decision on the first two issues, known now as "Bornstein I", occurred in February, 1988,

stating that the Board of Regents had the authority to restructure the University without an obligation to bargain first with the union, and that there was no evidence of "anti-union" animus on the part of the University.

BORNSTEIN II

In August, 1988, Mr. Bornstein held a hearing on the question of whether the ACCFT representation of the former community college faculty should have continued beyond the implementation date of the restructuring. The University argued that after the restructuring the unit definition that had been established within the former collective bargaining agreement no longer existed. The ACCFT argued that the administrative restructuring and elimination of the community colleges did not alter the community of interest and that their representational rights extended into the new organization.

The hearing before Mr. Bornstein was held less than one year following the implementation of the restructuring. The University argued at the time that the restructuring, particularly the integration of faculty who were coming together from different academic cultures, was a process that would take several years to accomplish. At the time of his hearing, the full integration was just beginning. Under the collective bargaining agreement, faculty teaching at the community colleges were restricted primarily to lower division, developmental, vocational and community interest courses; did not hold academic rank; receive tenure; engage in research as a part of their workload; participate in peer review or evaluation; or involve themselves with faculty governance processes. Under the new policies and procedures that were being developed at the time of this initial Bornstein II hearing all of this was changing: revised tenure, promotion and evaluation policies were being written by the combined faculty; new mission statements were being developed by advisory committees; academic programs and departments were being consolidated with faculty from the former community colleges and universities sharing in the development and delivery of courses at all instructional levels; major remodelling and space allocations were being developed in Anchorage that reflected the needs of the integrated faculties; and the curriculum itself was being substantially revised to provide consistent course content and standards at each campus within the regional universities.

In January, 1990, Mr. Bornstein issued a ruling, now referred to as "Bornstein II", that concluded that at the time of his hearing, 18 months earlier, "...the working conditions and interests of the professional employees transferred from the community colleges to the three regional universities have not meaningfully changed", and further, that the university erred when it declined to continue recognition of the ACCFT as the representative of a bargaining unit following the initial restructuring. He directed that the parties meet together to seek a "...suitable remedy for the contractual and statutory violations...". The inordinate length of time taken by Mr. Bornstein to reach a decision in this arbitration created an unusual situation for both the University and the ACCFT. During the 18 months following the initial hearing, the

University proceeded with the evolution of the new institutions and the implementation of policies and procedures for the newly integrated faculty outlined above. While Bornstein could easily identify that a community of interest continued to exist within the university 9 months after the restructuring was initiated, it was far more difficult to determine what it should be in January of 1990 -- nearly 2 1/2 years later.

During the course of the next 9 months, the University and the ACCFT met several times to discuss the "remedy" directed in the Bornstein II decision. In order to determine a remedy for the Universities failure to recognize the ACCFT, it was necessary to identify who should be in the unit. The ACCFT contended that the unit should be composed of all former community college faculty, regardless of where they were in the new institutions (faculty, administrators, etc), and that it should also include all new faculty hired into positions that were formerly budgeted in a community college, regardless of what their new assignment might be. While vocational-technical faculty, the developmental and extended campus faculty continued in many instances to engage in work similar to that performed prior to restructuring, their conditions of employment had changed substantially. Another particular complexity involved the faculty in arts and sciences on the Anchorage campus. Following restructuring, these faculties came together in a way that made the distinction between "community college" and "university" difficult to determine. History 101 is now the same for all students whether they are seeking an associate degree, a baccalaureate, or taking the course for personal enrichment. Furthermore, under the faculty policies implemented at UAA, faculty are provided an option, depending on the teaching and research needs of the department, of selecting a tenure track option that may or may not include a research commitment. As a result, it is impossible to tell, based on workload, who is a "community college type" faculty member and who is not - particularly for faculty hired after the implementation of the restructuring. The union's contention that all positions and individuals formerly assigned to the community colleges, regardless of their current assignment, should be in the unit was simply not acceptable to the University. A unit that has no common community of interest makes little sense. The result of this unit would have been to create a bifurcated faculty, where for example, virtually every academic department at the Anchorage campus would have some of the faculty in a union and some not, and further, that this bifurcation would be based not on a common community of interest, but rather on the premise that positions and individuals who were once in a bargaining unit should forever continue in the bargaining unit regardless of their work assignment. From a management standpoint, this construct was and continues to be unworkable.

BORNSTEIN III

Mr. Bornstein retained jurisdiction over the matter in the event that the parties could not reach an agreement, and at the request of the University and the ACCFT, hearings were initiated in November 1990. The issue before Mr. Bornstein was to define a unit for purposes of establishing a remedy in

response to the University's failure to recognize the ACCFT as the bargaining agent for the former community college faculty following restructuring. During these hearings, the ACCFT argued that the contract that existed at the time of restructuring should be unilaterally extended, and that close to \$30,000,000 in awards and damages be made for the University's failure to honor the contract following the implementation of restructuring. The University argued that a full integration of the faculty, while it had not taken place at the time of the initial hearing in July of 1988, was essentially in place prior to the termination of the contract and that the period of time covered by the award should end, at the latest, with the beginning of the fall semester of 1988. The University further argued that if the contract was found to be in effect at any point following restructuring, that it should be applied *in toto*, and that all wages and benefits assigned to faculty outside of the contract provisions should be rescinded. On the issue of unit determination, the ACCFT argued that all new faculty hired to replace former community college faculty should be part of the unit, while the University argued that none of them should be considered because they did not fall into the community of interest defined by the contract itself.

Mr. Bornstein's final decision, known now as the "Bornstein III", received in May, 1991, defines a unit for purposes of the remedy that includes all former community college members and "new faculty hired to teach courses traditionally taught by former community college faculty on the basis of a bipartite workload"¹ Mr. Bornstein rejected most of the ACCFT's claims for damages, and fashioned a financial remedy that addresses itself to specific contract terms and conditions that were not continued following restructuring. The decision rejected the ACCFT position that the contract should be unilaterally extended and rejected the University's argument that the contract, if found to be in effect, should be applied, *in toto*. Instead, Mr. Bornstein's decision directed a compromise by limiting the time frame for awarding damages to the period July 1, 1987 (the implementation of the restructured University) to the expiration of the contract, March 31, 1989. He also concluded that wages and benefits extended by the University outside of the provisions of the collective bargaining agreement could not be rescinded.

In reaching his compromise on the term for awarding damages, Mr. Bornstein rejected the University's claim that a full integration of former community college faculty into the new University was completed prior to the expiration of the contract on March 31, 1989. While he acknowledged that there was movement in that direction, he was not persuaded that there were significant alterations in the working conditions prior to the expiration of the contract. He points out that many of the most significant changes in the working conditions, including the development of new faculty promotion and evaluation criteria, were implemented close to or after the March 31, 1989 contract

¹ Faculty workloads consist of 5 equal parts. A tripartite load is composed of three parts teaching, one part research, and one part public service. A bipartite workload is composed of four parts teaching and one part public service.

expiration date. In his words, "...the ice continued to melt during the 1988-89 academic year, but when the contract expired on March 31, 1989, there was still a large and identifiable block of ice in place."

The legislature appropriated a total of \$1.2 million in FY92 for payment of the award established in the Bornstein III arbitration. This amount was the best estimate that the University and the ACCFT could make as to the potential costs associated with each award element. Copies of Mr. Bornstein's award (Attachment #1) and the status of the pay-out to date (Attachment #2) are included here for your information. As of today, the only element remaining to be determined is the amount due to individuals for various overload payments that were allowed under the collective bargaining agreement. For instance, under the terms of the contract faculty members were eligible to receive additional pay beyond their annual salary for courses taught beyond their normal course load; for days worked beyond the academic year defined in the contract; for class preparation days; for time spent as a substitute for an absent faculty member; for committee assignments, etc. The payment of these individual overloads required that faculty submit documentation prior to payment. This process is nearing completion. Initial estimates are that these payments will be in excess of \$700,000. If additional funds are necessary to pay all aspects of the award, the University will submit a request for a supplemental appropriation as is the case with all state arbitration awards.

PRINCE WILLIAM SOUND COMMUNITY COLLEGE

From the original implementation date of restructuring, the University has recognized the ACCFT as the appropriate representative for the faculty at PWSCC. The University has attempted to enter into negotiations with the ACCFT on behalf of the faculty to no avail. The ACCFT has consistently refused to bargain with the University relative to these faculty, contending at each encounter that are representing, and bargaining, for a larger unit of approximately 285 unspecified members. Since the University refuses to negotiate a contract for a group that cannot be defined, and the ACCFT refuses to negotiate for the PWSCC faculty, we have failed to successfully enter into negotiations.

Our inability to enter into negotiations with the faculty at PWSCC has been especially frustrating. However, the University is obligated to recognize the ACCFT as their rightful agent, and as long as their agent refuses to negotiate on their behalf, it is difficult to see what option exists for us. In an effort to encourage the reopening of negotiation on behalf of the PWSCC faculty, we sent a copy of a new contract proposal to the ACCFT in December, 1991 with copies to each of the PWSCC faculty members. The ACCFT has subsequently filed an Unfair Labor Practice Charge against the University for this action. In a further effort to achieve some level of fairness for the PWSCC faculty, who have not received any salary increases in recent years, the University authorized, with the acceptance of the ACCFT, the payment of salary increases to the

PWSCC faculty at the same level as that received by other University employees during the past three years.

The University remains prepared to enter into full negotiations with the PWSCC faculty at any time.

CURRENT STATUS

The Bornstein arbitrations did not address the issue of whether a collective bargaining relationship continued to exist between the University and the ACCFT following the expiration of the contract in March of 1989. Mr. Bornstein was very careful to limit his findings to the period that ended on March 31, 1989 and he scrupulously avoided taking any position on whether a community of interest exists today. The ACCFT contends the remedy unit defined in the Bornstein II arbitration should automatically be accepted as the "successor unit", (i.e., no vote) for future negotiations. The University contends that the remedy unit has no meaning as a prospective bargaining unit because there is no common community of interest. The unit definition that existed prior to restructuring was established by the State Labor Relations Agency and was based on a community of interest for faculty who were employed at a community college. In correspondence responding to a request from the ACCFT for clarification on the issue of a prospective unit definition, Mr. Bornstein indicated that the answer to that question should probably come from the State Labor Relations Agency. In May of 1991, President Komisar wrote to the State Labor Relations Agency requesting their assistance in clarifying the representative status of the ACCFT and the composition of a bargaining unit that they might determine had a common community of interest. (Attachment #3) In September of 1991, the ACCFT made a motion to the Agency to reinstitute an Unfair Labor Practice charge originally filed in 1987 and held in abeyance pending the outcome of the Bornstein arbitration. The motion for reinstatement requests that the Agency essentially adopt the remedy unit defined in the Bornstein II arbitration as the successor unit, and direct that the contract terminated in March of 1989 be extended to the present time. The ACCFT further requests that the Agency assign additional monetary awards similar to those assigned by Bornstein for the period of time from the contract termination to the present. The Agency has agreed to hear these cases and will begin hearings in the very near future.

At the same time, the University has continued to engage in informal discussions with the ACCFT in an effort to determine whether we can agree on an appropriate bargaining unit without the third party intervention of the State Labor Relations Agency. The University continues to believe that a bargaining unit must represent a group that shares a common community of interest. The ACCFT continues to believe that they have a "right" to all of the individuals and positions that were formerly assigned to the community colleges, regardless of what their current assignments or conditions of employment may be.

A central issue of concern to the University continues to be that following restructuring, faculty at all the campuses have been integrated with the total University faculty, and that the community of interest that once existed is difficult to see today. The faculty at each extended campus are integrated into academic departments with their colleagues in Anchorage, Fairbanks or Juneau, the professional environment and obligations have changed, and in many cases, the workload has changed significantly from what it was when the individuals were community college faculty. These issues are particularly dramatic on the Anchorage campus, where faculty from traditional academic disciplines such as history, english, biology, etc., who were formerly teaching in separate institutions, to separately enrolled students, are now members of an integrated faculty co-located with their colleagues, and teaching to an integrated student body. The ACCFT version of a bargaining unit would result in the bifurcation of virtually every academic department. From a management standpoint, it is difficult to imagine how a educational institution could be effectively run with this type of collective bargaining situation. An additional issue of concern is that the ACCFT proposal for a successor unit does not allow for a vote by the membership, which would include many new faculty who were hired after the implementation of restructuring in 1987, and who never had any relationship whatsoever with a community college or with the ACCFT.

While it is still our preference that the University and the ACCFT find a joint solution to the central issue of unit definition without the intervention of the State Labor Relations Agency, both parties must feel that they have more to gain than to lose if such discussions are to be successful. At this point it appears that the ACCFT is ambivalent on this question. The University is attempting to resolve the issue through negotiations and failing that, we will seek the assistance of the the State Labor Relations Agency. In collective bargaining, these are the appropriate avenues of resolution.

SHOW NEWS

**** 18-MAR-1992 08:26 "Proposed 17 Million UA Budget Cuts"

SUBJECT: PROJECTED IMPACTS OF PROPOSED \$17 MILLION CUT TO UA FY93 BUDGET

Note: This file contains the text of the presentation President Komisar will make to the House and Senate Finance committees March 18, a summary of impacts to each unit, and historical comparisons of the UA budget share of the state general fund operating budget, and of the UA budget to the Higher Education Price Index from FY85 through FY92. Budget impact details for UAA, UAF, UAS and statewide programs and services are too long to include on SHOW NEWS, but may be found on the SYGABB vax bulletin board. Log on to ACAD3*. Type SYGABB at the USERNAME PROMPT. A menu will appear. Select the first category.

March 17, 1992

Jerome B. Komisa
President

Testimony Submitted on Behalf of the
University of Alaska
Before the
House and Senate Finance Committees
March 18, 1992

Thank you for this opportunity to come before you to discuss the proposed University budget for fiscal year 1993. It is not a happy occasion, but I do appreciate your consideration and your willingness to listen.

I don't envy you your task. The policy choices you must make are awesome and they will have a far reaching and irreversible impact on Alaska.

For the University and the State of Alaska, the threat of additional reductions comes at a particularly difficult time:

- * the University's enrollment is expanding, more and more Alaskan young people are choosing to stay in the State for their college education;
- * virtually all entry level jobs in our economy require some form of post-secondary education, and job promotions are usually tied to additional education;
- * public service needs of the State are expanding as people seek assistance in developing small business opportunities, assistance with technological changes, and application of new knowledge and research in their daily lives;
- * research opportunities abound and the University is in a position to lead the growing national and international interest in Arctic research and global warming;
- * and the quality of the University is becoming well known throughout the State and nation.

Six years ago, as State revenues plummeted, the University took nearly a 20% reduction in State funding. The Board of Regents directed the University to take that reduction in a way that would minimize the impact on student access and delivery. The result of this was a massive reorganization of the State's higher education system that reduced the administrative structure dramatically, merging the community college and university systems, saving nearly \$6 million per year in administrative costs to the State, and providing a vastly different type of higher education system. The University did not lay off any faculty, and we maintained the course delivery levels. It would be less than honest, however, to imply that this restructuring

was accomplished without a cost to the institution. Initially, enrollment in the University fell as did its capacity for public service and its ability to maintain its physical plant. Many of the traumas of the restructuring are still being absorbed and it is only in the last two or three years that the University has begun again to move forward in extension and research and student enrollment.

I bring this issue up for two reasons. First, I believe that memories are short, and it is my impression that most of the public have forgotten what the University went through in restructuring itself only 6 years ago. And second, the notion that the University can find substantial savings from administrative restructuring today is simply not true. While we can make further consolidations of administrative functions on some campuses, and we can reduce and realign administrative functions between the statewide and campus administrations, the fact is that these savings will be relatively small in terms of dollars. The pressures of expanding enrollments and flat budgets have already forced so much reduction in administrative costs that very little is left for further reduction. Financial savings today will have to come from a major reduction in services.

The current proposal of less than \$157 million is not simply a cut, it would represent a drastic curtailment in the services the University can provide the State and, in turn, irretrievably alter some of the fundamental conditions of life in Alaska.

For the current year, FY92, the budget for the University is \$4 million more than it received in FY91. University fixed costs, however, rose by \$11 million, and enrollment increased by 5%. As a result, the campuses have had to make significant reductions in services and staff this year.

* At all campuses, class offerings are being restricted, class size is increasing, proper sequencing for graduation is being significantly impacted; and closed sections for lower division core requirements, which all students need for graduation, are the rule rather than the exception.

* Nearly 50 courses were cancelled in the Spring schedule at UAA and UAF; 26 at UAS; from 17 to 20 cancelled at each extended campus resulting in a loss of an estimated 4,200 credit hours.

* Summer Sessions at UAF, UAS, and UAA are moving to a self-support basis resulting in higher cost to students, and a substantial reduction in course offerings.

In addition to the loss of course sections and credit hours, there were other cutbacks throughout the University because of increases in fixed costs. At UAA severe travel restrictions were put in place as well as general reductions in departmental expenditures of 3 - 5%. The closing of two research centers, the

Center for Information Technology and the Center for High Latitude Research, will result in the loss of important instructional, research and data collection capabilities for the State.

At UAF every department was assigned a reduction amounting to 3 - 20% of funding, resulting in the loss of dozens of administrative, clerical, and faculty positions. Crucial maintenance of facilities continues to be deferred, instructional equipment purchases must be delayed, and new initiatives designed to secure more federal funds have been curtailed.

At UAS, general reductions were made in administrative and clerical support, travel, commodities, library acquisitions, maintenance, and student access to computing services.

If this magnitude of reductions was necessary during a year of increased General Fund support, it is not too difficult to imagine what will be necessary to handle a decline of over \$12 million from the FY92 funding level.

Upon receiving the \$157 million target, I asked each of the Chancellors to project what actions they would have to take to accomplish so large a reduction. They were to examine two approaches: first, a 7% across-the-board cut of this year's budget of \$168 million; second, a 10% cut from the \$174 million target - the additional \$5 million having been distributed in accordance with the Board of Regents' initial budget submission.

Under each approach the results are horrendous. To absorb this reduction in general fund expenditures, the University will have to:

- * reduce employment: permanent faculty - 125; adjunct faculty and graduate assistants - 472; permanent staff - 208; temporary staff - 52.
- * cut 1,237 credit bearing courses, resulting in the loss of 74,225 credit hours;
- * diminish its public service, extension and advisory programs;
- * contract its organized research activities by \$1,446,200; resulting in approximately \$4,000,000 loss in federal funds;
- * reduce programs in athletics, performing and fine arts activities;
- * reduce acquisition of library resources, laboratory equipment, and computing and instructional technology;
- * defer important facility maintenance and plant enhancements designed to provide long term cost savings;

The results will be evident:

- * more students will be driven from the State to continue their studies and the probability of their remaining Alaskans will be reduced;
- * less choice, and diminished quality for those students who do continue to study at the University of Alaska;
- * more Alaskans will be denied an opportunity to continue their studies because of the reduction in program choice, higher tuition and fewer locations being served;
- * the University will be less able to compete for sponsored research funds and academic research, one of Alaska's significant growth industries, will be retarded;
- * the University will not be able to maintain, let alone enhance, its capacity to aid in economic activity and economic development;
- * the quality of the cultural life of the community will be unavoidably damaged;
- * the University will be forced to raise tuition much faster than planned in order to maintain minimum standards.

Most of these effects are not easily quantifiable, in fact the most important ones are not. But numbers can be put against some of the effects and by just examining those it is clear that a \$17,000,000 cut in the University's General Fund budget will cost individual Alaskans much more than the money saved in the State budget.

If, because of these reductions, 500 full-time students, and 500 is a low estimate, decide to go out-of-state for a four year undergraduate degree, the out-of-pocket expense to Alaskans will be approximately \$20,000,000 given the current cost of about \$40,000 for four years of out-of-state tuition, room and board and travel for those 500 students. And unless the University's budget is ultimately restored, there will another 500 students the next year, and the next.

This means \$20,000,000 more spent in Oregon or Washington or California, and \$20,000,000 less in Alaska. And since economic activity feeds upon itself, the \$20,000,000 will multiply into \$40,000,000 less commercial activity in this State.

But dollars are not the full measure of the injury done by compelling students who wish to remain in Alaska to study outside. The dollars lost might well be the smaller sum by far. By forcing students outside, Alaska would be drawing for itself a most disparaging self-image and would be declaring in no uncertain tones that the students' futures lie outside Alaska's

borders. I don't think any of us believe that vision; we do not want that type of tomorrow.

For those students who continue with the University, there will be fewer course offerings, larger classes, less library books, fewer adequate laboratories, less computer time and far less opportunity for advising and counseling.

Those who will be hurt the most, of course, are those place bound Alaskans who will not be able to use the services of the University because it will no longer be able to offer courses at convenient times and locations. These Alaskans will find themselves without the skills and knowledge essential for a place in an advanced economy, and without the wherewithal to improve their individual economic situation.

The Board of Regents' concerns and aspirations for the University have included a strong sense of reality regarding the State's revenues. At their urging, we have been planning for a funding future that was relatively flat. We have been engaged in program review processes to assess our program offerings and distribution; we have developed an allocation model that is intended to assist us in distributing our resources in the most effective manner; and we are engaged in a substantive management review process to assure that we are maximizing our administrative services and financial resources.

It should also be pointed out that the University is engaged in significant activities designed to increase our non-general fund revenue. Our budget request for FY93 included a 10% tuition increase, but, as mentioned before we will be forced to seek a larger increase.

We are continuing to build upon our research capacities and are increasing the level of sponsored research in the University. This funding supports not only research activities but also provides our graduate students opportunities for advanced study.

We have embarked on an aggressive land management program to maximize revenues. The land grant revenue goes into an endowment intended for the long term benefit of the University. The yearly revenue is less than \$2 million per year and, although it is unlikely that level can be greatly increased in the near future, revenue from our land ownership may prove a major factor toward the end of the '90s.

We are stepping up our development programs to secure private contributions. This is an area that I believe has great potential for the University, but again, these funds become part of an endowment for the long term benefit of the system and cannot be counted on as a revenue source that will provide any significant short-term off-set to the reductions we are discussing.

The work performed by the University of Alaska is essential to the future of our State. In simple economic terms, higher education has long been seen as having a direct correlation with

the health and vitality of the communities it serves. The educational, public service, job training, research, cultural and social contributions of higher education are essential to the overall State economy. How can Alaska find the balance between resource protection and development that our future depends on without the necessary research done at the University? How can our citizens enter, or stay current, with a job market that requires ever more sophisticated skills and technological abilities? How can the State attract new business and industry without offering the benefits of a high quality higher education system?

The University of Alaska is as significant an instrument of public policy as it is a major channel of private success. In making your budget decisions, in allocating the reductions to State agencies and the University, you are making public policy decisions on the priorities of the State.

Things do cost more in Alaska. Alaska's government now spends four times the amount spent per capita on all services than do other states, except for higher education, health and social services. In those areas it spends only twice the national average. The current proposal allocates higher percentage cuts from the current year to the University and health and social services than it does to other services, further pushing these areas of spending down on the State's list of priorities.

The proposal before you cuts 7% from the current year's funding to the University, compared to an average of 4% for other agencies in the State. We need at a minimum undiminished State support. We cannot maintain our bearing and our complexity of missions without it. And the State needs a strong public university. The brightness of Alaska's future would be deeply tarnished without it.

You have given the University great support in the past. It is an investment that has paid large returns. We need your help to continue.

Thank you for listening so patiently. I would be more than pleased to answer any questions.

University of Alaska
FY93 PROPOSED BUDGET IMPACT

	SPS	UAA	UAF	UAS	TO
FY92 Authorization	\$12,703.5	\$57,296.4	\$84,920.4	\$13,181.3	\$16
FY92 Gov. Request	\$12,905.0	\$61,488.7	\$86,008.1	\$13,464.5	\$17
FY93 Reduced Budget	\$11,643.2	\$55,476.6	\$77,598.5	\$12,148.0	\$15
FY93 Reduction	(\$1,261.8)	(\$6,012.1)	(\$8,409.6)	(\$1,316.5)	(\$1

Permanent Staff	(26)	(70)	(95)	(17)
Temporary Staff	(3)	(18)	(27)	(4)
Permanent Faculty	(1)	(49)	(67)	(8)
Adjunct Faculty	(0)	(180)	(243)	(49)
Credit Hours	0	(39,922)	(33,418)	(7,885)
Course Sections	0	(549)	(557)	(131)

FY85-92

UNIVERSITY OF ALASKA GENERAL FUND OPERATING BUDGET
AS A PERCENTAGE OF ALL STATE GENERAL FUND OPERATING BUDGET APPROPRIATION

	FY85	FY86	FY87	FY88	FY89	FY90	FY91
University State Budget	168.9	167.3	144.0	146.5	154.2	161.0	170.4
% of State Budget	2110.5	2116.5	1844.1	1911.3	2086.7	2118.6	2286.3
	8.05%	7.90%	7.81%	7.66%	7.39%	7.60%	7.45%
Fall Student Credit Hours	201928	214323	210013	202801	205807	212875	224482

UNIVERSITY OF ALASKA GENERAL FUND GROWTH
COMPARED WITH HIGHER EDUCATION PRICE INDEX
GROWTH FY85-FY92

	FY85	FY86	FY87	FY88	FY89	FY90	FY91
UNIVERSITY	168.9	167.3	144.0	146.5	154.2	161.0	170.4
HEPI		176.0	183.2	191.3	202.6	214.8	225.5

-----> A

sections, and general fund support to Adult Basic Education in Anchorage. Elimination of course sections will cause students severe scheduling and sequencing problems and create delays in completing degree course requirements. Eliminating specialized programs, including some vocational-technical programs, two year programs and graduate degrees, will severely harm site-bound Alaskans. Closing or severely curtailing programs that are within a reasonable commuting distance to Anchorage or an extended campus site will also harm site-bound students. The range in anticipated course section impact is a result of the lack of flexibility in academic and institutional support due to reductions made during restructuring and the FY92 vetoes which may require more significant reductions in instruction.

- B. STUDENT SERVICES -- Reduced staffing will result in reduction or elimination of many social, recreational, and cultural activities; counseling services; student health medical services; financial aid management and student employment; and student recruitment and retention efforts.
- C. LIBRARY SERVICES -- Review specialized libraries for reduction or elimination. The library will reduce staff, the purchase of books and periodicals, and reduce the hours of operation, severely limiting its use by students and researchers. Inflation since FY90 has reduced library purchasing power by over 35% which has resulted in an inability to maintain current periodicals, subscriptions and reference books and materials, and even minimum basic reference materials for new programs.
- D. OTHER SERVICES -- Reduce general fund support to intercollegiate athletics. Athletic program cuts at UAF will have an undetermined impact on the UAA athletic program. Reduce and/or eliminate research, public service centers and research institutes thereby reducing services to the public and government agencies and eliminating local jobs. UAA's capacity to train and keep Alaskans in state, and our ability to better manage our resources and develop new technologies that create jobs will be jeopardized. If the state's investment is lost or reduced, funding agencies will become cautious of awarding grants to UAA, the "new" money brought into the Alaska economy each year because of UAA's research efforts will decline. The reduced physical plant budget does not provide for fixed cost increases; building maintenance and renewal replacement dollars will have to be used for utilities and other non-discretionary costs. Reductions to academic and institutional support were so severe during the 1987 restructuring, that there is little flexibility to reduce staff in these areas without jeopardizing whole mandatory functions.

University of Alaska FY93
University of Alaska Fairbanks

Category	\$th FY92 Auth.	\$th FY93 Gov Req.	\$th FY93 Reduced Budget	\$th FY93 Loss	# Perm. Program	# Temp. Staff	# Perm. Staff
TOTAL	84920.4	86008.1	77598.5	(8409.6)	(95)	(27)	(57)
Instruction	27331.9	27946.3	25213.8	(2732.5)	(11)	(1)	(42)
Intercol. Athletics	818.5	818.5	738.5	(80.5)	0	(1)	0
Academic Support	5349.9	5349.9	4826.8	(523.1)	(6)	(5)	(4)
Institutional Support	8716.9	8716.9	7864.6	(852.3)	(15)	(8)	(1)
Physical Plant	12771.2	12771.2	11522.5	(1248.7)	(28)	(3)	0
Debt Service	1232.1	1231.1	1111.6	(120.5)	0	0	0
Student Services	3993.3	4024.5	3631.0	(393.5)	(9)	0	0
Library Services	4748.2	4966.5	4480.9	(485.6)	(5)	(2)	(5)
Public Service	5107.6	5107.6	4608.2	(499.4)	(4)	(4)	(4)
Scholar- ships	283.2	283.2	255.5	(27.2)	0	0	0
Research	14567.6	14791.4	13345.2	(1446.2)	(18)	(3)	(11)

Credit hours/course sections lost --> (33,418hr) (557 sec)

Impact:

- A. INSTRUCTION -- Students will be faced with closed classes; a total of 557 course sections will be eliminated. Some undergraduate majors will be terminated, including some in science, liberal arts and engineering. Eliminating specialized programs, including some vocational-technical, two-year programs and graduate degrees, will severely harm site-bound Alaskans. Elimination of special services such as the Writing Center will impair UAF efforts to improve student communication skills and make UAF graduates less competitive in the workplace. Certain extension sites will be closed and thereby eliminating information that assists in economic development.

B. **STUDENT SERVICES** -- Publications and other forms of communication will be reduced, including fewer class schedules, giving students less timely information. One athletic program will be cut at UAF, jeopardizing NCAA standing, affecting community-campus interaction, and having an undetermined impact on UAA. Responses to prospective students and notification of financial aid will be slower, meaning students may choose another school in the meantime. The reduction to the Adjunct Faculty labor pool will impact at least 150 graduate students who would have been hired as graduate assistants; this loss of income may seriously impair their ability to complete their education. Also the reductions to the staff labor pools will seriously impact student employee hiring.

C. **LIBRARY SERVICES** -- The library will reduce the purchase of books and periodicals, and will reduce its hours of operation, severely limiting its use by students and researchers. The reduction would equate to an effective ten percent reduction of staffing availability to students or a reduction to acquisition purchasing power of sixty percent. Inflation since FY90 has reduced library purchasing power by over thirty-five percent which has resulted in an inability to maintain current periodicals, subscriptions and reference books and materials, and provide even minimum basic reference materials for new programs.

D. **OTHER SERVICES**

Academic Support -- The major academic computer, which provides instructional and research support and electronic mail, will be shut down. Computer classes using the VAX will be disrupted, and all external communications depending on the VAX will be interrupted. Cancelling software support contracts will affect speed and accuracy of purchasing, budget, physical plant and grants and contracts. The more than 4,000 students and faculty users of the Fairbanks computing facility will be left without consultant and training services with little or no support for some areas such as microcomputers and statistical software. Staff cuts will force elimination of the PC purchase program, which has saved thousands of dollars for university employees and students.

Research - Statewide and Local Economic Impact -- Parts of research programs and facilities in Fairbanks and throughout the state will close eliminating local jobs. UAF's capacity to train and keep Alaskans in state, and our ability to better manage our resources and develop new technologies that create jobs will be jeopardized. If the state's investment is lost or reduced, funding agencies will become cautious of awarding grants to UAF, the \$50 million of "new" money brought into the Alaska economy each year because of UAF's research efforts will decline.

Institutional Support -- Administrative costs will be cut first and deepest. Eliminating evening and weekend

information/switchboard services will disadvantage tourists and students. Elimination of the summer shuttle bus service will impact summer programs. Increased ticket prices for cultural events and for conferences will limit access to a portion of the public unable to pay. Building safety checks will be curtailed by the public safety office; increasing the possibility of costly vandalism and theft. Many other hardships will result as well as undesirable spinoffs on special projects, for example reduced support will jeopardize the fund raising campaign momentum which led to UAF's recent success in securing a \$1 million endowment. In short, as we disappoint students and faculty who expect quality services from UAF, we will at the same time be removing the base of support that allows us to generate alternative sources of revenue, including grants and contracts and private funds.

Physical Plant -- The budget does not provide for fixed cost increases in utilities and other non-discretionary items; building maintenance and renewal/replacement dollars will have to be used for these purposes. This only increases future maintenance costs.

University of Alaska FY93
University of Alaska Southeast

Category	\$th FY92 Auth.	\$th FY93 Gov Req.	\$th FY93 Reduced Budget	\$th FY93 Loss	# Perm. Program	# Temp. Staff	# Perm. Staff
TOTAL	13181.2	13464.5	12148.5	(1316.5)	(17)	(4)	(8)
Instruction	5077.7	5148.1	4644.7	(503.4)	(2)	(1)	(6)
Intercol. Athletics	0	0	0	0	0	0	0
Academic Support	1087.8	1155.8	1042.8	(113.0)	(1)	0	(1)
Institutional Support	2330.0	2330.0	2102.2	(227.8)	(5)	0	0
Physical Plant	2430.7	2430.7	2193.0	(237.7)	(5)	(1)	0
Debt Service	0	0	0	0	0	0	0
Student Services	1154.9	1266.7	1142.8	(123.9)	(3)	(1)	0
Library							

Services	1077.0	1110.0	1001.5	(108.5)	(1)	0	(1)
Public Service	5.0	5.0	4.5	(0.5)	0	0	0
Scholarships	18.2	18.2	16.4	(1.8)	0	0	0
Research	0	0	0	0	0	0	0

Credit hours/course sections lost---> (7,885hrs) (131sec)

Impact:

- A. INSTRUCTION -- Forced program elimination or reduction in FY93 will result in the loss of approximately 11 FTE faculty positions, 78 courses, and 3,510 credit hours. In FY94, required additional reductions will result in the additional approximately loss of 12 FTE faculty, 76 courses, and approximately 4,020 credit hours. The anticipated loss of tuition funding as part of these program eliminations will range from \$197.5 to \$315.9.

UAS programs require a majority of faculty to teach across programs, across disciplines and across degree levels within a program. Therefore, specific program eliminations and reductions will result in course and enrollment losses in other programs, or extension of the time it takes students to complete a degree program. Substitution of adjunct faculty may not resolve all concerns as sufficiently qualified adjunct faculty may not exist in the community, or those which do may not be relied on for consistent service, or meet continued compliance with academic quality standards. As a consequence, anticipated additional losses from this include 12 courses, and 540 credit hours with an effective additional loss of tuition and fee revenues of \$30.0.

On the Juneau Campus, any and all instructional program reductions or eliminations will be predicated on minimizing loss of degree-seeking students. Due to the differences of their missions, program reductions within the Sitka and Ketchikan campuses are more difficult to ascertain. Reductions are anticipated to include all instructional levels, including developmental and bridging programs as well as degree programs.

- B. LIBRARY SERVICES -- Reduction to Library Services is anticipated to not exceed 7.0-8.5% of the proposed reduction. This would equate to an effective 10.0% reduction of staff availability to students or a reduction to acquisition purchasing power of 60.0%. Inflation since FY90 has reduced library purchasing power by over 35.0% which has resulted in an inability to maintain current periodicals, subscriptions and reference books and materials, and an inability to provide even minimum basic reference materials for the new programs.

C. STUDENT SERVICES -- No reductions are possible to academic-related student service support functions within the Juneau Campus. These support functions are already inadequately staffed to provide required student processing, assistance and records management functions. Any single reduction to staff dedicated to counseling, recruitment and retention of students will effect a 40.0% loss in the region's ability to recruit and retain freshmen students from the region and improve retention of existing students through their course of study to graduation. Adequate resources for recruitment and retention are critical concerns in meeting mission goals, accreditation standards requirements and federally sponsored program requirements, particularly those related to financial aid programs. Due to the lack of regulatory governances and compliance, the student life, health and activities components of the Juneau Campus are the only remaining areas in student services where reductions can be accomplished. However, the anticipated reduction could impact accreditation compliance standards required for a "resident" campus. The Ketchikan and Sitka campuses have no flexibility to reduce staffing in this area, as any reduction would totally eliminate student services at these sites.

D. OTHER SERVICES --

Academic Support -- No further reductions to those made during the restructuring of 1987 can be made in academic support. Since that restructuring, the Juneau Campus has reduced its academic administrative positions by 30%, while expanding its responsibilities to include two external campuses. Any further consolidation or combining of schools under fewer Deans would jeopardize their ability to continuously review, enhance, modify or develop necessary curriculum or programs, direct resources to ensure optimum course and program offerings, ensure that financial resources are allocated to each program efficiently, and to provide optimum leadership for all faculty and staff. The Ketchikan and Sitka campuses have no flexibility to reduce staffing in this area, as any reduction would eliminate required functional activities.

Institutional Support -- No further reductions to those made subsequent to the restructuring of the 1987 can be made in institutional support without the elimination of a functional area. Since the restructuring, the Juneau Campus has reduced its institutional administrative positions by 71%, while expanding its responsibilities to include two external campuses. The majority of institutional support funding resides within the business and personnel service departments. Permanent staffing is no more than one deep in any accounting, business or personnel function, and in a majority of the staffing, two functions are covered within each position. The Ketchikan and Sitka campuses have no flexibility to reduce staffing in this area, as any reduction would eliminate required functional responsibilities.

Physical Plant -- Because the size of the non-personal services budget in Physical Plant greatly exceeds that of all other NCHEM components and provides greater funding flexibility, the physical plant is the only available source for the balance of the reduction as well as any required transitional funding needed to supplement program reductions. These reductions could double our current deferred maintenance levels, result in closure of ancillary facilities, and impact health, safety and code compliance.

University of Alaska FY93
Statewide Programs & Services

Category	\$th FY92 Auth.	\$th FY93 Gov Req.	\$th FY93 Reduced Budget	\$th FY93 Loss	# Perm. Program	# Temp. Staff	Staff
TOTAL	12703.5	12905.0	11643.2	(1261.8)	(26)	(3)	
Instruction	0	0	0	0	0	0	
Intercol. Athletics	0	0	0	0	0	0	
Academic Support	2340.0	2541.5	2293.0	(248.5)	(6)	(1)	
Institutional Support	9696.1	9696.1	8748.1	(948.0)	(20)	(2)	
Physical Plant	245.0	245.0	221.0	(24.0)	0	(0)	
Debt Service	442.4	442.4	381.1	(41.3)	0	0	
Student Services	0	0	0	0	0	0	
Library Services	0	0	0	0	0	0	
Public Service	0	0	0	0	0	0	
Scholar- ships	0	0	0	0	0	0	
Research	0	0	0	0	0	0	
Impact:							

ACADEMIC AND INSTITUTIONAL SUPPORT -- Statewide functions such as accounting, payroll and benefits, university computing network, legal services, capital project management, and so on, are operational in nature and if discontinued at Statewide, considerable economies of scale would be lost by their dispersion to the academic units. Statewide is funding the first phase of a systemwide management study which is presently analyzing the relationship and distribution of functions between the campuses and Statewide to determine if any further realignment has cost savings potential.

The "discretionary" services in Statewide which might yield savings to the university system are more limited than first appears. Budget reductions of the magnitude suggested will require nearly complete termination of all administrative systems computing development, resulting in an inability to achieve the savings associated with enhanced electronic data management and communications. Baseline support for lower-cost distance education development and telecommunications services, which are less expensive and time-consuming than direct travel, would be curtailed or eliminated. The Advance College Tuition program, which provides a direct service (and cost savings) to future generations of Alaskans through the Permanent Fund Dividend program may be discontinued because it will be several years, if ever, before the program is self-supporting. Critical academic, voc/tech, human resource, affirmative action, legal, and finance support functions will be curtailed or eliminated.

Statewide is pursuing an aggressive land management strategy that, over time, should result in additional revenue streams. However, those revenues do not exist today to offset reductions. We are also trying to enhance our private fund raising program. Unfortunately, this area has never been adequately funded, and like land management, currently needs more "seed" money, not less, to eventually achieve any significant increase in private donations. Statewide also has been directly affected by the national recession and low interest rates. In the past, interest earnings on our cash balances were a major revenue source and were used to subsidize the academic units by reducing risk management charge-backs. For FY92, interest earnings projections indicate the possibility of insufficient earnings to meet Statewide's own revenue needs greatly increasing the probability that no reductions to chargebacks can be made in FY92 or FY93.

University of Alaska

Statewide System

HB 549/SB 441 Exempt UA Grievances from APA

In June, 1990, the Alaska Supreme Court overturned a Superior Court decision and found that because the University of Alaska was not specifically excluded from the adjudication procedures of the Alaska Administrative Procedures Act (AAPA), it must implement grievance procedures pursuant to AAPA, or "...seek a remedy from the legislature".

The APA adjudication procedures apply to boards and commissions listed in Sec 44.62.330, in third party actions dealing with the granting or denying "...a right, authority, license, or privilege...". For instance, when an individual is denied a real estate license, that person is entitled to a hearing before the Real Estate Commission through the process outlined in this statute. The quasi-judicial proceedings included in the APA are not intended for employee or student grievances, but rather for what are essentially licensing decisions and disputes involving state boards and commissions.

The statute as currently written applies to the University of Alaska, "...except to the extent that its inclusion is inconsistent with the provisions of AS. 14.40", the statute specifically outlining the responsibility and authority of the Board of Regents and the President of the University of Alaska. AS 14.40 gives the Board of Regents the right to "...adopt reasonable rules, orders, and plans...for the good government of the University." Taken together with the strong constitutional powers in Title 14, Article VII, Section 3 of the Alaska Constitution, the Board has plenary authority to govern and manage the University. Transcripts of the legislative history of the APA statute reveal that the legislators had no intention that this section be interpreted in a way that would negate internal grievance procedures. The Supreme Court, however, did not consider legislative intent, and because the APA does

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Position Paper

not specifically exempt the University, and because the referenced statutory language in AS 14.40 does not specifically grant the Board the authority to establish grievance procedures, they essentially directed the University to seek the appropriate legislative action for clarification.

The University is seeking a clear exemption from the requirements in AS 44.62.330 (a)(45). The APA grievance procedures do not apply to any employee group in the state. Provisions in the state statutes covering collective bargaining require that grievance procedures be part of all collective bargaining contracts, and non-covered state employees are included in grievance procedures established within their specific agencies and departments.

Employee and student grievance procedures, which incorporate constitutionally required due process protections, are traditionally built around a process of peer review and consideration with appeal rights at several levels all the way to the President. The majority of University grievances are resolved at an early state of review, and are done so at little or no cost to the grievant or to the University. The imposition of the APA procedures, however, will now impose a quasi-judicial proceeding on all university grievances, including the utilization of a formal hearing officer. The additional cost, complexity and formality of the APA requirements are contradictory to the resolution of student and employee grievances, and are contradictory to the collegial approach that characterizes a University setting.

If this legislation is not passed, it is anticipated that the University will have to pay approximately \$200,000 per year for hearing officers, and associated costs involved with this complex process.

A "grandfather" clause is included with the legislation that provides the APA procedures be utilized for all grievances filed prior to the final passage of this legislation.

ALASKA STATE AFL-CIO

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Re: Proposed Legislation exempting the University of Alaska from the Alaska Administrative Procedures Act.

We understand that the University of Alaska has requested the Administration introduce a bill exempting the University of Alaska from the Alaska Administrative Procedures Act. This is not good legislation and it has a long and expensive history.

The University of Alaska was sued by a Professor named Aden, the gist of the suit revolved around the fact that Ms. Aden was denied tenure—she grieved the issue; however the grievance procedure in place did not afford Ms. Aden basic protections which are required under the Alaska Administrative Procedures Act and available to all other State Employees. The court ruled the Administrative Procedure Act should have applied to the Aden grievance. Soon thereafter, and following the 1987 absorption of the community college teachers into the university, the university:

1. unilaterally repudiated the existing collective bargaining agreement between the University of Alaska and the Alaska Community Colleges Federation of Teachers 2404 (the union for the community college teachers). This union contract contained a grievance procedure which paralleled the Administrative Procedures Act.

2. Merged the 300 community college teachers into the university personnel procedure and grievance policy while simultaneously denying 130 of them tenure and/or proper placement into the university job grids.

The ACCFT 2404 filed a grievance on behalf of its 130 injured members. Naturally, the University refused to recognize the

grievance procedure in the union contract--so the grievance was filed under the university grievance policy.

Since the final determinator of the university's grievance procedure is the President of the University--the same person who remanded the 300 community college teachers to the university personnel procedures and the inappropriate job title grids--a university grievance committee recommended to the then President of the University Donald O'Dowd--that the existing grievance procedure was inadequate and the Administrative Procedures Act should apply. Donald O'Dowd rejected the recommendation of the committee and denied the grievance.

The ACCFT 2404 filed litigation--which ultimately went to the Alaska Supreme Court. On 6/26/91 in a 5-0 decision the Court ruled that the Administrative Procedures act must apply to the University of Alaska grievance procedure. (see attached)

The proposed legislation is not about student's and their complaints about grades, cafeteria food and the like. The proposed legislation is an attempt on the part of the University to deny all of its 3500 employees the protections that all other State employees have.

The university lost in Court and is ^{Now} ~~not~~ attempting to subvert the law through this legislation. Outside legal counsel, Tom Owens so far has been paid \$88641.70 to represent the University in this matter and lost.

Ralph McGRATH and Don
Mohr, Appellants,

v.

UNIVERSITY OF ALASKA, Appellee.

No. S-3418.

Supreme Court of Alaska.

June 21, 1991.

Following merger of state community college system into state university system, professors filed grievance regarding tenure status. The Superior Court, Third Judicial District, Anchorage, Brian C. Shortell, J., affirmed university's determination that Administrative Procedure Act was not applicable to grievance, and appeal was taken. The Supreme Court, Rabinowitz, C.J., held that Alaska Administrative Procedure Act was applicable to University of Alaska employee grievance proceedings.

Reversed and remanded.

1. Administrative Law and Procedure
⊕5

Colleges and Universities ⊕8(1)

Alaska Administrative Procedure Act was applicable to University of Alaska employee grievance proceedings; Act procedures were not inconsistent with authority of Regents to manage University. AS 44.62.330-44.62.650.

2. Administrative Law and Procedure
⊕441

Claims involving legislative as opposed to adjudicative facts, are not controlled by adjudicative provisions of Administrative Procedure Act. AS 44.62.330-44.62.650.

Robert A. Royce, Jermain, Dunnagan & Owens, Anchorage for appellants.

Thomas P. Owens, Jr. and C. Ann Courtney, Owens & Turner, P.C., Anchorage, William R. Kauffman, Fairbanks, for appellee.

Before RABINOWITZ, C.J., and
BURKE, MATTHEWS, COMPTON and
MOORE, JJ.

OPINION

RABINOWITZ, Chief Justice.

I. FACTS AND PROCEEDINGS

The University of Alaska ("University") is a statewide institution which operates both four-year universities and community colleges. In 1987, the University undertook a system-wide restructuring and eliminated the separate administration of the community colleges. Previously, the faculty at the community colleges had been represented by the Alaska Community Colleges' Federation of Teachers, Local 2404, and covered by a collective bargaining agreement. This agreement had no rank or tenure provisions. After the restructuring, the community colleges' faculty was offered an opportunity to transfer to the combined faculty of the University of Alaska. In the combined faculty, the community college faculty would not have union representation and the employees would be subject to the same rank and tenure system as their colleagues at the University of Alaska.

All members of the community colleges' faculty were offered an opportunity to transfer to the combined faculty, and all but one accepted. The University's Board of Regents adopted a policy "to provide the guidelines for faculty appointment, tenure, academic ranks, and salary for faculty in the transition." The policy provided that former full-time community college faculty with seven full years of service were eligible to receive tenure; those with four to six years were eligible to receive two-year contracts; and those with fewer years of service were eligible to receive one-year contracts. No former community college faculty member was offered a full-professorship; the highest rank offered was associate professor.

Many community college faculty members were dissatisfied with their rank and tenure assignments. Associate Professor Don Mohr, as a representative of the com-

munity colleges' faculty union, filed an informal grievance on behalf of faculty members who claimed that they were wrongly denied tenure. Similarly, Associate Professor Ralph McGrath requested a change in the rank assignments. Thereafter, the two professors filed a formal grievance on behalf of themselves and seventy-three other former community college faculty members.

At the time Mohr and McGrath filed their initial complaints, the University of Alaska's administration had not yet established grievance procedures for the newly integrated institution. The Anchorage campus chancellor adopted an interim grievance procedure, which mirrored the procedures previously used by the Anchorage campus. The chancellor then appointed an interim grievance council ("council") to implement the interim procedures.

The council conducted a preliminary investigation and determined that a grievance hearing should proceed. Additionally, the council recommended that the University hold this formal grievance hearing in accordance with the provisions of Alaska's Administrative Procedure Act ("APA"), AS 44.62.330-650.

However, the president of the University rejected the council's recommendation that the grievance be processed in accordance with the APA. Instead, it was determined that the grievance would be processed under the Board of Regents' Policy, see 04-04.01 (June 4, 1987), and the interim grievance procedures. Under the Board of Regents' policy, the council was required to recommend dismissal or hold a hearing on the grievance within thirty days of its filing, and then forward a recommendation to the chancellor for decision. The chancellor's decision was then appealable to the president.

1. Summary judgment was granted in this case on the basis of stipulated facts and exhibits. *De novo* review is the applicable standard of review on an appeal from a grant of summary judgment. *Kollodge v. State*, 757 P.2d 1028, 1032 (Alaska 1988). There is no genuine issue of material fact; rather, this appeal concerns statutory interpretation, which involves our own in-

The council notified McGrath and Mohr that it was ready to go forward with the hearing and that procedures would not be governed by the APA. Rather than proceeding with the hearing before the council, McGrath and Mohr then filed a complaint in superior court, seeking a declaratory judgment and mandatory injunction to require the University to conduct the grievance hearing under the APA. They contended that the APA procedures were required and that the contemplated grievance procedures denied them due process.

Thereafter, the plaintiffs and the University filed motions for summary judgment. The superior court held that the APA did not apply to the grievance proceedings in the instant case.¹

II. DISCUSSION

A. *Do the provisions of the APA govern the grievance proceedings in this case?*

Article 8 of the APA deals with administrative adjudication. AS 44.62.330(a) provides, in part, that "[t]he procedure of the state boards, commissions, and officers listed in this subsection . . . shall be conducted under AS 44.62.330-44.62.630. This procedure, including, but not limited to . . . conduct of hearings . . . shall be governed by this chapter. . . ." AS 44.62.330(a)(45) lists the University of Alaska as a covered entity, with the proviso "except to the extent that its inclusion is inconsistent with the provisions of AS 14.40."

McGrath and Mohr argue that AS 44.62-330(a)(45) mandates that their grievances be processed in accordance with procedures called for by the APA. The University advances numerous arguments in support of the superior court's grant of summary judgment and its holding that the APA is inapplicable to the proceedings in question.²

dependent judgment. *Waller v. Richardson*, 757 P.2d 1036, 1039 n. 1 (Alaska 1988).

2. The University emphasizes that the superior court reasoned, in part, as follows in reaching its decision:

(1) AS 44.62.330(a)(45) requires the University to comply with the procedural require-

More particularly, the University contends that the legislative history of AS 44.62.330(a) demonstrates that the legislature never intended to interfere with the Board of Regents' independent power to manage and govern the internal affairs of the University; that the University's grievance procedures are reasonable; that application of the APA to the University's grievance proceedings would be inconsistent with AS 14.40; that the APA by its very nature does not apply in the circumstances of this case; that grievance procedures are not "procedures" within AS 44.62.330; that the APA only applies to "adjudicative facts" not to "legislative facts;" and that the statutory framework governing personnel matters for state agencies and other public employees shows that the APA does not apply to the University's grievance procedures.

We have reviewed all of the University's contentions listed above and conclude that they should be rejected. Therefore, the APA's procedures must govern any grievance hearings in the case at bar.

(i) Applicability of the APA

[1] As noted at the outset, AS 44.62.330-.630 governs the adjudicative procedures of the University "except to the extent that its inclusion is inconsistent with the provisions of AS 14.40." AS 44.62.330(a)(45). The University notes that under AS 14.40.170(b)(1), the Board of Regents may "adopt reasonable rules, orders and plans ... for the good government of the university...." The University then argues that since its rules governing grievance procedures are reasonable, an application of the APA procedures to its grievance proceedings would be inconsistent with the authority of the Board to manage the Uni-

ments of the APA "except to the extent that [the APA's] inclusion is inconsistent with the provisions of AS 14.40;" (2) AS 14.40 specifically authorizes the Board to "adopt reasonable rules, orders and plans ... for the good government of the University;" (3) the Alaska Legislature did not intend the University to be required by law to conduct the APA grievance procedures if the University were to adopt valid, adequate, and fair grievance procedures of its own; (4) under AS 14.40.170(b)(1),

University. More specifically, the University contends that the APA procedures are inconsistent with AS 14.40 because they are more extensive and costly than its own reasonable grievance procedures, and therefore they are precluded under AS 44.62.330(a)(45).

We think these contentions are adequately and correctly answered by Judge Serdahely's opinion *Adon v. University of Alaska*, No. 3AN-85-17179 Civil (Alaska Super., Feb. 2, 1987). In rejecting contentions similar to those advanced by the University in the instant case, Judge Serdahely held the following:

The Court concludes that AS 44.62.330 *et seq.* does apply to Defendant University of Alaska and that Defendant's grievance proceedings must comply with the provisions of such Act.

In so ruling, the Court notes that on its face, the APA applies to Defendant University of Alaska. AS 44.62.330(45) [sic] expressly provides that the provisions of the Act apply to the "University of Alaska, except to the extent that its inclusion is inconsistent with the provisions of AS 14.40." Having reviewed the provisions of AS 14.40, particularly including the powers and duties of the University President as defined in AS 14.40.210-.220, the Court concludes that there is nothing inconsistent between such provisions and the APA. Clearly, the President's power to appoint professors and assistants, and to define and supervise the duties of such persons, are not inconsistent with the APA hearing procedure which is designed to guarantee due process to persons adversely affected by administrative action, such as adverse employment or personnel action.

grievance procedures adopted by the Board need only be "reasonable," and the procedures instituted by the University meet this test of reasonableness; and (5) to the extent that the APA would require the University to hold substantially more extensive, time consuming, and expensive procedures than would be required under the validly adopted and reasonable University grievance procedures, application of the APA would be inconsistent with AS 14.40.170(b)(1).

(ii) Does the APA govern intra-agency adjudications, such as employee grievance hearings?

Three arguments advanced by the University of Alaska converge here. The University contends that the statutory framework governing personnel matters for state agencies and public employees shows that the APA does not apply to University grievance proceedings; that grievance procedures are not procedures within AS 44.62.330; and that the APA applies only to adjudicative facts, not legislative facts.

The University correctly observes that the State Personnel Act, AS 39.25.010-220, "governs personnel matters for all state employees in non-exempt service positions." AS 39.25.090. Neither those state employees in non-exempt service positions nor state employees covered by the Public Employment Relations Act ("PERA"), AS 23.40.070-260, are covered by the APA procedures when grievance proceedings are implicated.³ Therefore, the University concludes that the "the Legislature intended University employees to have only the same rights as state and other public employees in personnel matters...."

University employees, however, are exempt from the State Personnel Act. AS 39.25.110(5). Thus, they do not receive the protection of grievance rules promulgated by the Director of Personnel under AS 39.25.150(16). Consequently, the exclusion of other state personnel from the APA does not, in our view, conclusively demonstrate that University personnel should be similarly excluded.

3. The personnel division of the Department of Administration administers the State Personnel Act. AS 39.25.030. The labor relations agency administers PERA. AS 23.40.090; AS 23.40.170. Neither of these agencies are enumerated under the APA. AS 44.62.330(a). However, hearings conducted pursuant to either of these statutes contain considerable procedural protections. See AS 39.25.170-176; 2 AAC 10.400-440. PERA applies to the University when the University has a collective bargaining agreement. See *Alaska Community Colleges' Fed'n of Teachers v. University of Alaska*, 669 P.2d 1299 (Alaska 1983). Hearings conducted under that agreement would be conducted pursuant to 2 AAC 10.400-440. The University concludes that where no collective bargaining agreement ex-

The University relies on two statutes in support of its argument that intra-agency grievance proceedings are not the type of proceedings meant to be included within AS 44.62.330. First, the APA's definition of "regulation" excludes anything which "relates only to the internal management of a state agency." AS 44.62.640(a)(3). Second, the State Personnel Act establishes procedures for amendment of personnel rules affecting non-exempt state employees. AS 39.25.140. Subsection (e) of this section states, "[t]he rules adopted under this chapter relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act." While the State Personnel Act does not apply to University employees, the University argues, by analogy, that a blanket legislative intent exists not to have the APA apply to employment matters.

We believe these arguments are fundamentally flawed. Both statutes refer to the application of the APA to an agency's rulemaking authority, i.e. the adoption of rules. Neither statute applies to an agency's adjudicatory functions. If adjudication and rulemaking were coextensive, these statutes would be controlling here. However, the two functions differ significantly. Rulemaking procedures are designed to ensure a fair and open adoption of policy; adjudication procedures are intended to ensure a fair application of policy to parties.⁴ Thus, the fact that rulemaking procedures do not apply to internal personnel rules does not indicate that the protections of the APA's adjudicatory procedures

ists, hearings should be conducted pursuant to internal policy. We think a more logical conclusion is that where no collective bargaining agreement exists, hearings should be conducted pursuant to the APA.

4. See *Wickersham v. State, Commercial Fisheries Entry Comm'n*, 680 P.2d 1135, 1139, 1143-44 (Alaska 1984). See also R. Cass & C. Diver, *Administrative Law* 325 (1987) ("There is no doubt, however, that the procedures requisite for decisions addressing many members of an affected class on grounds generally applicable classwide are minimal in comparison to the procedures constitutionally required for individualized determinations.").

are inapplicable to individual personnel decisions.

The APA outlines the manner in which a hearing "to determine whether a right, authority, license or privilege should be revoked, suspended, limited, or conditioned" is initiated. AS 44.62.360. It similarly informs as to how a hearing "to determine whether a right, authority, license or privilege should be granted, issued or renewed" is initiated. AS 44.62.370. From these provisions, the University concludes that the APA only covers hearings which concern rights, authorities, licenses, and privileges, and that this does not include "intra-agency personnel matters." In support of this argument, the University cites cases from other jurisdictions, holding that their respective administrative procedure acts are inapplicable to agency personnel decisions.⁵

The University further contends that the APA adjudication procedures are inapplicable because McGrath is not grieving "adju-

5. In *Abramson v. Board of Regents, Univ. of Hawaii*, 548 P.2d 253 (Hawaii 1976), the plaintiff who was denied tenure and sued asserted, in part, a denial of her rights under the Hawaii APA. *Id.* at 255. This portion of her claim was rejected because the coverage of that act was limited to "a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." *Id.* at 263. *Accord Klein v. State Bd. of Educ.*, 547 So.2d 549, 551-52 (Ala.Civ.App.1988), cert. quashed by *Ex parte Klein* 547 So.2d 554 (Ala.1989). However, Alaska's APA has no such limitation. Therefore, this authority is not on point here.

The University of Alaska interprets *McCarrey v. Commissioner of Natural Resources*, 526 P.2d 1353 (Alaska 1974), as holding that "the APA applies only where a particular agency statute provides for a hearing and adjudication." This, however, overstates the holding. The APA's adjudicatory chapter only includes the "Division of Lands under Alaska Land Act where applicable." AS 44.62.330(a)(9) (emphasis added). The land act gave the commissioner discretion to terminate grazing leases; hence, we held that application of the APA was not required. *McCarrey*, 526 P.2d at 1356. Where not similarly limited, however, the APA would apply across the board. *McCarrey* quotes from the federal APA, which, like the Hawaii APA, is limited to cases where "adjudication [is] required by statute to be determined on the record after opportunity for an agency hearing." 526 P.2d at 1356 n. 17 (quoting 5 U.S.C.A. § 554 (1967)). Alaska's APA as it applies to the University has no such limitation;

dicative facts," but rather "legislative facts." As one court explained, "agencies employ rulemaking procedures to resolve broad policy questions affecting many parties and turning on issues of 'legislative fact.' Adjudicatory hearing procedures are used in individual cases where the outcome is dependent on the resolution of particular 'adjudicative facts.'" *Independent Bankers Ass'n of Georgia v. Board of Governors of Fed. Reserve Sys.*, 516 F.2d 1206, 1215 (D.C.Cir.1975).⁶

The limitation of administrative adjudicatory hearings to adjudicatory facts is not made explicit in the APA.⁷ Nevertheless, the distinction has been recognized. See *Wickersham v. State, Commercial Fisheries Entry Comm'n*, 680 P.2d 1135, 1143-47 (Alaska 1984) (refusing to apply the more relaxed public notice requirements of rulemaking procedures to adjudicatory procedures which involve individual rights). The structure of the APA, which establishes separate procedures for rulemaking and

indeed, it specifically applies "notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed." AS 44.62.330(a). Thus, the fact that the adjudicatory provisions of the APA do not apply to termination of a grazing lease does not dictate that they are inapplicable to University of Alaska grievance procedures.

6. In *Independent Bankers*, the United States Court of Appeals for the District of Columbia Circuit adopted the following distinction:

Adjudicative facts are the facts about the parties and their activities, businesses, and properties. Adjudicative facts usually answer the questions of who did what, where, when, how, why, with what motive or intent; adjudicative facts are roughly the kind of facts that go to a jury in a jury case. Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law and policy and discretion.

516 F.2d at 1215 n. 26 (quoting 1 K. Davis, *Administrative Law Treatise* § 7.02 at 413 (1958)).

7. Cf. California Code, Government Code §§ 11000-11529 at § 11500(f) (West 1980), which defines "adjudicatory hearing" to mean "a state agency hearing which involves the personal or property rights of an individual, the granting or revocation of an individual's license, or the resolution of an issue pertaining to an individual...."

adjudications, suggests that Alaska has implicitly limited adjudicative functions to adjudicatory facts and rulemaking functions to legislative facts. Compare AS 44.62.010-.320 with AS 44.62.330-.630. See also AS 44.62.640(a)(3) (defining regulation). Further, the distinction is one which must be made in order to determine whether an administrative entity has made an adjudicatory decision for purposes of Appellate Rule 602(a)(2). See *Kollodge v. State*, 757 P.2d 1028, 1033 (Alaska 1988); *Ballard v. Stich*, 628 P.2d 918, 920 (Alaska 1981). Finally, the bifurcation of administrative functions along the legislative/adjudicative facts distinction is recognized in both federal and other state courts.⁸

The formal grievance complaint filed by both McGrath and Mohr does not explicitly distinguish between legislative facts and administrative facts. The grievance complaint alleges "[i]nappropriate placement of former community college faculty in rank.... Inappropriate denial of tenure for certain former community college faculty.... Discriminatory treatment by UA administration against grievants."

[2] Upon remand, it will be left to the parties and the grievance council to identify any claims of McGrath and Mohr involving legislative facts, as such issues are not controlled by the adjudicative provisions of the APA.

B. *Does application of the APA to University of Alaska's grievance proceedings impermissibly circumscribe explicit and implicit constitutional and statutory grants of power to the University in the area of personnel management?*

As to this issue, we again refer to and adopt the reasoning of Judge Serdahely in

8. See 1 K. Davis, *Administrative Law Treatise* § 7.06 (1958) and cases cited therein. *Ballard* defined the test for determining when an agency is engaging in adjudication as "functional." 628 P.2d at 920. "Whenever an entity which normally acts as a legislative body applies policy to particular persons in their private capacities, instead of passing on general policy or the rights of individuals in the abstract, it is functioning as an administrative agency within the meaning of Appellate Rule [602(a)(2)]." *Id.*; *Kollodge*, 757 P.2d at 1033.

Aden v. University of Alaska. In rejecting the same argument as the University makes in the case at bar, Judge Serdahely stated,

Nor does the Court find that the application of the APA to Defendant's grievance procedure violates provisions of Alaska's Constitution establishing the University of Alaska and its Board of Regents. Likewise, the Court is unpersuaded that requiring Defendant to comply with the APA in connection with its grievance procedure constitutes unconstitutional or impermissible interference with the internal affairs or academic freedom of the University. In this Court's view, the University's academic freedom is strengthened, rather than undermined, by the existence of a grievance procedure for adverse employment decisions which comports with the basic requirements of the APA and due process. *Ultimately, if Defendant seeks to be exempted from the workings of the APA, it must seek such remedy from the Legislature, not this Court.*

(Emphasis added).

III. CONCLUSION

The judgment of the superior court is REVERSED and the matter is REMANDED for further proceedings consistent with this opinion.⁹



9. Our resolution of the appeal has made it unnecessary to address any of the other issues and arguments raised by the parties.

On remand, we suggest that it would not be inappropriate for the grievance council to integrate the adjudicatory provisions of the APA into its grievance procedures by following the hearing procedures outlined by Judge Serdahely in his August 25, 1987 "Order Regarding Administrative Hearing," which was entered in the *Aden* case.