

UNITED STATES OF AMERICA

BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY

ATLANTA REGION



U. S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION, NATIONAL MARINE
FISHERIES SERVICE, PANAMA CITY
LABORATORY
PANAMA CITY, FLORIDA

CASE NO. AT-RP-60031

Activity

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, SEIU, AFL-CIO, LOCAL R5-106

Petitioner/Incumbent Labor Organization

AMENDMENT OF CERTIFICATION

Pursuant to Section 2422.1 of the Regulations of the Federal Labor Relations Authority, a petition was filed seeking to amend the *certification* granted to the *National Association of Government Employees, SEIU, AFL-CIO, Local R5-160* in Case No. AT-RO-50035, as the exclusive representative of certain employees of the *U. S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Panama City Laboratory, Panama City, Florida* by changing the designation of the exclusive representative for this existing bargaining unit from *National Association of Government Employees, SEIU, AFL-CIO, Local R5-160* to *National Association of Government Employees, SEIU, AFL-CIO, Local R5-106*.

On June 17, 1996, I issued a Decision and Order finding that the *certification* may be amended as requested. The parties waived their right to file an Application for Review. Pursuant to the authority vested in me as Regional Director,

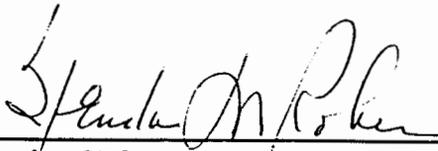
I ORDER that the *certification* granted to the *National Association of Government Employees, SEIU, AFL-CIO, Local R5-160* in Case No. AT-RO-50035, as the exclusive representative of the following unit of employees:

INCLUDED: *All professional and nonprofessional employees of the U. S. Department of Commerce, National Oceanic Atmospheric Administration, National Marine Fisheries Service, Panama City Laboratory, Panama City, Florida.*

EXCLUDED: *All supervisors, management officials, Student Career Experience Program employees, and employees described in 5 U. S.C. 7112(b)(2), (3), (4), (6) and (7).*

is amended by changing the designation of the *exclusive representative* from the *National Association of Government Employees, SEIU, AFL-CIO, Local R5-160* to *National Association of Government Employees, SEIU, AFL-CIO, Local R5-106.*

Dated: June 17, 1996



Regional Director
Atlanta Region

Attachment: Service Sheet

SERVICE SHEET

I certify that I have served the parties listed below a copy of the *Amendment of Certification*.

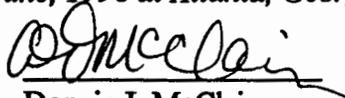
Thomas O. Magnetti
Agency Representative
U. S. Department of Commerce
Office of the General Counsel
14th & Constitution Avenue
Washington, DC 20230

Frances C. Silva
Agency Representative
U. S. Department of Commerce
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Washington, DC 20230

Orval Lee Dobson
National Representative
National Association of Government
Employees, SEIU, AFL-CIO
36 Wine Street
Hampton, VA 23669

Nancy A. Speight
Director of Program Development
Federal Labor Relations Authority
Office of the General Counsel
607 14th Street, NW, Suite 210
Washington, DC 20424-0001

DATED THIS *17th day of June, 1996 at Atlanta, Georgia.*


Donnie J. McClain
Paralegal Specialist

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
ATLANTA REGION

U. S. DEPARTMENT OF COMMERCE,)
NATIONAL OCEANIC AND ATMOSPHERIC)
ADMINISTRATION,)
NATIONAL MARINE FISHERIES SERVICE,)
PANAMA CITY LABORATORY,)
PANAMA CITY, FLORIDA)

Activity)

and)

Case No. AT-RP-60031)

NATIONAL ASSOCIATION OF GOVERNMENT)
EMPLOYEES, SEIU, AFL-CIO, LOCAL R5-106)

Petitioner/Incumbent Labor Organization

DECISION AND ORDER ON
PETITION FOR AMENDMENT OF CERTIFICATION

A petition was filed with the Federal Labor Relations Authority (the Authority) under § 7111(b) of the Federal Service Labor-Management Relations Statute (the Statute). In accordance with section 7105(e)(1), 5 U.S.C. § 7105(e)(1), the Authority delegated authority to me to decide representation matters.

The National Association of Government Employees, Local R5-106 (Petitioner), filed a petition on May 9, 1996, seeking to amend the certification issued on June 29, 1995, in Case No. AT-RO-50035 for certain employees of the U. S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Panama City Laboratory, Panama City, Florida (Activity). Specifically, the Petitioner requests a change in the designation of the local number of the exclusive representative, from National

Association of Government Employees, SEIU, AFL-CIO, Local R5-160 (NAGE, Local R5-160) to National Association of Government Employees, SEIU, AFL-CIO, Local R5-106.

The Activity does not oppose the request to amend the certification.

FACTS:

On June 29, 1995, I certified the National Association of Government Employees, SEIU, AFL-CIO, Local R5-160, as the exclusive representative for the following unit of employees:

INCLUDED: All professional and nonprofessional employees of the U.S. Department of Commerce, National Oceanic Atmospheric Administration, National Marine Fisheries Service, Panama City Laboratory, Panama City, Florida.

EXCLUDED: All supervisors, management officials, Student Career Experience program employees and employees described in 5 USC 7112(b)(2),(3),(4),(6) and (7).

Local R5-160 represents all nonappropriated fund (NAF) employees of the XVIII Airborne Corps, Fort Bragg, North Carolina. When National Association of Government Employees, Local R5-160 filed the petition in Case No. AT-RO-50035, it listed the incorrect local number. It listed R5-160 instead of R5-106. The Petitioner now seeks only to change the local number to correct the error.

FROM: National Association of Government Employees, SEIU, Local R5-160

TO: National Association of Government Employees, SEIU, Local R5-106

CONCLUSION:

I conclude that the certification issued to National Association of Government Employees, SEIU, AFL-CIO, Local R5-160 on June 29, 1995, may be amended to reflect a change in the designation of the local number. The parties have waived their right to file a request for review to this Decision and Order.

ORDER

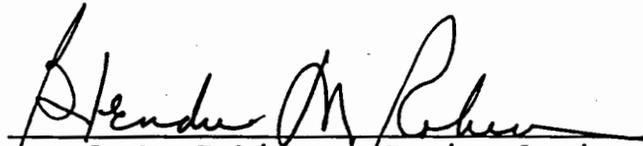
Having found that the certification issued to National Association of Government Employees, SEIU, Local R5-160 on June 29, 1995, may be amended to reflect a change in the designation of the local number of the exclusive representative as requested and the parties having waived their rights to file an application for review pursuant to section 2422.31 of the Regulations, pursuant to the authority vested in the undersigned,

IT IS HEREBY ORDERED that the name of the exclusive representative be changed to show a change in the number of the local, to National Association of Government Employees, Local 106.

Having ordered that the certification be amended, I will issue an Amendment of Certification of the following certified unit, which is represented by National Association of Government Employees, Local 106:

INCLUDED: All professional and nonprofessional employees of the U.S. Department of Commerce, National Oceanic Atmospheric Administration, National Marine Fisheries Service, Panama City Laboratory, Panama City, Florida.

EXCLUDED: All supervisors, management officials,
Student Career Experience program
employees, and employees described in
5 USC 7112(b)(2),(3),(4),(6) and (7).



Brenda M. Robinson, Regional Director
Federal Labor Relations Authority
Atlanta Region
Marquis Two Tower - Suite 701
285 Peachtree Center Avenue
Atlanta, Georgia 30303-1270

Dated: June 17, 1996
Attachment: Service Sheet

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UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
MARQUIS TWO TOWER - SUITE 701
285 PEACHTREE CENTER AVENUE
ATLANTA, GA 30303-1270

July 29, 1996

Francis Silva
Agency Representative
14th & Constitution Avenue
Washington, DC 20230

George L. Reaves, Jr.
National Representative
National Association of
Government Employees, SEIU,
AFL-CIO, Local R5-106
36 Wine Street
Hampton, VA 23669

Re: U.S. Department of Commerce
National Oceanic and Atmospheric
Administration
National Marine Fisheries Service
Panama City Laboratory
Panama City, Florida
Case No. AT-RP-60031

Dear Ms. Silva and Mr. Reaves:

This is to confirm a telephone conference call held on July 19, 1996. During this conference I discussed with the two of you, Dr. Churchill B. Grimes, Rosalie Schaffer, and Regina James the bargaining unit status of the following employees: Lynn A. Collins, Douglas A. DeVries and William, A. Fable and Lori Lynn Sumner.

Lori Lynn Sumner

Prior to the conference call, the Agency took the position that Ms. Sumner was a confidential employee under Section 7103(a)(13) of the Statute while the Union took the opposite position.

The evidence reveals that Lori Lynn Sumner works as the Secretary to Dr. Churchill B. Grimes, Director of the Laboratory. Dr. Grimes is Sumner's immediate supervisor. Dr. Grimes is the only supervisor at the Panama City facility. Dr. Grimes is responsible for the laboratory. Dr. Grimes has the authority to handle grievances and personnel matters relating to the employees at the facility and engage in negotiations with the Union. Based on his position in the grievance procedure decision making hierarchy, his

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participation in negotiations and his handling of personnel matters, Dr. Grimes effectuates labor relations policy in his group.

Ms. Sumner is classified as a GS-0318-06 Secretary. In this position she handles Dr. Grimes correspondence, maintains files, handles personnel matters as directed by Dr. Grimes, receives telephone calls, delivers messages to Dr. Grimes, and prepares time and attendance records for employees of the laboratory. Sumner has only been in her current position since March, 1995. Dr. Grimes acknowledged that prior to Sumner, Carol Parker was the incumbent of the same position. Dr. Grimes stated that Sumner performs the same duties as performed by Parker. Based on Sumner's access to both sensitive personnel information and matters concerning labor relations at the facility, the parties agreed Sumner works in a confidential relationship with Dr. Grimes and therefore is excluded from the bargaining unit under 7103(a)(13) of the Statute.

LYNN ALAN COLLINS, DOUGLAS A. DEVRIES AND WILLIAM A. FABLE

Prior to the conference call the Agency took the position that Lynn Alan Collins, Douglas A. DeVries and William A. Fable were supervisors and exempt from the bargaining unit currently represented by National Association of Government Employees, SEIU, Local R5-106.

Lynn Alan Collins and Douglas A. DeVries are both GS-0482-11 - Research Fishery Biologists while William A. Fable is a GS-0482-12 Research Fisher Biologist. The employees are supervised by Director, Dr. Churchill Grimes. The evidence reveals that the employees act as project leaders. They give technical advice to term employees, a co-op student and two summer student contractors, all non-bargaining unit employees. During 1995 each employee initialed a rating form to indicate that a midyear rating was given to the above-listed employees. None of the employees have the authority to hire, direct, assign, promote, reward, transfer, discipline or remove employees. The parties agreed that the Research Fishery Biologists do not exercise any indicia of supervision and further exercise no independent judgment under 7103(a)(10) of the Statute. Further the parties concluded that there was no statutory conflict to have Lynn Alan Collins, Douglas A. DeVries and William A. Fable included in the bargaining unit.

In summary the parties agreed that Lynn Sumner should be excluded on the basis that she is a confidential employee under 7103(a)(13) of the Statute while Lynn Alan Collins, Douglas A. DeVries and William Fable are to be included in the unit on the basis that they do not perform supervisory duties under 7103(a)(10) of the Statute.

Discussion also occurred regarding unfair labor practice charge Case No. AT-CA-60576. The charge alleges that the Agency refuses to process dues allotments on behalf of Lynn Alan Collins, Douglas A. DeVries and William Fable. Since the parties agreed to include Collins, DeVries and Fable in the bargaining unit, the Agency

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agreed to process the employees' SF-1187- "Request For Payroll Deductions For Labor Organization Dues" when resubmitted by the Union.

Based on the agreements outlined as above, the Union agreed to withdraw the petition and the unfair labor practice charge. If you are in agreement with the above recap of the telephone conference, please sign and date at the respective spaces and return via FAX by July 30, 1996. Upon receipt of this returned signed confirmation letter, I will recommend that the withdrawal request be approved.

If you have any questions or comments, please contact me at the following number (404) 331-5212 X17.

Sincerely,

Gail Hitchcock

Gail Hitchcock
Authority Agent

Francis Silva

George L. Reaves, Jr.

DATE

DATE

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UNITED STATES OF AMERICA
 FEDERAL LABOR RELATIONS AUTHORITY
 ATLANTA REGION

U. S. DEPARTMENT OF COMMERCE
 NATIONAL OCEANIC AND ATMOSPHERIC
 ADMINISTRATION
 NATIONAL MARINE FISHERIES SERVICE
 PANAMA CITY LABORATORY
 PANAMA CITY, FLORIDA

Activity

and

NATIONAL ASSOCIATION OF GOVERNMENT
 EMPLOYEES, SEIU, AFL-CIO,
 LOCAL R5-160,

¹⁰⁶
Petitioner

Case No. AT-RO-50035

CERTIFICATION OF REPRESENTATIVE

I have conducted an election in the above matter in accordance with the provisions of Chapter 71 of Title 5 of the U.S.C., and in accordance with the Regulations of the Federal Labor Relations Authority. It appears that a majority of the valid ballots has been cast for a representative for the purpose of exclusive recognition.

IT IS HEREBY CERTIFIED that the National Association of Government
 Employees, SEIU, AFL-CIO, Local
 R5-160

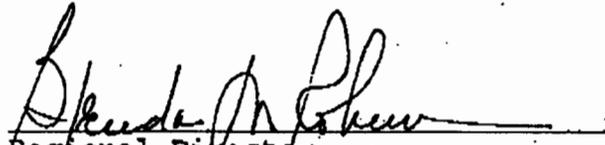
¹⁰⁶
 has been designated and selected by a majority of the employees in the unit described below, and that pursuant to Chapter 71 of Title 5 of the U.S.C., the above organization is the exclusive representative of all the employees in the unit.

UNIT: INCLUDED: All professional and nonprofessional employees of the U. S. Department of Commerce, National Oceanic Atmospheric Administration, National Marine Fisheries Service, Panama City Laboratory, Panama City, Florida.

EXCLUDED:

All supervisors, management officials, Student Career Experience Program employees, and employees described in 5 USC 7112(b) (2), (3), (4), (6) and (7).

Federal Labor Relations Authority


Regional Director
Atlanta Region

Dated: June 29, 1995

SERVICE SHEET

Case No. AT-RO-50035

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Washington, DC 20230

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Orval Lee Dobson
National Representative
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Washington, DC 20427

Nancy A. Speight
Director of Program Development
Office of the General Counsel
Federal Labor Relations Authority
607 14th Street, N.W., Suite 210
Washington, DC 20424-0001

UNION AGREEMENT

BETWEEN

U.S. DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

NATIONAL MARINE FISHERIES SERVICE

PANAMA CITY LABORATORY

AND

THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

LOCAL R5-106

Effective Date: August 31, 1996

PREAMBLE

This agreement is made and entered into by and between the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Panama City Laboratory, Panama City, Florida, hereinafter referred to as the "Employer," and the National Association of Government Employees, Local R5-106, hereinafter referred to as the "Union." This agreement and such supplementary agreements as may be agreed to hereunder from time to time, together constitute a collective agreement between the Employer and the Union.

ARTICLE 1

RECOGNITION AND UNIT DESIGNATION

The Employer recognizes the Union as the exclusive bargaining representative for all professional and nonprofessional employees of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Panama City Laboratory, Panama City, Florida, excluding management officials, supervisors, student career experience employees and employees described in 5 USC 7112(b) (2), (3), (4), (6) and (7).

ARTICLE 2

PROVISIONS OF LAWS AND REGULATIONS

Section 1. It is agreed and understood by the Employer and the Union that in the administration of all matters covered by this agreement, officials and employees are governed by existing or future laws, Executive Orders and regulations of appropriate authorities; by published agency policies and regulations in existence at the time this agreement is approved and subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities.

Section 2. The fact that the Union agrees to published agency policies and regulations in existence at the time the agreement is approved does not preclude the Union from requesting to meet and negotiate on impact and implementation or substantive bargaining of any agency policy and regulation.

ARTICLE 3

EMPLOYER RIGHTS

Section 1. Subject to Section 2 of this Article, nothing in this Article shall affect the authority of any management official of the agency -

(a) To determine the mission, budget, organization, number of employees and internal security practices of the agency; and

(b) In accordance with applicable laws -

(1) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(2) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(3) with respect to filling positions, to make selections for appointments from -

(A) among properly ranked and certified candidates for promotions; or

(B) any other appropriate source; and

(4) to take whatever actions may be necessary to carry out the agency mission during emergencies.

Section 2. Nothing in this Article shall preclude the Employer and the Union from negotiating -

(a) on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods and means of performing work;

(b) procedures which management officials of the agency will observe in exercising any authority under this Article; or

(c) appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by such management officials.

Section 3. The parties agree to follow Executive Order 12871. If the Executive Order is changed or rescinded this article is subject to reopening.

ARTICLE 4

EMPLOYEE RIGHTS

Section 1. Each employee has the right, freely and without fear of penalty or reprisal, to form, join and assist the Union or to refrain from such activity. The freedom of such employees to assist the Union shall be recognized as extending to participation in the management of the Union and acting for the Union in the capacity of a Union officer or steward.

Section 2. The Employer agrees that employees in the exercise of these rights shall be protected from interference, restraint, coercion, or discrimination by any representative of the Employer.

Section 3. Nothing in this agreement shall require an employee to become or to remain a member of a labor organization or to pay money to the organization except pursuant to a voluntary written authorization by a member for the payment of dues through payroll deduction.

Section 4. Nothing in this agreement precludes any employee of the bargaining unit, regardless of union membership, from bringing matters of personal concern to the attention of appropriate officials under applicable law, rule, regulation, or established agency policy or from choosing his/her own representative in a grievance or appellate action except when the grievance is covered under the negotiated procedure contained in this Agreement.

Section 5. The Union shall be given the opportunity to be represented at any examination of a unit employee by a representative of the Employer in connection with an investigation if:

- a. the employee reasonably believes that the examination may result in disciplinary action against the employee; and
- b. the employee requests representation.

Section 6. Prior to the commencement of an investigatory examination, the employee will be informed of the purpose of the examination.

Section 7. In the administration of this Agreement and working conditions, all employees will be treated in a fair and equitable manner.

Section 8. The employee has the right to confer with the Union during duty hours concerning grievances, complaints, appeals or other appropriate matters. An employee desiring to confer with a Union representative will make the request for time to his/her immediate supervisor prior to leaving his/her work area. Such

absences from the work area will be limited to reasonable amount(s) sufficient in duration to conduct discussions and/or actions deemed necessary.

ARTICLE 5

UNION RIGHTS AND OBLIGATIONS

Section 1. The Union shall accept employees of the bargaining unit as members without discrimination based on color, race, religion, creed, age, sex, national origin, political affiliation, marital status and physical or mental handicap.

Section 2. The Union shall act for and negotiate agreements covering all employees in the unit and shall be obligated to represent the interests of all such employees without discrimination and without regard to union membership in matters covered by the Agreement.

Section 3. The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.

Section 4. A Union representative may be present during orientations. The Employer will advise the Union of orientation sessions.

ARTICLE 6

UNION REPRESENTATION

Section 1. The Employer shall recognize the officers and stewards of the Union. The Union will keep the Employer advised in writing of the names of its officers and stewards.

Section 2. Union representatives will be granted reasonable time off without charge to leave to perform representational functions. Representational functions include:

a. investigate, prepare and/or present grievances, appeals, claims and unfair labor practice charges;

b. consult and/or negotiate with representatives of the Employer concerning personnel policies, practices and conditions of employment;

c. research and prepare recommendations and/or proposals in connection with the above consultations, negotiations, or meetings;

- d. administration of the negotiated agreement; and
- e. third party proceedings where the Union is authorized to represent the employee.

Section 3. Representatives will provide reasonable advance notice to their immediate supervisors whenever they wish to leave their official duties to perform any of their representational responsibilities and will report to their supervisors when they return. Permission will be granted upon request except when work exigencies preclude such release. Official time will not be unreasonably denied. The Union will cooperate with the Employer in maintaining a record of time spent for union representational activities.

Section 4. The Employer agrees that there shall be no restraint, interference, coercion, or discrimination against Union officials and stewards in the performance of duties related to their responsibilities as the exclusive representative for unit members.

Section 5. Representatives of the national office for NAGE will be allowed to visit the facilities on appropriate union business.

Section 6. The representative of the Union for administration and implementation of this Agreement will be the duly-elected or appointed President of the local or the person whom he/she designates in writing to act in his/her place.

Section 7. The Union will be provided a listing of all committees established by the Employer. The union may appoint a member to each of those committees.

Section 8. The Union is authorized use of Employer office support items (e.g. telephone, copier, fax, typewriter, computer).

Section 9. Union representative(s) are authorized official time for Union training.

ARTICLE 7

NEGOTIATIONS

Section 1. It is agreed that the Employer shall negotiate with the Union on all proposed changes in conditions of employment. It is understood that the Employer in this context means a representative with delegated authority to speak for the Laboratory Director.

Section 2. Negotiation is defined as collective bargaining between the Employer and the Union with the objective of reaching formal written agreement with respect to personnel policies and practices and matters effecting working conditions, so far as may be

appropriate under applicable laws, regulations and published policies.

Section 3. Procedures for Bargaining. The following procedures for bargaining will be followed unless otherwise agreed to by the parties.

a. The Employer agrees to notify the Union President in writing prior to the planned implementation of a proposed change in conditions of employment. The notification will indicate the general nature of the proposed change and the planned implementation date.

b. The Union shall have ten (10) calendar days from the date of notification to request bargaining and to forward written proposals to the Employer.

c. If the Union does not request bargaining within the time limit, the Employer may implement the proposed change(s).

d. Upon timely request by the Union, bargaining will commence within ten (10) calendar days, unless otherwise agreed upon by the Parties.

e. The Employer shall have ten (10) calendar days from the date of receipt of Union initiated proposed change to conditions of employment to forward written proposals to the Union. Bargaining will commence within ten (10) calendar days, unless otherwise agreed upon by the Parties.

Section 4. It is recognized that this Agreement is not all inclusive, and the fact that certain working conditions have not been specifically covered in the Agreement does not lessen the responsibility of either party to meet with the other for discussion and exchange of views and/or negotiations in an effort to find mutually satisfactory solutions to matters related to policies, practices, procedures and conditions of employment not covered by this Agreement.

Section 5. Issues regarding negotiability of an item under discussion will be resolved in accordance with applicable provisions of Title V of USC and the rules and regulations of the Federal Labor Relations Authority.

ARTICLE 8

PARTNERSHIP

Section 1. The parties shall have a Partnership Council (hereinafter the Council) composed of two (2) representatives appointed by the Union and two (2) representatives appointed by the

Employer. Except as described below, the Council will decide its protocols and operating procedures, including whether to utilize subgroups or task forces. Any issue which affects employees' conditions of employment, except grievances and matters which would infringe on an individual's privacy, will be open for discussion. Council members will be on official time when they would otherwise be in a duty status.

Section 2. The Council will initially be trained together in collaborative interest-based bargaining.

Section 3. The Council will make decisions based on a consensus approach. Those decisions will be enforceable under this agreement except for those specific matters which would be rejected in an Agency Head review under 5 USC 7114(c). In those instances, the Union may refer the issue to the FLRA for a negotiability determination.

Section 4. When the Council cannot reach a consensus decision, either party may refer the matter to traditional negotiations beginning at mediation.

Section 5. The Employer shall provide written notice to the Union of studies and/or proposed changes to conditions of employment that may adversely affect the bargaining unit. Written notice will include those matters initiated locally and/or at a higher Agency level.

ARTICLE 9

PAYROLL WITHHOLDING OF UNION DUES

Section 1. An employee who is a member in good standing of the Union may voluntarily authorize an allotment from his pay to cover regular dues for such membership provided that all the following requirements are met:

a. The employee receives an established amount of pay that is sufficient after legal deductions and other authorized allotments to cover the full amount of the allotment for the established dues.

b. The employee has voluntarily completed a request for such allotment from his/her pay with full knowledge of the limitations on revocation of the authorization.

c. The employee is included in the unit for which exclusive recognition has been granted.

Section 2.

a. The Union agrees to provide to its members in good standing the prescribed authorization form, SF-1187, and to receive completed forms from members who want to request allotment. The President or Secretary of the Union is designated to receive completed forms, to enter the current amount of the regular dues to be deducted for the member each pay period, and to determine whether the member is in good standing in the Union. He will then complete the required request for certification and submit the forms for processing.

b. Allotments authorized on properly completed and certified forms which are received by the Employer will be processed in an expeditious manner.

Section 3. The Employer will withhold the amount of regular dues set by the Union from the pay of each employee for whom it has a properly executed current allotment authorization. If the amount of regular dues is changed, the Union will notify the Employer in writing of the change. Only one (1) such change will be made in any period of 12 consecutive months.

Section 4. The Employer will terminate an allotment:

a. At the end of the pay period following notification of loss of exclusive recognition by the Union.

b. At the end of the pay period during which an employee separates from the unit or moves to a position not included within the unit of recognition.

c. At the first complete pay period after written notification is received from the Union that an employee is no longer a member in good standing in the Union.

d. Upon receipt of a properly completed SF-1188, at the beginning of the first pay period one calendar year after the employee's dues have been withheld, or if the allotment is not revoked at the end of the first year it has been in effect, any revocation will be effective on the first pay period beginning on or after September 1 provided the revocation is received by the Employer prior to September 1. Employees desiring to submit a revocation form (SF-1188) must submit the completed form during the 6 weeks prior to the revocation period to the Employer. A copy of these forms will be provided to the local Union.

Section 5. A supply of SF-1188's will be maintained in the servicing personnel office. An employee may request one of these forms personally or in writing from the personnel office. The form will be released only upon proper request of an employee. These forms will not be stocked except in the personnel office.

Section 6. Remitting the amounts withheld. Upon disbursement for each pay period, the Payroll Office will certify for payment the net amount withheld. The check will be made out and sent to: Comptroller, Fiscal Office, National Association of Government Employees, 159 Burgin Parkway, Quincy, Massachusetts 02169-9885. The check will be accompanied by a list of the employee members designated by their Union local number, who have current allotments authorizations on file; the amount withheld from each person's pay; and a statement showing the total amounts withheld; and the net balance remitted. Also, identified will be those employees whose pay was not sufficient to cover the full amount of the deductions and those whose allotments are being terminated at the beginning of the next pay period. A copy of this listing will also be provided the Local.

ARTICLE 10

GRIEVANCE PROCEDURES

Section 1. The Employer and the Union recognize and endorse the importance of bringing to light and resolving grievances in a prompt manner. The parties agree that the expeditious settlement of grievances at the lowest possible level is in the best interest of the government service. This procedure is designed to provide an ethical, orderly and equitable means for resolving grievances.

Section 2. Unit employees covered by this agreement may present a grievance which may be processed with or without Union representation at the grievant's discretion. However, the Union shall have the right to have its' representative present at the grievance meetings. This right to individual presentation does not include the right to take the matter to arbitration, unless the Union agrees to do so.

Section 3. This Article provides procedures for the processing of grievances relating to the interpretation and/or application of this Agreement, and to matters relating to personnel policies, practices and working conditions which fall within the discretionary authority of the Employer. Except as outlined in Article 12, this shall be the sole procedure available for processing covered grievances. A grievance is defined as any complaint:

- a. By any unit employee concerning any matter relating to the employment of the employee;
- b. By the Union concerning any matter relating to employment of unit employees;
- c. By any unit employee, the Union, or the Employer concerning;

1. The effect or interpretation, or a claim of breach of this Agreement; or

2. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Section 4. The following are excluded from coverage of this grievance procedure:

a. A claimed violation of prohibited political activities.

b. Retirement, life insurance, health benefits, and matters under the auspices of the Office of Worker's Compensation Program, U.S. Department of Labor.

c. A suspension or removal under 5 USC 7532 (national security).

d. Any examination, certification, or appointment of candidates for federal employment.

e. The classification of any position which does not result in the reduction in grade or pay of an employee.

f. Nonelection for promotion from a group of properly ranked and certified candidates.

g. Termination of probationary employees.

h. Matters appealable to the Merit Systems Protection Board.

i. Equal Employment Opportunity Complaints.

Section 5. Grievances may be initiated by: (a) employees (either individually or jointly), (b) the Union, or (c) the Employer. Regardless of Union membership, employees shall not be precluded from bringing matters of personal concern to the attention of appropriate officials in accordance with applicable law, rule, regulation, or established agency policy. An employee or group of employees in the unit may be represented by themselves or only by the exclusive Union, in filing a grievance under the negotiated procedure.

Section 6. If two or more employees initiate identical grievances, where the basis for the grievance and corrective action being sought are identical, the Union, if it has been designated as the representative, will call the employees together and have them select one of the grievances for processing. The decision made on the grievance selected for processing will be equally applicable to all of the other identical grievances.

Section 7. Reasonable official time will be granted to aggrieved unit employees, and to the appropriate Union representatives, to investigate and prepare grievances. Official time will be granted to present a grievance through this Negotiated Grievance Procedure.

Section 8. Once a grievance has been accepted for processing under this Grievance Procedure, failure of the aggrieved employee or the Union to comply with any applicable time limit will terminate further consideration of the grievance, except as otherwise provided herein. Failure of the Employer to comply with any applicable processing time limit will constitute a valid basis for the grievance being advanced to the next higher step of this Grievance Procedure. However, any time limits stated in this Article may be extended by mutual written agreement between the Employer and the Union.

Section 9. A grievance by the employee, Union, or the Employer shall be filed within fifteen (15) calendar days of the occurrence or awareness of the incident being grieved, except for extenuating circumstances, such as an unavoidable or an authorized absence of the aggrieved. Should extenuating circumstances preclude adherence to the above-stated time constraints, written reasons will be submitted with the grievance.

Section 10. Employee grievances shall be processed as follows:

Step One. An employee shall take up his grievance with the Laboratory Director. The employee may choose to have a Union representative. A meeting will be held to discuss the grievance. The following shall be specified in writing:

- a. The basis for the grievance;
- b. The date of the occurrence or awareness of the incident being grieved; and
- c. The corrective relief sought.

The Director shall make a reasonable effort to resolve the grievance and will render his written decision or findings/conclusions to the employee within ten (10) workdays of the date the employee submitted the grievance.

Step Two. An employee dissatisfied with the answer provided in Step One may forward the grievance to the Science Director, Southeast Fisheries Science Center, Miami, FL, within ten (10) workdays of receipt of the Step One decision or request mediation in accordance with Article 12.

The Step Two written grievance shall contain a general statement explaining why management's Step One response is not acceptable and a copy of the Step One grievance and the response. Within fifteen

(15) workdays following receipt of the grievance, the Science Director, or his designee will send a written decision to the grievant and his/her designated representative. This time period will include any meetings if necessary.

Section 11. Employer grievances shall be filed in writing with the President of the Union. The grievance shall specify the basis for the grievance and the corrective relief sought. A meeting shall be held to discuss the grievance. The President shall issue a written decision within ten (10) workdays of receipt of the grievance.

Section 12. Union grievances shall be filed in writing with the Laboratory Director by an elected officer of the Union. The grievance shall specify the basis for the grievance and the corrective relief sought. A meeting shall be held to discuss the grievance. The Director shall issue a written decision within ten (10) workdays of his receipt of the grievance.

Section 13. Grievances not resolved through the provisions of this Article may be referred to Arbitration by either the Union or Employer in keeping with Article 11, ARBITRATION PROCEDURES.

Section 14. Grievability or arbitrability issues must be raised in writing no later than the final grievance step decision.

ARTICLE 11

ARBITRATION PROCEDURES

Section 1. When a matter pursued through the negotiated grievance procedure, Article 10, is not satisfactorily resolved at the final step of the grievance procedure, the matter may be submitted to arbitration by the Employer or the Union. The request to invoke arbitration must be in writing and must be received by the Laboratory Director or the Union President within ten (10) workdays of the date of receipt of the final grievance decision. Only the parties to this agreement may invoke arbitration.

Section 2. Within five (5) workdays after receipt of the arbitration request the Employer and the Union will jointly request that the Federal mediation and Conciliation Service submit a list of seven (7) impartial persons qualified to act as arbitrators. Within seven (7) workdays after receipt of such a list, a representative of the Union and a representative of the Employer will each strike one arbitrator's name from the list of seven (7); they will then repeat this procedure. The remaining name will be the duly selected arbitrator. A flip of a coin will decide which party strikes first.

Section 3. The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the

case in the event:

- a. either party refuses to participate in the selection of an Arbitrator, or;
- b. upon inaction or undue delay on the part of either party.

Section 4. The parties will in good faith attempt to define the issue. If complete agreement cannot be reached on the issue prior to arbitration, the parties will present their respective issues to the Arbitrator at the hearing. The Arbitrator will then determine the issue to be heard.

Section 5. Grievability and arbitrability issues, if unresolved, will be handled as threshold issues at Arbitration.

Section 6. The Arbitrator's fees and expenses shall be borne by the losing party. The Arbitrator shall determine the losing party. If there is a split decision in which neither party can be designated as the losing party, the arbitrator shall determine the percentage of arbitration cost to be paid by each party. Where the Union and the Employer mutually request a transcript or the arbitrator requests a transcript, the expense will be shared; otherwise the party requesting the transcript shall bear the expense. The Employer and the Union shall share equally the expenses of any mutually agreed upon services.

Section 7. The arbitration hearing will be on the Employer's premises during the Employer's regular administrative working hours. Each person authorized to attend the arbitration hearing who is employed by the Employer and who is in an active duty status at the time the hearing is held will be excused from duty to participate in the arbitration proceeding without loss of pay or charge to annual leave.

Section 8. The Arbitrator will be requested to render his/her decision to the Union and the Employer as quickly as possible, but in any event not later than thirty (30) calendar days after conclusion of the hearing, unless the parties agree otherwise.

Section 9. The Arbitrator will not change, modify, alter, delete, or add to the provisions of this agreement; this right is the prerogative of the Union and the Employer only.

Section 10. Either the Union or the Employer may file exceptions to an Arbitrator's award in accordance with law and regulations.

ARTICLE 12

ALTERNATIVE DISPUTE RESOLUTION

Section 1. Employees may request mediation for grievances, EEO complaints, MSPB appeals and informal workplace disputes as outlined in the National Oceanic and Atmospheric Administration (NOAA) Alternative Dispute Resolution Program Administrative Order. For grievances, mediation may be requested if the grievance has not been resolved at the first step. Mediation for negotiated grievances must be requested within ten (10) workdays of receipt of the Step One decision. Employees may elect mediation at any time during the EEO process. If employees elect ADR during the counseling process, the informal counseling will stop and the counselors will contact the ADR Program Administration.

Section 2. Participation in the ADR process is voluntary; it must be agreed to by all parties to the dispute before mediation can be used. Disputes not resolved through ADR mediation shall revert back to the appropriate process from which they came. If the unresolved dispute is a negotiated grievance, the employee must submit it to the Science Director for further consideration within ten (10) workdays of the close of mediation. Settlement agreements resulting from the ADR process are binding and enforceable.

Section 3. The ADR Program Administrator will arrange for mediators from the pool of trained NOAA mediators and supplemental resources. Mediators will generally not be assigned cases within their own line organization. The disputants will be provided the name of the first mediators available in that (or the nearest) geographical location. Mediators may be rejected by disputants only if they have stated a compelling reason, such as a conflict of interest based on a personal relationship. If parties provide compelling reasons for rejecting the mediators, the Program Administrator shall use the same selection process with subsequent mediator names.

ARTICLE 13

DISTRIBUTION OF AGREEMENT

The Agreement will be typed in final format by the Employer. After approval, copies of the Agreement will be reproduced. Cost of reproduction will be borne by the Employer. The Employer will distribute copies of the Agreement to all unit members and new employees as hired. The Union will be provided copies of the Agreement for internal use as needed.

ARTICLE 14

DURATION AND CHANGES

Section 1. This Agreement shall remain in full force and effect for a period of 3 years from the date of its approval by the head of the Agency or from the 31st day after execution, whichever is sooner. This Agreement will automatically be renewed for 3-year periods thereafter unless written notice of a desire to renegotiate the Agreement is served by either party between the 105th and 60th day prior to expiration of the contract.

Section 2. This Agreement is subject to reopening:

- a. By mutual consent of the parties concerned;
- b. When new or revised laws or regulations of appropriate authority require changes to provisions of the Agreement.

Section 3. When the renegotiation of this Agreement is pending or in process, and the parties are unable to complete such renegotiation by the termination date of the Agreement, the terms and conditions of this Agreement shall continue in effect until a new Agreement is effected.

FOR MANAGEMENT:

Pamela E. Rankin
PAMELA E. RANKIN
Chief Negotiator

Churchill B. Grimes
CHURCHILL B. GRIMES, Ph.D.

Karen Patterson
P. KAREN PATTERSON

FOR THE UNION:

George L. Reaves, Jr.
GEORGE L. REAVES, JR.
Chief Negotiator

Rosalie N. Shaffer
ROSALIE N. SHAFFER

William A. Fable, Jr.
WILLIAM A. FABLE, JR.

DATED: 24 JULY 1996

TO BE EFFECTIVE: _____



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

June 4, 1996

Gail Hitchcock
Federal Labor Relations Authority
Atlanta Regional Office
Marquis Two Tower - Suite 701
285 Peachtree Center Avenue
Atlanta, Georgia 30303-1270
(404-331-5280 facsimile)

Re: National Association of Government Employees,
Local R-5-160 and Department of Commerce, National
Oceanic and Atmospheric Administration
Case AT-RP-60031

Dear Ms. Hitchcock:

This is to confirm our telephone conversation today that the Agency will agree and stipulate to the change in the Local Number for the above-referenced unit of National Association of Government Employees from R5-160 to R5-106. The Agency also will waive any right it has to a review in this matter.

If you have any further questions, feel free to call me at 202-482-5017.

Sincerely yours,

A handwritten signature in cursive script that reads "Frances C. Silva".

Frances C. Silva
Agency Representative

UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
ATLANTA REGION

SERVICE SHEET

Case No. AT-RP-60031

In the matter of: U. S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
PANAMA CITY LABORATORY
PANAMA CITY, FLORIDA

Activity

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, SEIU, AFL-CIO, LOCAL R5-106

Petitioner

Copy of: DECISION AND ORDER ON PETITION FOR AMENDMENT OF
CERTIFICATION

Dated: June 17, 1996 sent to the following:

CERTIFIED MAIL

Thomas O. Magnetti
Agency Representative
U. S. Department of Commerce
Office of the General Counsel
14th & Constitution Avenue
Washington, DC 20230

Frances C. Silva
Agency Representative
U. S. Department of Commerce
Office of the General Counsel
14th & Constitution Avenue
Washington, DC 20230

Orval Lee Dobson
National Representative
National Association of Government
Employees, SEIU, AFL-CIO
36 Wine Street
Hampton, VA 23669

REGULAR MAIL

**Nancy A. Speight
Director of Program Development
Federal Labor Relations Authority
Office of the General Counsel
607 14th Street, NW, Suite 210
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**Director, Office of Case Control
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