

COLLECTIVE BARGAINING AND PARTNERSHIP AGREEMENT

BETWEEN

THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
BOULDER LABORATORIES, BOULDER COLORADO

AND

THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 2186

JUNE 1996

PREAMBLE

In order that the employees in the Recognized Exclusive Units (hereinafter referred to as “employee(s)”) and management officials of the Department of Commerce's National Institute of Standards and Technology, Boulder Laboratories (NIST Boulder), Technical Services Division (TSD) (hereinafter referred to as “employer”) may work together to achieve common interests and goals to support the TSD mission and increase the efficiency of the Agency, this Negotiated Agreement is hereby established pursuant to the provisions and exclusions contained in Title VII of the Civil Service Reform Act of 1978 (hereinafter referred to as Title VII), and the Executive Order on Partnership E.O. 12871 (hereinafter referred to as “partnership or partnering”), pursuant to the Exclusive Recognition of AFGE Local 2186 (hereinafter referred to as the “Union”). Within the terms of this Agreement, use of the term “negotiate” refers to interest-based bargaining by partnership. All references to “days” in this Agreement, refers to “calendar days” unless otherwise specified.

In the spirit of partnership, the Technical Services Division and the Union will work together to improve the internal operations of the Division.

ARTICLE 1. RECOGNITION AND UNIT DESIGNATION

Section 1. The Employer recognizes the Union as the exclusive bargaining agent and representative, under the provisions of Title VII and Department of Commerce Administrative Order 202-711, for all employees, except managerial, supervisory, professional, intermittent, temporary limited and employees described in 5 USC 7112(b) (2), (3), (4), (6), and (7), in the bargaining unit of the Technical Services Division 361.

Section 2. The Union recognizes its responsibility for representing the interests of all employees in the bargaining unit without discrimination and without regard to labor organization membership.

ARTICLE 2. GENERAL PRINCIPLES AND POLICIES

Section 1. This Agreement and all supplemental, impending, subsidiary, and informal agreements between the Employer and the Union, are subject to the following provisions:

- a. Section 7106 of Chapter 71 of Title 5, United States Code, which states:

“7106. Management Rights

- a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency –
 - (1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
 - (2) in accordance with applicable laws-
 - a. to hire, assign, direct, lay off, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary actions against such employees;
 - b. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
 - c. with respect to filling positions, to make selections for appointments from--
 - i. among properly ranked and certified candidates for promotion; or
 - ii. any other appropriate source; and
 - iii. to take whatever actions may be necessary to carry out the agency mission during emergencies.”
- b. Union\Management Partnership, as authorized by Executive Order 12871, shall be implemented for the life of this Agreement. Nothing in this section shall preclude any agency and labor organization from negotiating at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational sub-division, work projects, or tour of duty, or on the technology, methods and means of performing work;
- c. Involvement in partnership includes:
 - Pre-decisional involvement
 - Information sharing
 - Responsibility
 - Timeliness
 - Openness
 - Trust
 - Cooperation
 - Receptiveness and an open attitude
 - Training and activities to foster and encourage Partnership

d. The Employer and Union agree to form a Management Partnership Council. The purpose of this Council is to foster an environment of partnership and involvement at all levels and resolve issues as required. The Council will be comprised of six members. There shall be four permanent members, two advisory members and ad hoc members as needed:

- (1) President AFGE Local 2186 or their designee
- (2) Designated Union representative from NIST
- (3) Chief of the Technical Services Division or his designee
- (4) Designated Management representative
- (5) Human Resource Specialist for Technical Services Division (Advisory only)
- (6) Labor Management Relations Officer (Advisory only)

e. The Partnership Council will use consensus to reach their decisions. If there is an objection to consensus, then the person objecting must provide another solution.

The Council's mission will be to promote excellence in the Technical Services Division through a cooperative, constructive working relationship between members of the bargaining unit and management.

The responsibilities of the Council will be to:

- Identify problems and develop solutions to better serve the customers of the Technical Services Division.
- Serve as the appeal and resolution authority in grievance procedures.
- Grievances unable to be resolved by the Council will be referred to FMCS Arbitration.
- Establish and promote the development of methods of Alternative Dispute Resolution.
- Promote open communications at all levels for purposes of enhancing customer service.

f. Nothing in this Agreement shall require an employee to become or remain a member of a Union organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for payment of dues through payroll deductions.

Section 2. The Employer and the Union agree that laws, regulations, and policies imposed by an authority above NIST/Boulder shall take precedence over the terms of this Agreement unless the issuing authority or the Federal Labor Relations Authority determines there is no compelling need

for the law, regulation or policy as pertains to the Bargaining Unit. However, the Union retains the right to negotiate on impact and implementation of any required changes in employment conditions. Such negotiations shall not delay the implementation of the changes after the parties have negotiated to the point of impasse.

Section 3. The Employer and the Union agree that, as provided by Title VII, employees shall have, and shall be protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from such activity. The right of employees to assist a labor organization is recognized as extending to participation in the management of the organization and acting for the organization in the capacity of organization representatives, including presentation of its views to officials of the Executive Branch, the Congress or other appropriate authority. The Employer hereby affirms to all employees the rights described in this Section, and states that no interference, restraint, coercion, or discrimination shall be practiced within the Agency to encourage or discourage membership in a labor organization.

Section 4. The Employer and the Union further agree that the rights of Section 3 of this Article do not authorize participation by employees in the management of a labor organization, or acting as a representative of such an organization by a supervisor, except as provided by Title VII, or by an employee, when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

Section 5. The Employer and the Union agree to partner on impact and implementation with respect to changes in conditions of employment as provided by Title VII. The Employer and the Union further agree to consult from time to time with the object of improving communication, understanding and cooperation, and to seek to settle any problems of mutual concern. Nothing in this Section precludes meeting and negotiating on any matter proposed locally concerning conditions of employment whether or not referenced in this Agreement. The Employer, however, reserves its right, in accordance with 5 U.S.C. 7101 (b), to implement changes prior to bargaining to impasse, if necessary, due to the urgent needs of the organization's mission.

Section 6. Matters appropriate for negotiation between the Employer and the Union include, but are not limited to, 5 U.S.C. 7106(b)(1), regulations, policies, and procedures promulgated within NIST/Boulder which impact working conditions of employees in the recognized units. Examples are: safety, training, labor-management cooperation, employee services, methods of adjusting grievances, leave scheduling, reduction-in-force policies, environmental pay, and hours of work. This Section does not create any additional rights beyond that provided in the Executive Order 12871.

Section 7.

- a. The terms of this Agreement do not preclude any employee from bringing matters of personal concern to the attention of appropriate officials under applicable law, rule, regulation, or established agency policy.

- b. An employee may choose to represent him/herself or to be represented by the Union in any grievance not excluded under Article 3 of this Agreement. If a grievant(s) is not represented by the Union, the Employer will ensure the right of the Union to have an observer present at any discussion with the grievant(s) concerning an adjustment or resolution of the grievance.
- c. An employee may elect to be represented by anyone of his/her choice in appellate actions not processed under the grievance procedure of this Agreement.

Section 8. The Employer and the Union agree that an atmosphere of mutual respect and cooperation contribute significantly to effective Union-Employer relations. In implementing this contract, the Employer and the Union agree to seek to maintain, and further develop, such an atmosphere.

ARTICLE 3. GRIEVANCE PROCEDURE

Section 1. The purpose of this article is to provide for a mutually acceptable method for the prompt and equitable settlement of grievances as defined in 5 U.S.C. 7103(a)(9), over the application or interpretation of this Agreement and other dissatisfactions. Unless otherwise provided for, this procedure will be the sole procedure available to the Union, the Employer, or bargaining unit employees for resolving grievances. Excluded from this negotiated grievance procedure are the following:

- a. Matters for which a statutory appeal procedure is established, except for removal or suspensions of more than fourteen days;
- b. Any matter which is subject to final administrative review outside of the Department of Commerce;
- c. Termination of probationary or temporary employees;
- d. Non-selection for promotion from a group of properly ranked and certified candidates;
- e. A notice of proposed action or preliminary warning;
- f. Informal measures taken by the Employer which are not a matter of formal record, such as oral and written admonishments. However, the employee may submit written rebuttal and discuss the matter with the next appropriate level of management;
- g. Suitability determination;
- h. Non-adoption of a suggestion;
- i. Disapproval of a performance or incentive award;

- j. Contents of employee performance plan or performance improvement plan;
- k. Matters not within the control or discretion of the Employer;
- l. Any issue for which there would be no tangible personal relief to the grievant or for which action is sought against another person; and,
- m. Matters excluded by law or government wide rule or regulation.
- n. Reduction-In-Force.

Section 2. Grievances which question directly or indirectly interpretation of higher authority regulations will not proceed to arbitration without clarification by the responsible agency office. This clarification will be binding on the arbitrator. The arbitrator shall decide the merits of the grievance considering this clarification.

Section 3. Questions as to whether or not a grievance is on a matter subject to the grievance or arbitration procedure may be referred by either party to arbitration in accordance with Article 4. Arbitration.

Section 4. Only a Union designated representative may represent an employee who files a grievance under this Agreement. However, a unit employee may present a grievance without the intervention of the Union. The Union retains the right to observe.

Section 5. Informal Procedure and Time Frame. The parties agree to attempt to resolve complaints informally at the lowest possible level. However, if informal attempts are unsuccessful, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's or supervisor's good standing, performance, or loyalty or desirability to the organization. Official time during working hours will be allowed for employees and Union representatives, to discuss, prepare for and present grievances, including attendance at meetings with the Employer officials. If a grievant(s) is not represented by the Union, the Employer will assure the right of the Union to have an observer present at any discussion with the grievant(s) concerning an adjustment or resolution of the grievance. A grievance may be presented at any time within 30 days from the date that the grievant(s) became aware, or was notified, of the action or condition giving rise to the grievance. The intent of the 30-day grievance period or "window" is to allow adequate time for the involved individuals and organizations to attempt to resolve the issues. During this period both parties will meet timely and regularly to review and attempt to resolve the issue(s). If these informal efforts fail to resolve the issues giving rise to the grievance, the Formal Procedures shall be followed.

Section 6. Formal Procedures

a. Step 1.

- (1) The grievance shall be presented formally within the thirty (30) day "window." The grievance shall be submitted to the group supervisor in writing, and shall contain, to the extent possible, the following:

- 1. Name of the grievant(s),

2. Designation of Union as the representative or statement self-representation,
3. Details of the grievance,
4. The corrective action sought,
5. Memo(s) describing attempts at informal resolution,
6. Signature of the grievant(s), and,
7. Signature of the Union representative (if applicable) and date of submission.

(2) The Group Supervisor shall, within fourteen (14) days, provide a written decision to the grievant, with a copy to the grievant's representative (if any) and to the Chief Steward.

- b. Step 2. If the grievance is not settled at the first level, the grievant(s) and/or the designated Union representative may, within seven (7) days, forward the grievance, in writing, to the Partnership Council for further consideration. The grievance shall include: Memoranda of informal and first level proceedings and decision memorandum, and a Statement of Case will be developed jointly by the grievant(s), a Union representative (if requested) and the Manager within seven (7) days to be forwarded to the Partnership Council for their action. Administrative support for this action is the responsibility of Management.

The Partnership Council will provide a written response to the grievant, with a copy to the grievant's representative, if any, and to the Chief Steward, within fourteen (14) days of receipt of the grievance.

Section 8. If the grievance is not satisfactorily settled at the Partnership Council, the Union or the Employer may refer the matter to arbitration in accordance with Article 4 of this Agreement.

Section 9. All time limits in this Article may be extended by mutual consent. Extensions will not unreasonably be refused. If not provided a response within the allotted time, the grievant retains the option of elevating the grievance to the Partnership Council. Failure of the grieving party to advance a grievance to the next step shall result in cancellation of the grievance.

Section 10. Questions and issues arising over interpretations of this Agreement will be addressed in the Partnership Council.

Section 11. At any point in the process, and prior to arbitration, the use of a facilitator/mediator service may be used to resolve the conflict.

Section 12. The Partnership Council will review the process after each formal grievance. Review will include, but not be limited to timeliness, fairness, cost-effectiveness and the ability to meet the interests of all parties. Changes will be incorporated into the formal process.

ARTICLE 4. ARBITRATION

Section 1. Under 5 U.S.C. 7121(b)(3)(c), if the parties fail to settle the grievance under the negotiated grievance procedure, (Article 3) the grievance may be submitted to arbitration upon written request within 30 days of issuance of a final decision or expiration of the response time.

Section 2. Within seven (7) days from the date of the request for arbitration, the parties shall jointly request the Federal Mediation and Conciliation Service to provide a list of five (5) arbitrators from which to select an individual to decide the issue. The parties shall meet within five (5) days after the receipt of such list to make their selection. If they cannot mutually agree upon a selection, the Employer and the Union will each strike, alternately, one name at a time until only one remains. The Employer shall have the first strike. The remaining person shall be the duly selected arbitrator.

Section 3. If for any reason the Employer or the Union refuses to participate in the selection of an arbitrator, the Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case.

Section 4. If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate submission, and the arbitrator shall determine the issue or issues to be heard.

Section 5. The arbitrator's fee, other arbitrator's expenses, cost of hearing transcript, if any, will be borne by the requesting party. In the event of a split award, cost will be equally shared. The arbitration hearing will be held, if possible, on the Employer's premises during the regular day shift hours of the basic work week. All employee participants in the hearing shall be in a duty status if they otherwise would have been in a duty status. Settlement costs will be in accordance with the law.

Section 6. The arbitrator will be requested to render the decision as quickly as possible, in any event not later than (30) days after the conclusion of the hearing unless the parties mutually agree, in writing, to grant an extension of the time limit.

Section 7. The arbitrator's award shall be binding on the parties. However, either party may file an exception to an award, when made under regular arbitration procedures, with the Federal Labor Relations Authority under regulations prescribed by the Authority.

Section 8. The Union will be allowed reasonable time to prepare for the arbitration process.

ARTICLE 5. DUES WITHHOLDING

The parties to this Agreement agree to continue to abide by the conditions negotiated in the Dues Withholding Agreement governing the practices and policies of processing voluntary union dues withholding authorizations and the revocation of the same.

ARTICLE 6. DURATION OF AGREEMENT

Section 1. This Agreement is viewed as a living document and will remain in full force until a notice of termination is issued by either party. This Agreement may be modified at any time through a partnership effort.

Section 2. Either party must give 30 days' written notice to the other of intent to terminate this Agreement. At the time of termination of Agreement, the December 12, 1991, contract will become effective in full, until such time as a new Agreement can be negotiated.

Section 3. The Employer agrees to recognize the right of the Union as the exclusive representative of the bargaining unit to bargain as appropriate over the impact and implementation of changes proposed by the Employer to personnel procedures, practices and working conditions when such changes significantly affect unit employees. The Employer agrees to discharge its responsibilities in this area. The Union agrees to recognize the Employer's right to make changes in personnel practices, procedures and working conditions, subject to bargaining as required by the Federal Service Labor Relations Act and Executive Order 12871 as long as it is in effect and subject to Interest Based Bargaining. Otherwise, the parties agree that the terms of this Agreement, personnel practices, procedures and working conditions shall remain in effect for the duration of this Agreement. This Section does not create any additional rights beyond that provided for in the Executive Order 12871.

CONTRACT EXECUTION

IN WITNESS to this Agreement, the signatures of the authorized representatives of the parties are hereto affixed this 28th day of June 1996.

Partners

For the Employer:

Henry W. Tyler
Garry J. Schow
Stephen Salber

For the Union:

Nolan Biesanz
James Tacke
Lane Morken
Randy Siebert
Tom Gaffney

Approved:

Henry W. Tyler, Chief
Technical Services Division
National Institute of Standards and Technology

Nolan Biesanz, President
Local 2186, American Federation of Government Employees, AFL-CIO

This agreement is effective _____, the date of approval by the Director of Personnel, U.S. Department of Commerce.