

73 FLRA No. 49

DEPARTMENT OF COMMERCE
 NATIONAL OCEANIC
 AND ATMOSPHERIC ADMINISTRATION
 NATIONAL MARINE FISHERIES SERVICE
 SOUTHEAST FISHERIES SCIENCE CENTER

(Agency)

and

AMERICAN FEDERATION
 OF GOVERNMENT EMPLOYEES
 LOCAL 2875
 AFL-CIO
 (Petitioner/Labor Organization)

and

NATIONAL ASSOCIATION
 OF INDEPENDENT LABOR
 (Petitioner/Labor Organization)

AT-RP-21-0010
 AT-RP-22-0013
 AT-RP-22-0014

ORDER DENYING
 APPLICATION FOR REVIEW

September 21, 2022

Before the Authority: Ernest DuBester, Chairman, and
 Colleen Duffy Kiko and Susan Tsui Grundmann,
 Members

I. Statement of the Case

National Association of Independent Labor (NAIL) filed an application for review (application) of the attached decision and order (decision) of Federal Labor Relations Authority (FLRA) Regional Director Richard S. Jones (the RD). The RD denied NAIL's representation petitions, which sought to clarify its pre-existing bargaining-unit certifications following an Agency reorganization. The RD found NAIL's units were not appropriate under § 7112(a) of the Federal Service Labor-Management Relations Statute (the Statute).¹ Rather, the RD granted American Federation of Government Employees, Local 2875's (AFGE's) petition, which also sought to clarify its pre-existing bargaining unit

certification and include, as relevant here, bargaining-unit employees that fell under NAIL's certifications.

In the application, NAIL argues that the RD erred in finding the AFGE unit appropriate. For the reasons set forth below, we deny NAIL's application.

II. Background and RD's Decision

The Agency is headquartered in Miami, Florida and has facilities throughout the Southeast region. Before conducting its reorganization, the Agency organizational structure was a Directorate, which included the Social Sciences Research Group (SSRG) and eight suborganizations. Four of those suborganizations were geographically based laboratories, which, as relevant here, included the Beaufort, North Carolina and Panama City, Florida Laboratories. The other four were the following function-based divisions, whose employees were not necessarily in the same location: Sustainable Fisheries Division (SFD), Fisheries Statistics Division (FSD), Protected Resources and Biodiversity Division (PRBD), and the Operations Management and Information Division (OMID), which included the Science Planning and Coordination Branch (SPCB).

As relevant here, in 2019 the FLRA certified AFGE as the exclusive representative for SFD, FSD, PRBD, OMID (including SPCB), and SSRG employees. In 1996 and 2017, the FLRA certified NAIL as the exclusive representative for employees in the Beaufort and Panama City Laboratories.

In 2020 and 2021, the Agency changed its organizational structure (the reorganization) to rename existing divisions, create new divisions, and eliminate laboratories as suborganizations. After the reorganization, the divisions were the Directorate; SFD; FSD; OMID; Marine Mammals and Sea Turtle Division (MMSTD); Population and Ecosystems Monitoring Division (PEM); and Fisheries, Assessment, Technology, and Engineering Support Division (FATES). The Agency also realigned laboratory employees under the divisions. Throughout the reorganization, employees retained their daily job duties and the changes were limited to organizational structures and supervisory chains.

As a result of the reorganization, AFGE filed a representation petition with the FLRA seeking to maintain representation of employees within three divisions identified under its certification (SFD, FSD, and OMID), and include employees that the Agency reorganized into those divisions.² AFGE further sought representation of employees in the MMSTD and the Directorate under successorship principles. NAIL filed two petitions

¹ 5 U.S.C. § 7112(a).

² Case No. AT-RP-21-0010.

seeking to maintain its unit certifications for employees who were formerly organizationally part of the Beaufort and Panama City Laboratories.³

In determining whether to grant NAIL's petition to maintain its two existing bargaining units, the RD relied on Authority precedent used to determine appropriate bargaining units after a reorganization.⁴ As such, the RD held that, under § 7112(a) of the Statute, "an appropriate unit is one that will ensure a clear and identifiable community of interest among the employees in the unit; promote effective dealings with the agency involved; and promote efficiency of agency operations."⁵ The RD noted that, during the reorganization, the Agency organizationally abolished the Beaufort and Panama City Laboratories, such that employees who were formerly organizationally part of those Laboratories "are now scattered throughout" various divisions.⁶ After considering various factors, the RD found: the bargaining-unit employees no longer shared a community of interest; maintaining separate geographic-based units would create fragmentation across multiple divisions that would not promote effective dealings; and the units proposed by NAIL did "not bear a rational relationship to the Agency's current [organizational] structure" and, thus, "would not promote efficiency of [A]gency operations."⁷ Therefore, the RD determined that the reorganization rendered NAIL's existing units inappropriate.

The RD next relied on automatic-inclusion principles set forth in *Department of the Army Headquarters, Fort Dix, Fort Dix, New Jersey*⁸ to determine whether AFGE remained the exclusive representative of employees within SFD, FSD, and OMID and whether its units should include employees that the Agency transferred into those divisions.⁹ The RD found that employees in these divisions fall within the express terms of AFGE's existing unit certificates, and that their inclusion would not render the units inappropriate.¹⁰ Therefore, the RD found that AFGE remains the exclusive representative of these divisions and employees working in them are automatically included in AFGE's existing unit.¹¹

Lastly, to determine whether AFGE retained its status as exclusive representative of employees transferred to the MMSTD and the Directorate, the RD applied the

principles prescribed in *Naval Facilities Engineering Service Center, Port Hueneme, California*¹² for resolving successorship claims.¹³ The RD found that the MMSTD was the successor to the PRBD, and that the Directorate was the successor to the SPCB that had originally been part of OMID.¹⁴ The RD also found that AFGE – rather than NAIL – represented a majority of PRBD and OMID bargaining-unit employees transferred to the MMSTD and the Directorate. Further, after weighing the three criteria in § 7112(a) of the Statute, the RD concluded that AFGE's unit is appropriate for these organizationally transferred employees.¹⁵

Therefore, finding NAIL's units no longer appropriate, the RD revoked NAIL's certifications.

NAIL filed its application on July 27, 2022. The Agency and AFGE each filed an opposition to the application on August 5, 2022 and August 10, 2022, respectively.

III. Preliminary Matter: Sections 2422.31(b) and 2429.5 of the Authority's Regulations bar two of NAIL's arguments.

In its application, NAIL argues that that the RD erred by "grouping employees together by job titles and position descriptions within divisions, [which] ignores many of the important considerations in collective bargaining such as the unique location of the employees' particular environment."¹⁶ NAIL also argues that "[t]he small number of [NAIL] employees involved skews the

³ Case Nos. AT-RP-22-0013 and AT-RP-22-0014.

⁴ Decision at 17 (citing *U.S. Dep't of the Army, Army Materiel Command Headquarters, Joint Munitions Command, Rock Island, Ill.*, 63 FLRA 394, 405 (2009) (*Joint Munitions Command*)).

⁵ *Id.* at 18 (citing 5 U.S.C. § 7112(a); *U.S. Dep't of the Navy, Fleet & Indus. Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 959 (1997) (*FISC*)).

⁶ *Id.*

⁷ *Id.* at 18-20.

⁸ 53 FLRA 287, 294 (1997).

⁹ Decision at 20-21.

¹⁰ *Id.* at 21-22.

¹¹ *Id.*

¹² 50 FLRA 363, 368 (1995).

¹³ Decision at 22-23.

¹⁴ *Id.* at 23-25.

¹⁵ *Id.*

¹⁶ Application at 2.

percentages of bargaining[-]unit eligibles scattered throughout the Agency.”¹⁷

Under the Authority’s Regulations, a party’s application may not “raise any issue or rely on any facts not timely presented to the . . . [RD]”¹⁸ or raise arguments “that could have been, but were not, presented in the proceedings before the [RD].”¹⁹ Here, although NAIL could have presented the above arguments to the RD, the record does not reflect that it did so. Therefore, we find these arguments barred and do not consider them.²⁰

IV. Analysis and Conclusion: The RD did not fail to apply established law or commit clear and prejudicial errors concerning substantial factual matters.

NAIL argues that (1) the reorganization was a “paper exercise” that eliminated the community of interest, effective dealings, and efficiency of operations of employees in the existing NAIL units; (2) the reorganization eliminated efficiency of operations because it “fragmented operations to a point that some structures do not have any supervisors physically located where their new employees actually work”; and (3) “AFGE’s proposed unit should be found inappropriate because the

scope and character of the petitioned[-]for unit was altered by this huge reorganization.”²¹

At the outset, we note that NAIL’s application has not specified a particular ground for review set forth in § 2422.31(c) of the Authority’s Regulations.²² However, even construing NAIL’s application as arguing that the RD failed to apply established law or committed clear and prejudicial errors concerning substantial factual matters,²³ we find that those arguments fail.

In determining whether a unit is appropriate under § 7112(a), the Authority considers whether the unit would: (1) ensure a clear and identifiable community of interest among the employees in the unit; (2) promote effective dealings with the agency; and (3) promote efficiency of the operations of the agency.²⁴ A unit must satisfy all three criteria in order to be found appropriate.²⁵ Determinations as to each of these criteria are made on a case-by-case basis.²⁶ The Authority has set out factors for assessing each criterion, but has not specified the weight of individual factors or a particular number of factors necessary to establish an appropriate unit.²⁷

As the basis for its first two arguments, NAIL essentially concedes that its units are inappropriate

¹⁷ *Id.* at 3. Member Kiko notes that even if the Authority were to resolve this argument on its merits, the Authority in applying successorship principles has held that, absent “special circumstances,” an election is not necessary if one union represents more than seventy percent of employees in the new unit. *Dep’t of the Army, U.S. Army Aviation Missile Command (AMCOM), Redstone Arsenal, Ala.*, 56 FLRA 126, 131 (2000) (*AMCOM*). And the Authority has defined “special circumstances” as including “clear evidence that the percentage of employees represented by the unions . . . is not a dispositive indicator of their respective strength.” *Id.* at 131 n.8. Here, NAIL emphasizes the small size of the units at issue, and argues that “[t]he small numbers of employees involved skews the percentages.” Application at 3. Member Kiko notes that, in some cases, the small number of employees involved might plausibly cast doubt on whether the “percentage of employees represented by the unions . . . [was] a dispositive indicator of their respective strength.” *AMCOM*, 56 FLRA at 131 n.8. Under those circumstances, she would not find that the larger union had established that it was “sufficiently predominant to render an election unnecessary.” *Id.* In the units at issue here, however, the record does not reflect that “[t]he small numbers of employees involved skew[ed] the percentages.” Application at 3. In the MMSTD, thirteen out of eighteen employees had been represented by AFGE as compared to one employee who had been represented by NAIL. Decision at 14. And in the Directorate, nine out of twelve employees had been represented by AFGE as compared to one employee who had been represented by NAIL. *Id.* Moreover, Member Kiko notes that there is still an outstanding petition seeking an election for the PEM and FATES divisions, filed by NAIL after the RD issued the decision at issue here, which has yet to be resolved. See Agency Opp’n at 3.

¹⁸ 5 C.F.R. § 2422.31(b).

¹⁹ *Id.* § 2429.5.

²⁰ *E.g., U.S. Dep’t of the Air Force, Air Force Life Cycle Mgmt. Ctr., Hanscom Air Force Base, Mass.*,

69 FLRA 483, 484 (2016).

²¹ Application at 1-3.

²² 5 C.F.R. § 2422.31(c)(1)-(3) (“The Authority may grant an application for review only when the application demonstrates that review is warranted on one or more of the following grounds: (1) [t]he decision raises an issue for which there is an absence of precedent; (2) [e]stablished law or policy warrants reconsideration; or, (3) [t]here is a genuine issue over whether the Regional Director has: (i) [f]ailed to apply established law; (ii) [c]ommitted a prejudicial procedural error; or (iii) [c]ommitted a clear and prejudicial error concerning a substantial factual matter.”).

²³ *See, e.g., U.S. Dep’t of the Air Force, Joint Base Langley – Eustis, Va.*, 66 FLRA 752, 755 (2012) (construing a party’s arguments in its application as raising a recognized ground for review); *U.S. Dep’t of the Air Force, Tyndall Air Force Base, Tyndall AFB, Fla.*, 65 FLRA 610, 614 (2011) (same).

²⁴ 5 U.S.C. § 7112(a); *see also FISC*, 52 FLRA at 959.

²⁵ *See FISC*, 52 FLRA at 961 n.6.

²⁶ *See U.S. Dep’t of the Interior, Bureau of Ocean Energy Mgmt. & U.S. Dep’t of the Interior, Bureau of Safety & Env’t Enft, New Orleans, La.*, 67 FLRA 98, 99 (2012).

²⁷ *Id.*

following the reorganization. Therefore, those arguments do not demonstrate that the RD erred by finding those units inappropriate.

NAIL's remaining argument appears to challenge only the RD's finding that the AFGE unit was appropriate. To the extent that NAIL asserts that the units as they existed before the reorganization were more appropriate than those the RD found appropriate, this argument does not demonstrate that the RD erred. The RD relied on multiple stipulated facts and applied the three appropriate-unit criteria under § 7112(a) and found the AFGE unit appropriate.²⁸ NAIL fails to cite any evidence in the record or otherwise support its claim that the RD erred in making this finding.²⁹ Moreover, Authority precedent is clear that a unit only needs to be *an* appropriate unit, not the *most* appropriate unit.³⁰ Consequently, NAIL fails to demonstrate that the RD erred in finding the AFGE unit appropriate.

For the foregoing reasons, we find that NAIL has not demonstrated that the RD failed to apply established law or committed clear and prejudicial errors concerning substantial factual matters.

V. Order

We deny NAIL's application for review.

²⁸ Decision at 20-25.

²⁹ *Dep't of the Army, Fort Carson Fire & Emergency Servs., Fort Carson, Colo.*, 73 FLRA 1, 3 (2022) (finding union cited no evidence to support argument and therefore failed to provide a basis for the Authority to conclude that the RD committed a clear and prejudicial factual error); *U.S. Dep't of the Navy, Fleet Readiness Ctr. Sw., San Diego, Cal.*, 63 FLRA 245, 252 (2009) (finding union failed to support claim that RD failed to apply established law).

³⁰ *U.S. Dep't of the Air Force, Lackland Air Force Base, San Antonio, Tex.*, 59 FLRA 739, 741 (2004). In its application for review, NAIL references only one Authority decision. See Application at 2 (citing *Joint Munitions Command*, 63 FLRA 394). However, it fails to explain how this decision, in which the Authority denied a union's application for review of an RD's decision following an agency reorganization, supports its application.

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

Department of Commerce
National Oceanic & Atmospheric Administration
National Marine Fisheries Service
Southeast Fisheries Science Center
(Agency)

and

American Federation of Government Employees
Local 2875, AFL-CIO
(Petitioner/Labor Organization)

Case Nos. AT-RP-21-0010
AT-RP-22-0013
AT-RP-22-0014

and

National Association of Independent Labor
(Petitioner/Labor Organization)

DECISION AND ORDER

I. Statement of the Case

The American Federation of Government Employees, Local 2875, AFL-CIO (AFGE Local 2875) filed a petition in Case No. AT-RP-21-0010¹ seeking to clarify and update its unit certification following a series of reorganizations undertaken by the National Oceanic and Atmospheric Administration (NOAA) National Fisheries Service Southeast Fisheries Science Center (SEFSC). The National Association of Independent Labor (NAIL) filed petitions in Case Nos. AT-RP-22-0013 and AT-RP-22-0014² also seeking to clarify its bargaining units following the reorganization.

The Parties entered into a joint Stipulation of Facts and I adopt it as the record in these matters in lieu of a record created at hearing.

II. Findings

1. AFGE Local 2875 and NAIL are labor organizations under 5 U.S.C. § 7103(a)(4) of the Statute.

2. NOAA is an Agency under 5 U.S.C. § 7103(a)(3) of the Statute.
3. On May 1, 2019, in Case Nos. AT-RP-19-0006 and AT-RP-19-0007, AFGE Local 2875 was certified³ as the exclusive representative of the following unit:

Included: All professional and nonprofessional employees of the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Southeast Fisheries Science Center, Miami, Florida (including employees not physically located in the Miami Laboratory), in the following subunits:

Sustainable Fisheries Division
Protected Resources and
Biodiversity Division Fisheries
Statistics Division Operations,
Management, and Information
Division Social Sciences
Research Group Branch

Excluded: All management officials, supervisors and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6), and (7).

4. On October 22, 2007, in Case No. AT-RP-07-0021, NAIL was certified as the exclusive representative of the following 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

¹ AFGE's initial petition was filed on February 12, 2021. AFGE filed amended petitions on March 29, 2021 and March 11, 2022.

² The NAIL petitions were filed on February 17, 2022.

³ AFGE Local 2875 was previously certified as the representative of certain agency employees in Case No. 42-1201 on September 25, 1970. The 2019 certification expanded and updated the description of AFGE's original unit.

described in 5 USC 7112(b)(2), (3), (4), (6) and (7).

NAIL Local 12 has represented employees in this Panama City, Florida-based bargaining unit.

5. On July 27, 2015, in Case No. AT-RP-15-0023, NAIL was certified as the exclusive representative of the following unit:

Included: All professional and nonprofessional employees of the U.S. Dept. of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Beaufort, North Carolina.

Excluded: All supervisors, management officials, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6), and (7).

NAIL Local 20 has represented employees in this Beaufort, North Carolina-based bargaining unit.

6. NOAA is comprised of six line-offices, which includes the National Marine Fisheries Service (NMFS). NMFS has six Science Centers, which includes the Southeast Fisheries Science Center (SEFSC).
7. The SEFSC is headquartered in Miami, Florida and has facilities in Beaufort, North Carolina; Panama City, Florida; Pascagoula and Stennis, Mississippi; and Galveston, Texas. SEFSC researchers are also located in Lafayette, Louisiana and port agents, fisheries observers and other staff are stationed throughout the Southeast region.
8. During 2020-2021, SEFSC undertook a three phase realignment to increase organizational depth, centralize certain functions that previously crossed organizational structures, and add supervisory positions. Phase I was initiated in September 2020, but was not functionally completed until January 2021, during which time Phase II was also completed. Phase III of the realignment was completed in October 2021.

9. Throughout the realignment, employees retained their day-to-day job duties and changes were limited to organizational structures and supervisory chains.

10. Prior to the three-part realignment, the SEFSC was comprised of a Directorate (which included the Social Sciences Research Group as a branch) with four laboratories (Galveston, Pascagoula, Panama City, and Beaufort) and four divisions (Sustainable Fisheries, Fisheries Statistics, Protected Resources and Biodiversity, and Operations Management and Information) under the Directorate.

11. During Phase I of the Agency's realignment, the Agency made the following changes to its organizational structure:

- a. The Protected Resources and Biodiversity Division was renamed the Marine Mammals and Sea Turtles Division. The Marine Mammals and Sea Turtles Division assumed the organizational code of the Protected Resources and Biodiversity Division. The Agency also established two branches within the Marine Mammals and Sea Turtles Division: the Marine Mammal Branch and Sea Turtle Branch.
- b. The Agency created the Facilities Branch as a subdivision under the Operations, Management & Information Division (OMI). The Science, Planning and Coordination Branch moved from OMI to the Directorate.
- c. The Agency created Observer Programs as a subdivision under the Galveston Lab.

12. At the conclusion of Phase I of the realignment, SEFSC had nine (9) divisions and seventeen (17) subdivisions: 1. SEFSC Directorate⁴ (1.1. Science Planning and Coordination Office; 1.2. Social Sciences Research Group); 2. Sustainable Fisheries Division⁵ (2.1. Gulf and Caribbean Fisheries; 2.2. Highly Migratory Fisheries); 3. Marine Mammals and Sea Turtles Division (3.1. Marine Mammal Branch; 3.2. Sea

⁴ The Directorate is not a separate Division. The Divisions report to the Directorate. The Directorate has its own budget code and branches within it.

⁵ The Sustainable Fisheries, Fishery Statistics, and Panama City Laboratory Divisions were all officially organized under a shared organizational/budget code at this point. They received distinct codes as described below in Phase II of the reorganization.

- Turtles Branch); 4. Mississippi Laboratories (4.1. Harvesting and Engineering Branch, 4.2. Resource Surveys Branch); 5. Panama City Lab; 6. Galveston Laboratory (6.1 Observer Programs; 6.2 Fishery Ecology); 7. Beaufort Laboratory (7.1. Sustainable Fisheries, 7.2. Fisheries Ecosystems); 8. Fisheries Statistics (8.1. Fisheries Monitoring, 8.2. Fisheries Sampling); and 9. Operations Management and Information (9.1. Budget & Procurement, 9.2. Information Technology, 9.3 Facilities).
13. The Agency made several additional changes to its organization during Phase II of the reorganization, which was finalized at the end of January 2021. Among these changes were the following:
- a. The Operations, Management and Information (OMI) Division changed the Budget and Procurement Branch to the Budget and Administration Branch.
 - b. The Agency established a new Laboratories Division. The Galveston, Beaufort, and Panama City Laboratories became branches under this Division and were abolished as independent Divisions within the SEFSC organization. The organizational code associated with the Galveston Laboratory was reassigned to the Laboratories Division when the Galveston Laboratory became a branch under that Division. Some of the Galveston, Beaufort, and Panama City Laboratory employees transferred to the new Laboratories Division, while others were reassigned to functional Divisions. For example, some Panama City Laboratory employees were also assigned to the Sustainable Fisheries and the OMI Divisions.
 - c. The former Beaufort Laboratory organizational code was reassigned to the Fisheries Statistics Division when that Laboratory became a Branch under the Laboratories Division.
 - d. The Sustainable Fisheries and Fisheries Statistics Divisions stopped sharing an organizational code, as the Fisheries Statistics Division received its own code. The organizations underwent additional changes as separate entities, including:
 - i. The Sustainable Fisheries Division aligned and centralized its functions across the SEFSC. The Sustainable Fisheries Division established a Data Analysis & Assessment Support Branch and a Caribbean Branch. The Sustainable Fisheries Branch that was under the Beaufort Laboratory was moved to fall under the Sustainable Fisheries Division and renamed the Atlantic Fisheries branch.
 - ii. The Fisheries Statistics Division gained a separate organizational code (from the former Beaufort Laboratories Division) and added the Observer Program, which was centralized into one branch.
 - e. The Science Planning and Coordination Branch under the SEFSC Directorate was abolished.
14. At the conclusion of Phase I and II on January 30, 2021, SEFSC was organized by seven (7) divisions and twenty-one (21) subdivisions: 1. SEFSC Directorate (1.1 Social Science Research Group); 2. Sustainable Fisheries Division (2.1. Gulf of Mexico Fisheries, 2.2. Atlantic Fisheries, 2.3. Highly Migratory Species, 2.4. Caribbean fisheries, 2.5. Data Analysis & Assessment Support); 3. Marine Mammals and Sea Turtles (3.1. Marine Mammals, 3.2. Sea Turtles); 4. Mississippi Laboratories (4.1. Harvesting and Engineering Branch, 4.2. Resource Surveys Branch); 5. Laboratories Division (5.1. Panama City Lab, 5.2. Galveston Laboratory, 5.3. Beaufort Laboratory); 6. Fisheries Statistics Division (6.1. Commercial Fisheries Monitoring, 6.2. Recreation fisheries monitoring, 6.3. Survey design data management, and dissemination, 6.4. Catch validation and Biosampling, 6.5. Observer program); and 7. Operations Management and Information (7.1. Information Technology, 7.2. Budget & Administration, 7.3. Facilities).

15. The Agency made further changes to its organizational structure during Phase III, which was implemented as of October 10, 2021. Among these changes were the following:

a. Mississippi Laboratories was removed as an organization and the Population and Ecosystems Monitoring Division was created in its place. The Population and Ecosystems Monitoring Division took over the organization code for Mississippi Laboratories. The SEFSC established an Oceanic & Coastal Pelagics Program, Trawl & Plankton Program, Gulf & Caribbean Reef Fish Program, Atlantic & Caribbean Reef Fish Program; and Habitat Ecology Program within the Population and Ecosystems Monitoring Division.

b. The Laboratories Division was removed as an organization and the Fisheries, Assessment, Technology, and Engineering Support Division was created in its place. The Fisheries, Assessment, Technology, and Engineering Support Division took over the organization code from the Laboratories Division. This reorganization also established the following branches within the Fisheries, Assessment, Technology, and Engineering Support Division: Biology & Life History Program, Advanced Technology Program, Gear Research Program, and Gear & Vessel Support Program.

16. The Population and Ecosystems Monitoring Division and Fisheries, Assessment, Technology, and Engineering Support Division were staffed with employees from the Mississippi Laboratories and Laboratories Division, as well as a few employees who were transferred from other established Divisions.

17. At the conclusion of Phase I and Phase II of the reorganization, as of January 2021, the bargaining unit eligible employees were distributed throughout the Agency as follows:

| Division | Sub-Division | 2194 - AFGE | 2204 - NA |
|--|---|-------------|-----------|
| 0000-SOUTHEAST FISHERIES SCIENCE | | 9 | 81.82% |
| 0001-SUSTAINABLE FISHERIES DIVISION | | 21 | 63.64% |
| | 00-SUSTAINABLE FISHERIES DIVISION | 20 | 95.24% |
| | 01-PANAMA CITY BRANCH | 0 | 0.00% |
| 0002-MARINE MAMMALS AND SEA | | 21 | 80.77% |
| | 00-MARINE MAMMALS AND SEA TURTLES DIVISION | 8 | 72.73% |
| | 10-MARINE MAMMAL BRANCH | 8 | 72.73% |
| | 20-SEA TURTLE BRANCH | 5 | 71.43% |
| 0003-MISSISSIPPI LABORATORIES | | 0 | 0.00% |
| 0004-LABORATORIES DIVISION | | 0 | 0.00% |
| 0005-FISHERIES STATISTICS DIVISION | | 27 | 75.00% |
| 0006-OPERATIONS, MANAGEMENT, AND | | 19 | 55.88% |
| | 00-OPERATIONS, MANAGEMENT, AND INFORMATION DIVISION | 3 | 100.00% |
| | 10-INFORMATION TECHNOLOGY BRANCH | 7 | 53.85% |
| | 20-BUDGET AND ADMINISTRATIVE BRANCH | 4 | 40.00% |
| | 30-FACILITIES BRANCH | 3 | 60.00% |

18. At the conclusion of Phase III implemented on October 10, 2021, SEFSC was organized by a total of twenty-five (25) subdivisions under seven (7) divisions, which include the 1. SEFSC Directorate (1.1. Social Sciences Research Group); 2. Sustainable Fisheries Division (2.1. Gulf of Mexico Fisheries, 2.2. Atlantic Fisheries, 2.3. Highly Migratory Species, 2.4. Caribbean fisheries, 2.5. Data Analysis & Assessment Support); 3. Marine Mammals and Sea Turtles (3.1. Marine Mammals, 3.2. Sea Turtles); 4. Population and Ecosystems Monitoring (4.1. Oceanic & Coastal Pelagics, 4.2. Trawl & Plankton, 4.3. Gulf & Caribbean Reef Fish, 4.4. Atlantic & Caribbean Reef Fish, 4.5. Habitat Ecology); 5. Fisheries, Assessment, Technology, and Engineering Support (5.1. Biology & Life History, 5.2. Advanced Technology, 5.3. Gear Research, 5.4. Gear & Vessel Support); 6. Fisheries Statistics Division (6.1. Commercial Fisheries Monitoring, 6.2. Recreation fisheries monitoring, 6.3. Survey design data management, and dissemination, 6.4. Catch validation and Biosampling, 6.5. Observer program); and 7. Operations Management and Information (7.1. Information Technology, 7.2. Budget & Administration, 7.3. Facilities).

19. The organization described at the end of Phase III above reflects the current organizational structure of the Agency.
20. The functional statements for each of the current organizations are as follows:

1. SEFSC Directorate:

The SEFSC conducts multi-disciplinary research programs to provide scientific and technical information on the living marine resources of the Southeast Region and adjacent seas, and responds to the management information needs of regional fishery management councils, interstate and international fishery commissions, fishery development foundations, other Federal, state, local, and private conservation agencies, commercial and recreational fishing industries and interests, consumers, other constituents, and the general public. The Center supervises and administers large marine ecosystems programs performing fishery surveys and research, collects and reports on statistical data from commercial and recreational fisheries, and operates information resource, retrieval, and dissemination support systems. It develops the scientific information base required for fishery resource conservation, fishery development and utilization, habitat conservation, and protection of marine mammals and endangered species, the preparation of impact analyses and environmental assessments for management plans and/or international negotiations, and pursues research to answer specific needs in the subject areas of population dynamics, stock assessment, fishery biology, fishery economics, fishery engineering, biotechnology, ecotoxicology, and food science.

2. Sustainable Fisheries Division

The Sustainable Fisheries Division is responsible for developing and coordinating the scientific advice for the Southeast Fisheries Science Center in regards to coastal resources including coastal pelagics, reef fish and other coastal species within the purview of the Gulf of Mexico, South Atlantic and Caribbean Fishery Management Councils and in regard to highly migratory species including tunas, swordfish, billfish and sharks within the purview of the International Commission for the Conservation of Atlantic Tunas and the Highly Migratory Species Division of Headquarters. The Division works with Councils, Regions, Headquarters, Commissions and constituencies to develop research programs, stock assessments and management advice.

2.1 Gulf of Mexico Fisheries

The Gulf of Mexico Fisheries Branch develops and conducts stock assessments for the managed living marine resources of the US Gulf of Mexico; prepares

written reports detailing the data, methods and outcomes of assessments; presents assessment results to the Gulf of Mexico Fisheries Management Council; conducts research that advances fishery science, making important changes to existing products, processes, techniques or practices; and publishes significant findings in technical reports, peer reviewed scientific journals and/or present at various professional organizations.

2.2 Atlantic Fisheries

The Atlantic Fisheries Branch develops and conducts stock assessments for the managed living marine resources of the US South Atlantic; prepares written reports detailing the data, methods and outcomes of assessments; presents assessment results to the South Atlantic Fisheries Management Council; conducts research that advances fishery science, making important changes to existing products, processes, techniques or practices; and publishes significant findings in technical reports, peer reviewed scientific journals and/or present at various professional organizations.

2.3 Highly Migratory Species

The Highly Migratory Species Branch develops and conducts stock assessments for the managed living marine resources of the Atlantic High Seas; prepares written reports detailing the data, methods and outcomes of assessments; presents assessment results to HQ-HMS and ICCAT managers; conducts research that advances fishery science, making important changes to existing products, processes, techniques or practices; and publishes significant findings in technical reports, peer reviewed scientific journals and/or present at various professional organizations.

2.4 Caribbean fisheries

The Caribbean Fisheries Branch develops and conducts stock assessments for the managed living marine resources of the US Caribbean; prepares written reports detailing the data, methods and outcomes of assessments; presents assessment results to Caribbean Fisheries Management Council and other Regional Fishery Management Organizations (RFMOs); conducts research that advances fishery science, making important changes to existing products, processes, techniques or practices; publishes significant findings in technical reports, peer reviewed scientific journals and/or present at various professional organizations.

2.5 Data Analysis & Assessment Support

The Data Analysis & Assessment Support Branch develops required analytical products for stock

assessments; prepares written reports detailing the application of analytical approaches; presents analytical approaches to fisheries management bodies. It promotes efficient assessments through the development of automated QA/QC and standardized analytical approaches; conducts research that advances fishery science, making important changes to existing products, processes, techniques or practices; and publishes significant findings in technical reports, peer reviewed scientific journals and/or present at various professional organizations.

3. *Marine Mammals and Sea Turtles Division*

The Marine Mammals and Sea Turtles Division is a multi-disciplinary program responsible for providing robust data and technical advice to multiple stakeholders related to the conservation and recovery of marine mammals, sea turtles, and other protected species under the purview of the National Marine Fisheries Service, as well as on issues related to coastal, estuarine, and marine ecosystem monitoring.

3.1 *Marine Mammals Branch*

The Marine Mammals Branch focuses on the comprehensive assessment of marine mammal stocks and the advancement of marine mammal science in support of the Marine Mammal Protection Act, Endangered Species Act, other applicable laws, agreements, and management and science priorities.

3.2 *Sea Turtles Branch*

The Sea Turtles Branch focuses on the comprehensive assessment of sea turtle populations and the advancement of sea turtle science in support of the Endangered Species Act, other applicable laws, agreements, and management and science priorities.

4. *Population and Ecosystems Monitoring Division*

The Population and Ecosystems Monitoring Division provides data, analytical products, research, and expertise to support SEFSC and NMFS priorities, predominantly related to stock assessments and ecosystem-based fishery management. The Division's activities are focused within the Gulf of Mexico, southeastern U.S. Atlantic, and Caribbean regions. The Division carries out fishery-independent surveys and applied research focused on fisheries and habitat utilization, and provides support for ecosystem- and climate-related initiatives. The Division coordinates consistently with other SEFSC divisions, as well as other

NMFS and NOAA entities, to ensure maximum utility of Division products.

4.1 *Oceanic & Coastal Pelagics Branch*

The Oceanic and Coastal Pelagics branch supports the planning and conducting of fisheries resource surveys, validating data quality, and conducting data analysis to provide vital population trends for use in stock assessments. The branch also manages a Highly Migratory Species (HMS) Tagging Program and engages in both basic and applied research concerning the biology and ecology of various oceanic and coastal fish species within the North Atlantic, Gulf of Mexico and Caribbean Sea to support ecosystem-based fisheries management.

4.2 *Trawl & Plankton Branch*

The Trawl & Plankton Branch supports the planning and conducting of trawl and plankton surveys in the Gulf of Mexico, validating data quality, and conducting data analysis to provide vital population trends for use in stock assessments. The branch also engages in applied research concerning the biology and ecology of federally managed species to support ecosystem-based fisheries management.

4.3 *Gulf & Caribbean Reef Fish Branch*

The Gulf & Caribbean Reef Fish Branch supports the planning and conducting of resource surveys in the Gulf of Mexico with a variety of advanced technologies (e.g. optics and acoustics), validating data quality, and conducting data analysis to provide vital population trends for use in stock assessments. The branch also engages in habitat mapping and applied research concerning federally managed reef-associated species, mesophotic and deep benthic ecosystems, and Marine Protected Areas to support ecosystem-based fisheries management.

4.4 *Atlantic & Caribbean Reef Fish Branch*

The Atlantic and Caribbean Reef Fish Branch supports the planning and conducting of resource surveys in the southeast US Atlantic, US Caribbean, and Gulf of Mexico. We conduct research related to fish population and community biology and ecology, fisheries population dynamics, and the effect of habitat, climate, and ecosystem factors on fish populations. This research informs decision making related to marine resources, habitat, and ecosystem-based fisheries management.

4.5. Habitat Ecology Branch

The Habitat Ecology Branch conducts applied scientific research and targeted monitoring at the intersection of habitat ecology, fishery management and climate change by addressing the focused needs required to manage today's fisheries and by providing the broader scientific information necessary to manage tomorrow's fisheries.

5. Fisheries, Assessment, Technology, and Engineering Support Division

The Fisheries Assessment, Technology, and Engineering Support Division provides programmatic, cross-divisional products and support within the SEFSC. The Division generates life-history data products in support of stock assessments and fishery management. The Division pursues the development and application of advanced technologies relevant to SEFSC fishery-independent surveys, fishery-dependent surveys, life-history-related methodologies, and research efforts. The Division designs, fabricates and maintains gear in support of SEFSC fishery-independent surveys, and operates and maintains SEFSC Small Research Vessels in support of SEFSC fishery-independent surveys and research. The Division assesses and develops fishing gear and fishing practices to reduce the bycatch of protected species and unwanted or underutilized fish and invertebrate species.

5.1 Biology & Life History Branch

The Biology and Life History Branch conducts age and growth analysis of fish samples that informs life history reports that support fisheries management advice through SEDAR meetings and stock assessments.

5.2 Advanced Technology and Innovation Branch

The Advanced Technology and Innovation Branch provides innovative solutions that optimize monitoring and assessment through research, development and support of advanced technology for data acquisition, analysis, validation, and visualization.

5.3 Gear Research Branch

The Gear Research Branch provides the scientific advice, data, and outreach needed to effectively minimize bycatch in U.S. and international fisheries to ensure that fisheries remain sustainable and protected species are given the best chance to recover.

5.4 Gear & Vessel Support Branch

The Gear and Vessel Support Branch maintains and operates the NOAA small Boat fleet and associated physical infrastructure needed to conduct fisheries independent surveys for the Center. This includes the design, fabrication and repair of specialized gear to facilitate resource surveys of Fisheries and NOAA trust resources.

6. Fisheries Statistics Division

The Fisheries Statistics Division works in partnership with state, regional, and federal partners to provide high quality reliable data for use in developing scientific advice for fisheries managers. The division is responsible for developing and maintaining statistically valid, state-of-the-art fisheries dependent data collections using the latest technologies available to advance efficient collection of high-quality information. In addition, it supports advancements in scientific knowledge, and promotes sustainable management of fisheries by collecting and making available high quality, timely information.

6.1 Commercial Fisheries Monitoring

Commercial Fishery Monitoring is responsible for the collection of self-reported catch and effort data by collection of logbook and IFQ information from HMS, South Atlantic, and Gulf of Mexico permitted vessels. The branch investigates and utilizes the most up to data collection platforms available to the program to maximize the quality of information available, while minimizing reporting burden on commercial fishery participants.

6.2 Recreation Fisheries Monitoring

Recreational Fishery Monitoring is responsible for the collection of self-reported catch and effort data, as well as biosample data obtained through the collection of logbook and survey data from fishers harvesting South Atlantic and Gulf of Mexico federally managed fisheries. The branch investigates and utilizes the most up to data collection platforms available to the program to maximize the quality of information available, while also working with state and FIN partners to ensure the use of the most representative information available for science and management.

6.3 Survey Design Data Management, and Dissemination

Survey Design, Data Management and Dissemination is responsible for ensuring that survey

designs of our fishery dependent data collections are statistically valid, as well as ensuring that the information collected from these surveys are managed in a cutting - database. The branch is also responsible for making these fishery dependent data available to scientists and the public through a standardized reporting process.

6.4. Catch Validation and Biosampling

Catch Validation and Biosampling works with State, Territorial, and Federal partners to collect statistically valid biosamples (lengths, weights, sex, age structures, etc.) from Federally-managed commercial fisheries in the Southeastern United States and U.S. Caribbean. Besides the actual collection, data entry, and quality control of the information, the Branch is responsible for instruction, monitoring and improvement of commercial biosample data collection methods.

6.5. Observer Program

The Observer Program is responsible for the collection of detailed catch and effort data by placement of trained fishery observers on board commercial fishing vessels. Collections come from a variety of the fleets in the southeast (shrimp trawl, reef fish, pelagic longline, etc.) and coverage is generally mandated by the Endangered Species Act, Marine Mammal Protection Act, or by treaty (e.g. ICCAT) obligations. The Branch also houses the Platform Removal Observer Program, which monitors the removal of obsolescent oil or similar platforms in the Gulf of Mexico.

7. Operations Management and Information Division

The Operations, Management, and Information Division provides support for strategic and annual operations planning; budget formulation and execution; full-time equivalent (FTE) and human resources management (including EEO and diversity); administrative processes, management information, information technology, e-mail and telecommunications systems; contracting; environmental compliance, and facilities management. Other functions include data management, grants management/administration. The Staff conducts analyses and advises the Science Director of options.

7.1 Information Technology

The Information Technology staff provides support for strategic and operational goals for the center. This includes all aspects of information technology infrastructure, application development, troubleshooting, and telecommunications systems.

7.2 Budget & Administration

The Budget and Administrative staff provides support for strategic and annual operations planning; budget formulation and execution; full-time equivalent (FTE) and human resources management (including EEO and diversity); administrative processes; and contracting. Other functions include procurement and grants management/administration. The staff conducts analyses and works with the directorate on budget allocations.

7.3 Facilities

The Facilities staff provides support for facilities operations; general and technical maintenance; environmental compliance, and facilities contract management. Other functions include physical security compliance, strategic facilities planning, and project oversight.

21. SEFSC is headed by a Director who has authority over the working conditions, labor and employee relations, grievances, and disciplinary actions of SEFSC employees.
22. Throughout the pendency of the petitions, the Agency has maintained the collective bargaining relationships with the Unions. Each of the Unions has a collective bargaining agreement in effect.
23. Prior to the functional reorganization, only one Full-Time Employee and Labor Relations Specialist advised and assisted with all employment and labor matters at the Center. Union matters did not take up the full FTE but HR did not track how much of this individual's time was specifically spent supporting the Center on labor matters rather than employee relations matters. Since the functional realignment, in addition to the 1 FTE, HR has reassigned (1) an Employee and Labor Relations Specialist; and (2) a Labor Relations Specialist to each provide 25 % of their FTE duties to assist with the Center's union matters. Therefore, HR has increased allocation of staff time for the Center from 1 FTE to 1.5 FTE to assist managers with their multiple bargaining obligations within their units.
24. Employees support similar missions and functions and perform similar duties under substantially similar working conditions. Employees have not been physically relocated.

- 25. There has been no substantial impact or change in conditions of employment beyond changes in management structure.
- 26. As of this date, the SEFSC bargaining unit eligible employees are distributed throughout the Agency as follows:

| Division | Sub-Division | | 2194 - AFGE | 2204 - |
|--|--|----|-------------|--------|
| 0000-SOUTHEAST FISHERIES SCIENCE | | 9 | 75.00% | 0 |
| 0001-SUSTAINABLE FISHERIES DIVISION | | 15 | 60.00% | 3 |
| | 00-SUSTAINABLE FISHERIES DIVISION | 4 | 100.00% | 0 |
| | 10-GULF OF MEXICO FISHERIES BRANCH | 4 | 80.00% | 0 |
| | 20-ATLANTIC FISHERIES BRANCH | 0 | 0.00% | 0 |
| | 30-HIGHLY MIGRATORY SPECIES | 1 | 25.00% | 3 |
| | 40-CARIBBEAN FISHERIES BRANCH | 4 | 100.00% | 0 |
| | 50-DATA ANALYSIS & ASSESSMENT SUPPORT BRANCH | 2 | 66.67% | 0 |
| 0002-MARINE MAMMALS AND SEA | | 13 | 72.22% | 0 |
| | 10-MARINE MAMMAL BRANCH | 8 | 72.73% | 0 |
| | 20-SEA TURTLE BRANCH | 5 | 71.43% | 0 |
| 0003-POPULATION AND ECOSYS MON DIV | | 8 | 25.00% | 2 |
| 0004-FISHERIES ASSMT, TECH, ENG SUPP | | 1 | 3.57% | 6 |
| 0005-FISHERIES STATISTICS DIVISION | | 28 | 71.79% | 0 |
| | 00-FISHERIES STATISTICS DIVISION | 0 | 0.00% | 0 |
| | 10-COMMERICAL FISHERIES MONITORING BRANCH | 4 | 80.00% | 0 |
| | 20-RECREATIONAL FISHERIES MONITORING BRANCH | 2 | 33.33% | 0 |
| | 30-SURVEY DESIGN, DATA MANAGEMENT AND DISSEMINATION BRANCH | 4 | 66.67% | 0 |
| | 40-CATCH VALIDATION AND BIOSAMPLING BRANCH | 16 | 100.00% | 0 |
| | 50-OBSERVER PROGRAM BRANCH | 2 | 40.00% | 0 |
| 0006-OPERATIONS, MANAGEMENT, AND INFORMATION DIVISION | | 17 | 54.84% | 3 |
| | 00-OPERATIONS, MANAGEMENT, AND INFORMATION DIVISION | 3 | 100.00% | 0 |
| | 10-INFORMATION TECHNOLOGY BRANCH | 7 | 53.85% | 1 |
| | 20-BUDGET AND ADMINISTRATIVE BRANCH | 4 | 40.00% | 2 |
| | 30-FACILITIES BRANCH | 3 | 60.00% | 0 |

III. Parties' Positions:

AFGE Local 2875:

AFGE Local 2875 seeks to maintain representation of three organizations under its certification and clarify that employees brought into those organizations are represented by AFGE pursuant to the Authority's *Fort Dix* doctrine. AFGE further seeks to maintain representation of two organizations, without an election, pursuant to successorship case law. Finally, AFGE Local 2875 opposes NAIL's cross-petitions in this matter on the grounds that the bargaining units proposed by NAIL in its petition would not be appropriate units.

AFGE Local 2875 takes the position that its unit remains appropriate and that any employees impacted by the reorganization that now fall under the plain language of its certification belong in its unit under the *Fort Dix* doctrine. With regard to the Sustainable Fisheries Division, Fisheries Statistics Division, and Operations, Management, and Information Division (OMI), AFGE takes the position that *Fort Dix* preempts application of successorship principles. AFGE's representation of these Divisions is expressly set forth in its 2019 certification. There has been no showing that inclusion of any transferred employees in any of these units would render the units inappropriate. Applying the *Fort Dix* principles, AFGE contends that it is the representative of these units and employees that fall under these Divisions should be clarified to be part of its unit.

AFGE Local 2875 has taken a position in agreement with the Agency in AT-RP-21-0010 that employees in the renamed Marine Mammals and Sea Turtles Division and the SEFSC Directorate should remain in AFGE's unit, without the need for an election, by virtue of successorship. Marine Mammals and Sea Turtles would be the successor organization to the Protected Resources and Biodiversity Division and the SEFSC Directorate would be the successor organization to the Social Sciences Research Group and the Science Planning and Coordination Office, the latter of which was transferred to a Division within AFGE's unit (OMI) to the Directorate before ultimately being abolished in the reorganization.

AFGE Local 2875 concurs with the Agency's position that any representation of employees in the Agency's newly created Population and Ecosystems Monitoring Division and Fisheries Assessment, Technology, and Engineering Support Division, including any subcomponents of those Divisions, should occur through an election. AFGE's current petition does not seek an election in either of the Divisions.

AFGE Local 2875 objects to the units proposed by NAIL in its respective petitions; it contends that the

proposed units overlap with and conflict with AFGE's bargaining units and would result in fragmentation. AFGE notes that its certification covers employees in a number of Divisions that are both located at Miami and "employees not physically located at" Miami (i.e., at any field or remote locations). Thus, it contends that NAIL's proposals conflict with AFGE's certification to the extent that any employees described by AFGE's existing unit certification have been or currently are located in Beaufort and Panama City. AFGE also takes the position that based on the plain language of the certifications and prior FLRA cases AT-RP-17-0011, AT-RP-19-0006, and AT-RP-19-0007, there was no overlap in the two units prior to the reorganization and that AFGE properly represented employees who fell under its certification located in Beaufort, NC and Panama City, FL. Moreover, NAIL's proposals would increase fragmentation of units within the Agency's organizational structure and create confusion.

NAIL's Position:

NAIL seeks to maintain separate unit certifications recognized by geographical areas and wishes to remain the exclusive representative of the bargaining units represented by NAIL Local 12 and NAIL Local 20. NAIL raises that management expressed a willingness to deal with multiple labor organizations and indicated that bargaining unit codes would not change after the realignment.

NAIL contends that the Agency's reorganization eliminated the community of interest, effective dealings, and efficient operations of the previous labor-management relationship. NAIL contends that the reorganization has fragmented operations to a point that some structures do not have any supervisors physically located where their new employees actually work. NAIL states that under the old organization, bargaining unit employees had 40 hours per week of access to their supervisor, but that now it's a one-hour window per week for BUEs to call in during an 'open office' period.

NAIL identifies a conflict in AFGE's current certification that covers employees located in Miami and "employees not physically located at Miami (i.e., at any field or remote locations.))" Two of those remote locations should not include Beaufort, NC or Panama City, FL because of prior geographical certifications. NAIL objects to AFGE's position that their "existing unit certification have been or currently are located in Beaufort and Panama City." Employees in those two locations are represented by incumbent NAIL Local 12 and 20. NAIL also asserts that AFGE's proposed unit should be found inappropriate because the scope and character of the petitioned for unit was altered by this reorganization.

NOAA's Position:

NOAA contends that the Sustainable Fisheries Division (SFD) and the Operations, Management, and Information Division (OMI) remain unchanged and remain appropriate units for inclusion in AFGE, Local 2875's certification. These units received both unrepresented employees and employees represented by NAIL Local 12 and NAIL Local 20.

NOAA asserts that the Fisheries Statistics Division (FSD) was not a stand-alone unit prior to 2020 and was rather a subdivision of the Sustainable Fisheries Division (SFD/FSD) without a separate budgetary designation. FSD is an appropriate unit insofar as it has a clear and identifiable community of interest among employees, would promote effective dealings with the agency, and promote the efficiency of the operations of the agency. Due to the complications of the merger of the SFD/FSD and the Beaufort Laboratories, it is not clear whether the FSD is an appropriate unit under AFGE Local 2875's certification or NAIL Local 20's certification.

The Science Planning and Coordination Office and Panama City Labs were abolished in the reorganization prior to January 2021 and no longer remain appropriate units.

NOAA asserts that the following divisions would require a successorship analysis: the Marine Mammal and Sea Turtle Division; the Population and Ecosystems Monitoring Division; the Fisheries, Assessment, Technology, and Engineering Support Division; and the Fisheries Statistics Division. NOAA asserts that based on successorship analysis, elections would be required for the Population and Ecosystems Monitoring Division; the Fisheries, Assessment, Technology, and Engineering Support Division; and the Fisheries Statistics Divisions.

NOAA opposes the petitions filed by NAIL on the basis that the proposed units would not promote efficient and effective dealings between labor and management. The multiple and overlapping bargaining units create confusion and inefficiency for both the Agency's general operations and in labor-management dealings. Specifically, the proposed geographic-based units would result in management officials and human resources specialists having to balance multiple bargaining obligations in the Sustainable Fisheries Division (SFD); Marine Mammals and Sea Division; Population and Ecosystems Monitoring Division (PEMD); Fisheries Assessment, Technology, and Engineering Support (FATES); Fisheries Statistics Division (FSD); and the Operations, Management, and Information Divisions (OMI). Additionally, the overlap of representatives would likely result in situations where representatives are

bargaining at cross-purposes since the bargaining units would be fragmented across divisions and supervisors, resulting in labor/management breakdowns in the Agency. By rationalizing the current units in line with the agency's operational and organizational structure, the Authority would make labor management relations more efficient and effective for the bargaining unit representatives, employees, management officials, and human resources staff.

IV. Analysis and Conclusions

A. Geography based units and Fragmentation

When determining whether existing units remain appropriate after a reorganization, the focus is on the changes caused by the reorganization and an assessment of whether those changes render existing units inappropriate. *US. Dep 't of the Army, Army Materiel Cmd. HQ., Jt. Munitions Cmd., Rock Island, Ill.*, 63 FLRA 394, 405 (2009) (*Rock Island*).

As detailed above, in January 2021, the Agency abolished the Beaufort and Panama City Laboratories (as well as the Galveston Laboratory) and created an independent Laboratories Division that fell under the former Galveston Laboratory's organizational code. At the time of the abolishment of the Beaufort and Panama City laboratories, the employees were reassigned to other divisions. Some were reassigned to the Laboratories Division and others were reassigned to functional Divisions.

The Agency made further changes to its organizational structure during Phase III, which was implemented as of October 10, 2021. The Laboratories Division was removed as an organization and the Fisheries, Assessment, Technology, and Engineering Support Division was created in its place. The Fisheries, Assessment, Technology, and Engineering Support Division took over the organization code from the Laboratories Division. This reorganization also established the following branches within the Fisheries, Assessment, Technology, and Engineering Support Division: Biology & Life History Program, Advanced Technology Program, Gear Research Program, and Gear & Vessel Support Program.

As of October 10, 2021, the Agency also removed the Mississippi Laboratories as an organization and created the Population and Ecosystems Monitoring Division in its place. The Population and Ecosystems Monitoring Division took over the organization code for Mississippi Laboratories. The SEFSC established an Oceanic & Coastal Pelagics Program, Trawl & Plankton Program, Gulf & Caribbean Reef Fish Program, Atlantic & Caribbean Reef

Fish Program; and Habitat Ecology Program within the Population and Ecosystems Monitoring Division.

Consequently, as a result of the above detailed reorganization, employees who formerly were part of the Panama City Laboratory unit are now scattered throughout the Sustainable Fisheries Division; Population and Ecosystems Monitoring Division; Fisheries Assessment, Technology, and Engineering Support Division; and Operations, Management and Information Division. Similarly, employees of the former Beaufort Laboratories Division are now scattered throughout the Directorate; Sustainable Fisheries Division; Marine Mammals and Sea Turtles Division; Population and Ecosystems Monitoring Division; Fisheries Assessment, Technology and Engineering Support division, Fisheries Statistics Division; and Operations, Management, and Information Division.

1. Community of Interest

Under Section 7112 of the Statute, an appropriate unit is one that will ensure a clear and identifiable community of interest among the employees in the unit; promote effective dealings with the agency involved; and promote efficiency of agency operations. The Authority has set forth a variety of factors to assess whether a clear and identifiable community of interest exists. But the Authority has not specified the weight of individual factors or a particular number of factors necessary to establish an appropriate unit. *U.S. Dep't of Def, Def Info. Sys. Agency*, 70 FLRA 482, 485-86 (2018). In assessing community of interest, the Authority examines such factors as whether the employees in the proposed unit are of the same organizational component of the agency; support the same mission; have similar or related duties, job titles and work assignments; are subject to the same general working conditions; are governed by the same personnel and labor relations policies that are administered by the same personnel office; and the degree of interchange between other organizational components. *See also U.S. Dep't of the Navy, Fleet & Indus. Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 960-961 (1997) (*FISC*); *Dep't of Health & Human Serv., Region II, N.Y., N.Y.*, 43 FLRA 1245 (1992) (*HHS Region II*).

In 2007, in Case No. AT-RP-07-0021, NAIL was certified as the exclusive representative of all professional and nonprofessional employees of the Panama City Laboratory, Panama City, Florida. As noted above, in January 2021, the Panama City Laboratory was abolished. Some of the Panama City employees transferred to the then established Laboratories and others transferred to the Sustainable Fisheries and OMI Divisions. As of October 2021, former Panama City Laboratory unit employees are now scattered throughout the Sustainable Fisheries Division; Population and Ecosystems

Monitoring Division; Fisheries Assessment, Technology, and Engineering Support Division; and Operations, Management and Information Division.

The former Panama City Laboratory employees have similar or related duties, job titles and work assignments; are subject to the same general working conditions; are governed by the same personnel and labor relations policies that are administered by the same personnel office. They also share geographic proximity. However, unlike prior to the reorganization, the former Panama City Laboratory employees are no longer part of the same Division. Since the abolition of the Panama City Laboratory, three employees now belong to the Sustainable Fisheries Division. Two belong to the Population and Ecosystems Monitoring Division. Six belong to the Fisheries Assessment, Technology, and Engineering Support Division and three belong to the Operations, Management and Information Division.

The former Beaufort Laboratory employees also retained similar or related duties, job titles and work assignments, maintained the same general working conditions and are governed by the same personnel office. However, like the former Panama City Laboratory employees, the former Beaufort Laboratory employees are no longer part of the same Division. These employees have not only changed supervisors, but are in new divisions with differing functions and missions. One former Beaufort Laboratory employee is now in the SEFSC Directorate, seven are now in the Sustainable Fisheries Division, one is in the Marine Mammals Division, six are in the Population and Ecosystems Monitoring Division, four are in the Fisheries Assessment, Technology, and Engineering Support Division, six are in the Fisheries Statistics Division and one is now in the Operations, Management and Information Division.

Although the employees share geography, they are no longer part of the same organization. The above listed organizations have distinct missions and functions. These employees are now integrated in Divisions made up of employees who transferred from other Divisions. And, as discussed below, many of the employees are now part of Divisions represented by AFGE Local 2875. Accordingly, the evidence reflects that neither the Beaufort nor Panama City based units have retained distinct communities of interest.

2. Effective Dealings

Effective dealings concern the relationship between management and the exclusive representative in an appropriate bargaining unit. Factors here include the past collective bargaining experience; the locus and scope of authority of the responsible personnel office administering personnel policies covering employees in

the proposed unit; the limitations, if any, on the negotiation of matters of critical concern to employees in the proposed unit; and the level at which labor relations policy is set in the agency. *FISC*, 52 FLRA at 961.

Here, the scope of authority of the personnel office administering personnel policies covering employees in the proposed unit remains at the SEFSC Director level. However, as noted above, neither the former Panama City Laboratory employees nor the former Beaufort Laboratory employees have supervisory hierarchies based on geography. They are no longer working in the same Divisions based on geography. The employees are integrated into new Divisions that are mission and function based rather than geographic based. Under these circumstances, maintaining separate geographic based units would create fragmentation across multiple Divisions. Such fragmentation does not promote effective dealings between parties.

3. Efficient operations

Efficiency of agency operations considers the “benefits to be derived from a unit structure which bears some rational relationship to the operational and organizational structure of the agency.” *FISC*, 52 FLRA at 961-962. When a unit bears a rational relationship to an agency’s operational and organizational structure, it could result in economic savings and increased productivity to the agency. Factors to be examined pertain to the effect of the proposed unit on agency operations in terms of cost, productivity and use of resources. *Id.* See also, *Dep’t of the Air Force, 82nd Training Wing, 361st Training Squadron, Aberdeen Proving Ground, Md.*, 57 FLRA 154, 156-57 (2001) (*Aberdeen Proving Ground*).

The units proposed by NAIL do not bear a rational relationship to the Agency’s current structure. Through the three-part reorganization, SEFSC shifted from location-based divisions to integrated, functional divisions. Retention of the geography based sites does not bear a rational relationship to the Agency’s new organizational structure. Retaining the geographic units would create fragmentation throughout the divisions. The Agency would have to maintain multiple bargaining obligations for employees within the same supervisory hierarchy and organizations. Supervisors would have to apply different rules for the employees falling under the same supervisory chains, which would be inefficient and create confusion.

Placing these employees in geographic units would mean fragmenting representation of those divisions, as only small portions of each division would be covered by the proposed NAIL units. This would result in the Agency’s having multiple bargaining obligations within the same organizations. Moreover, supervisors would have

to apply different rules for employees falling under the same supervisory chains within their division, which would both be inefficient and create confusion. Overall, the units fail to reflect the organizational structure of the agency and would not promote efficiency of agency operations.

Under these circumstances, I do not find that retaining a separate Panama City-based unit nor a separate Beaufort, North Carolina-based unit remain appropriate units under the Statute.

B. Application of Fort Dix

The SEFSC reorganization also affected the bargaining unit represented by AFGE Local 2875. Through its petition, AFGE Local 2875 seeks a determination that it remains the exclusive representative of its unit through *Fort Dix* on the organizations that remain expressly identified in its certification.

It is well-established that “[n]ew employees are automatically included in an existing bargaining unit where their positions fall within the express terms of a bargaining certificate and where their inclusion does not render the bargaining unit inappropriate.” *Dep’t of the Army Headquarters, Fort Dix, N.J.* 53 FLRA 287, 294 (1997) (*Fort Dix*). The Authority interprets *Fort Dix* broadly. Its holding applies not only to new employees hired into previously existing positions, but also to employees in newly created positions that fall within the express terms of the existing certification. See *Soc. Sec. Admin., Office of Disability Adjudication & Review, Falls Church, Va.*, 62 FLRA 513, 514-15 (2008) (*Falls Church*); *U.S. Dep’t of the Air Force, Randolph Air Force Base, San Antonio, Texas*, 64 FLRA 656, 658 (2010).

In *Fort Dix*, the Authority specifically held that “[b]argaining unit certifications do not become stale over time, if they continue to accurately describe the organization and employees within their scope.” *Fort Dix*, 53 FLRA at 295 (rejecting RD’s suggestion that passage of twenty-five years from issuance of certification foreclosed inclusion of employees in unit); see also 5 C.F.R. § 2422.32(b) (grounds on which a certification may be revoked do not include age of certification). Additionally, the Authority has held that, when *Fort Dix* applies, the successorship doctrine set forth under *Port Hueneme* does not. *Falls Church*, 62 FLRA at 515. In *Falls Church*, the Authority held that, after a reorganization creates a new component of the agency, when employees are automatically included in a unit under an existing certification, a successorship analysis is not necessary unless their inclusion would render the unit no longer appropriate. *Id.*; see also *U.S. Dep’t of the Navy, Naval Facilities Engineering Command Southeast*,

Jacksonville, Florida, 68 FLRA 244, 247 (upholding Regional Director's decision to first apply Fort Dix principles to resolve case and finding additional analysis unnecessary once unit satisfied Fort Dix requirements).

1. Sustainable Fisheries Division

AFGE Local 2875's certification expressly recognizes it as the exclusive representative of the Sustainable Fisheries Division. The Sustainable Fisheries Division continues to be a recognized organization within the Agency following the reorganization. The record revealed that the employees support similar missions and functions and perform similar duties under substantially similar working conditions. Employees have not been physically relocated. There has been no substantial impact or change in conditions of employment beyond changes in management structure.

There has been no showing that inclusion of the Sustainable Fisheries Division employees in AFGE's unit would render that unit inappropriate. Therefore, based on the express terms of the certification and application of the *Fort Dix* case law, AFGE Local 2875 remains the representative of this unit.

2. Operations, Management, and Information Division

The Atlanta Region certified AFGE Local 2875 as the exclusive representative of the SEFSC's Operations, Management, and Information (OMI) Division on May 1, 2019 in Case Nos. AT-RP-19-0006 and AT-RP-19-0007. The Division continues to be a recognized organization following the reorganization. Employees support similar missions and functions and perform similar duties under substantially similar working conditions. Employees have not been physically relocated.

There has been no showing that inclusion of the Operations, Management, and Information Division employees in AFGE's unit would render that unit inappropriate. Pursuant to the Authority's case law set forth in *Fort Dix*, described above, I find that AFGE remains the exclusive representative of this unit.

3. Fisheries Statistics Division

AFGE Local 2875's certification expressly recognizes it as the exclusive representative of the Fisheries Statistics Division. NOAA asserts that the Fisheries Statistics Division was not a stand-alone unit prior to 2020 and was a subdivision of the Sustainable Fisheries Division without a separate budgetary designation. The Agency did not dispute AFGE Local 2875's status as the exclusive representative when the Atlanta Region updated its certification in 2019. The

Agency's organizational charts also reflect that it long recognized the Division.

The Agency's contention that the Division did not have its own budget code prior to 2020 does not negate the Agency's recognition of the Division nor demonstrate that the unit is no longer an appropriate unit. There has also been no change in the employees' conditions of employment beyond changes in managers. Employees continue to support similar missions and perform similar duties and have not been physically relocated. Absent a finding that the unit is no longer appropriate, consistent with the case law set forth in *Fort Dix*, AFGE Local 2875 remains the exclusive representative of this unit.

C. Application of *Port Hueneme*

In *Naval Facilities Engineering Serv. Ctr., Port Hueneme, Cal.*, 50 FLRA 363 (1995) (*Port Hueneme*), the Authority established a three-prong test for determining whether, following reorganization, a new employing entity is the successor to one or more previous employers such that a secret ballot election is not necessary to determine the representation rights of the employees who were transferred. The Authority will find that a gaining entity is a successor based on the following:

- 1) An entire recognized unit, or a portion thereof, is transferred and the transferred employees:
 - (a) are in an appropriate bargaining unit, under section 7112(a)(1) of the Statute, after the transfer; and
 - (b) constitute a majority of the employees in such unit;
- 2) The gaining entity has substantially the same organizational mission as the losing entity, with the transferred employees performing substantially the same duties and functions under substantially similar working conditions in the gaining entity; and
- 3) It has not been demonstrated that an election is necessary to determine representation.

Port Hueneme, 50 FLRA at 368; see also *Dep't of the Navy, Naval Supply Ctr., Puget Sound, Bremerton, Wash.*, 53 FLRA, 173,175-185 (1977) (*Bremerton*) (applying *Port Hueneme* three-prong test in context of reorganization).

Under the first prong of *Port Hueneme's* successorship test, when a reorganization occurs, the transferred employees must first be found to be in an appropriate bargaining unit after the transfer. Under Section 7112 of the Statute, an appropriate unit is one that will ensure a clear and identifiable community of interest among the employees in the unit; promote effective dealings with the agency involved; and promote efficiency of agency operations.⁶

The Authority has held that the second prong of *Port Hueneme* is satisfied when a continuity of mission exists and the transferred employees' duties have remained substantially the same. See e.g. *Dep't of the Army, U.S. Army Aviation Missile Command (AMCOM), Redstone Arsenal, Ala.*, 56 FLRA 126, 130 (2000) (*Redstone Arsenal*) (additional functions that were performed on missile systems were substantially the same). With regard to the third prong of *Port Hueneme*, the Authority has held that successorship exists when an election is not necessary *Port Hueneme*, 50 FLRA at 373. An election is not necessary if one union is "sufficiently predominant," or represents more than 70% of employees in the new unit. *Port Hueneme*, 50 FLRA at 368; *Redstone Arsenal*, 56 FLRA at 131.

1. Protected Resources and Biodiversity Division/Marine Mammals and Sea Turtles Division

Prior to the reorganization, AFGE Local 2875 was the exclusive representative of employees in the Protected Resources and Biodiversity Division. As described in the parties' Stipulation, during Phase I of the reorganization, this Division was renamed the Marine Mammals and Sea Turtles Division.

Here, with respect to community of interest, the employees are all part of the same organizational component and support the same mission and function. The employees are subject to the same ultimate chain of command and are governed by the same personnel and labor relations policies that are administered by the same personnel office. The employees perform substantially the same duties and functions under substantially similar working conditions as they did prior to the reorganization. And while the employees are geographically dispersed,

they share similar working conditions and are operationally integrated into a single organization. Thus, I find the Marine Mammals and Sea Turtles Division shares a community of interest.

With respect to effective dealings, prior to the reorganization, AFGE Local 2875 represented the employees in the Protected Resources and Biodiversity Division. Throughout the reorganization and the pendency of the petitions, the Agency has maintained a collective bargaining relationship with the Union. AFGE Local 2875's collective bargaining agreement has remained in effect. The Division consists of a majority of employees who were represented by AFGE Local 2875 prior to the reorganization. The Division's structure and the parties' bargaining history favor finding the unit would promote effective dealings.

With respect to efficient dealings, in cases such as this wherein the evidence demonstrates that employees share a clear and identifiable community of interest, a unit will be found to promote efficient operations of the agency. See *Def. Logistics Agency, Def. Contract Mgmt. Command, Def. Contract Mgmt. Dist., Def. Plant Representative Office--Thiokol, Brigham City, Utah*, 41 FLRA 316, 330 (1991) (*DPRO, Thiokol*). I therefore conclude that, given the Marine Mammals and Sea Turtles Division employees' clear and identifiable community of interest, I find that the AFGE Local 2875 unit would promote efficiency of operations.

In sum, the foregoing findings as to community of interest, effective dealings, and efficiency of operations -- along with the fact that AFGE Local 2875 already represents nearly all of the employees in the proposed unit -- lead me to conclude that the first prong of the three-prong *Port Hueneme* successorship test is satisfied.

As to the second prong, in accordance with the *Port Hueneme* analytical framework, the parties' stipulation and the investigation, I find that the employees continue to support a similar mission and the function and duties of the employees transferred to the Marine Mammals and Sea Turtles Division remains unchanged. Therefore, the second prong is satisfied.

AFGE represented 81.82% of the employees in this organization at the end of Phase II and 75% at the end of Phase III. NAAIL Local 20 represented one employee (3.85%) at the end of Phase II and Phase III of the reorganization and there were four employees (22.22%) who were unrepresented but eligible for representation at the end of Phase II and Phase III. No election is

⁶ I have discussed the factors the Authority considers to assess whether a clear and identifiable community of interest exists in the previous section and will not repeat them here.

necessary because AFGE has maintained sufficiently predominant representation (over 70%) of the unit during the entirety of the reorganization. Accordingly, AFGE Local 2875 is the exclusive representative of the employees in the Marine Mammals and Sea Turtles Division.

2. Social Sciences Research Group/Science Planning and Coordination/SEFSC Directorate

AFGE Local 2875 seeks to be named the representative of bargaining unit employees under the SEFSC Directorate. Prior to the reorganization, AFGE Local 2875 represented the Social Sciences Research Group and Science Planning and Coordination Branch. Prior to the reorganization, the Science Planning and Coordination Branch was part of OMI, a Division represented by AFGE. During the reorganization, the Science Planning and Coordination Branch was transferred from OMI to the Directorate. The Branch was then abolished in Phase II of the reorganization, though the employees who previously fell under the Branch remained under the Directorate. Following the reorganization, both the SSRG and Science Planning and Coordination employees previously represented by AFGE now fall under the Directorate.

Throughout the reorganization phases, the employees continue to perform the same work under substantially similar working conditions. The employees support similar missions and functions, are subject to the same ultimate chain of command, and are governed by the same personnel and labor relations policies. I find that the employees share an identifiable community of interest.

With respect to effective dealings, prior to the reorganization, AFGE Local 2875 represented a majority of the employees that comprise the now SEFSC Directorate. The Directorate's organizational structure and the parties' bargaining history favor finding the unit would promote effective dealings.

With respect to efficient operation, the employees share a clear and identifiable community of interest. The employees share similar working conditions and are governed by the same personnel and labor relations. I find that this unit would promote efficiency of operations. In sum, the foregoing findings as to community of interest, effective dealings, and efficiency of operations -- along with the fact that AFGE Local 2875 already represents nearly all of the employees in the proposed unit -- lead me to conclude that that the first prong of the three-prong *Port Hueneme* successorship test is satisfied.

As to the second prong, in accordance with the *Port Hueneme* analytical framework, the parties'

stipulation and the investigation, I find that the employees continue to support a similar mission and the function and duties of the employees transferred to the SEFSC Directorate remains unchanged. Therefore, the second prong is satisfied.

AFGE represented 81% of the SEFSC Directorate employees at the end of Phase II and 75% at the end of Phase III. NAIL Local 20 represented one employee (8.33%) at the end of Phase II and Phase III of the reorganization and there were two employees (16.67%) who were unrepresented but eligible for representation at the end of Phase II and Phase III. AFGE is sufficiently predominant. Because all three criterion are met, I find that AFGE Local 2875 is the exclusive representative of employees in the SEFSC Directorate.

V. Order

For all the forgoing reasons, I find that, based on the stipulated record, the geographic legacy units proposed by NAIL no longer remain appropriate units. Accordingly, I am revoking the certifications granted under section 7111 of the Federal Service Labor-Management Relations Statute to the NATIONAL ASSOCIATION OF INDEPENDENT LABOR for the bargaining units described below

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| 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). |

[Ref. Case No. AT-RP-07-0021 (10/22/2007)]

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|-----------|---|
| Included: | All professional and nonprofessional employees of the U.S. Dept. of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Beaufort, North Carolina. |
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Excluded: All supervisors, management officials, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6), and (7).

[Ref. Case No. AT-RP-15-0023 (07/27/2015)]

Additionally, I find that AFGE Local 2875 remains the exclusive representative of the Sustainable Fisheries Division, Fisheries Statistics Division, and Operations, Management and Information Division pursuant to the *Fort Dix* doctrine. I also find that AFGE Local 2875 has met the three prongs of the *Port Hueneme* successorship test and represents employees in the Marine Mammals and Sea Turtles Division and SEFSC Directorate. Accordingly, I find that the AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2875, AFL-CIO is the exclusive representative of the following unit:

Included: All professional and nonprofessional employees of the Southeast Fisheries Science Center, Miami, Florida (including employees not physically located in the Miami Laboratory), National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce in the following units:

SEFSC Directorate
Sustainable Fisheries Division
Marine Mammals and Sea
Turtles Division Fisheries
Statistics Division Operations,
Management, and Information
Division

Excluded: All management officials, supervisors and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6), and (7).

VI. Right to Seek Review

Under section 7105(f) of the Statute and section 2422.31(a) of the Authority's Regulations, a party may file an application for review with the Authority

within sixty days of this decision. The application for review must be filed with the Authority by **August 9, 2022**, and addressed to the Chief, Office of Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 201, 1400 K Street, NW, Washington D.C. 20424-0001. The parties are encouraged to file an application for review electronically through the Authority's website, www.flra.gov.⁷

Dated: June 10, 2022

Richard S. Jones, Regional Director
Federal Labor Relations Authority
Atlanta Region

⁷ To file an application for review electronically, go to the Authority's website at www.flra.gov, select **eFile** under the **Filing a Case** tab and follow the instructions: