

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 05**

THE AMERICAN UNIVERSITY Employer and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 500 A/W SERVICE EMPLOYEES INTERNATIONAL UNION, SOC, CLC Petitioner	Case 05-RC-341134
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TYPE OF ELECTION: STIPULATED

**CERTIFICATION OF REPRESENTATIVE
COMBINED VOTING GROUP A & B**

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that the professional employees did wish to be included with non-professional employees in a unit appropriate for purposes of collective bargaining, and that a collective-bargaining representative has been selected by the combined Voting Group. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots has been cast for

**SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 500 A/W
SERVICE EMPLOYEES INTERNATIONAL UNION, SOC, CLC**

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate Voting Group:

All full-time and regular part-time professional and non-professional employees employed below the level of Associate Director in the Student Affairs, Information Technology, and University Communications & Marketing Divisions by American University in Washington, DC; but excluding all other employees, faculty other than staff holding adjunct appointments, students at the University paid from budget lines for student wages or Federal Work Study funds or who are employees of University as part of their role as students, employees who are working in positions funded partly or totally through external sources where the University does not control their wages; Senior Manager, Web Strategy; Assistant Director, Finance and Administration; Social Media Manager; Manager, Budget and Administration; confidential employees, managers, guards, and supervisors as defined by the National Labor Relations Act.

However, Community Director for Diversity and Inclusion Programs, Editor/Writer, Writer Editor Digital News, and certain individuals identified in the "Others Permitted to Vote"

section of the approved Stipulated Election Agreement in this matter are neither included in nor excluded from the bargaining unit covered by this certification, inasmuch as the parties did not agree on the inclusion or exclusion of these classifications or individuals but agreed to vote them subject to challenge and resolution of their inclusion or exclusion was unnecessary because, in the circumstances of this case, their ballots were not determinative of the election results.

[The Voting Group voted to be included in the attached existing unit which is currently represented by SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 500
A/W SERVICE EMPLOYEES INTERNATIONAL UNION, SOC, CLC]



June 21, 2024

/s/ *Sean R. Marshall*

Sean R. Marshall, Regional Director
National Labor Relations Board, Region 5
Edward A. Garmatz U.S. Courthouse
101 W. Lombard Street, Suite 700
Baltimore, Maryland 21201

Attachments

1. Existing Unit Description
2. Notice of Bargaining Obligation
3. Notice of Federal Mediation and Conciliation Services for Initial Contract Bargaining

cc: Federal Mediation and Conciliation Services

All full-time and regular part-time professional and non-professional employees employed below the level of Associate Director in the Provost's Division (also referred to as the Academic Affairs Division) by American University in Washington, DC, and all full-time and regular part-time non-professional employees employed below the level of Associate Director in the Office of Enrollment by American University in Washington, DC; but excluding all other employees, faculty other than staff holding adjunct appointments, students at the University paid from budget lines for student wages or Federal Work Study funds or who are employees of the University as part of their role as students, employees who are working in positions funded partly or totally through external sources where the University does not control their wages, confidential employees, managers, guards, and supervisors as defined by the National Labor Relations Act.

NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,¹ an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

¹ Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.

NOTICE OF FEDERAL MEDIATION AND CONCILIATION SERVICES FOR INITIAL CONTRACT BARGAINING

As a workplace where employees are now represented by a union, both the employer and union have a number of obligations under the law, including the duty to bargain in good faith. These duties can have a practical impact on the bargaining process, as well as the ongoing labor-management relationship at a worksite.

As you navigate this set of obligations and their resulting impacts, we encourage you to take advantage of the following resources from the Federal Mediation and Conciliation Service (FMCS) (www.fmcs.gov). FMCS is a non-regulatory, independent federal agency, separate from the National Labor Relations Board (NLRB), whose mission is to preserve and promote labor-management peace and cooperation. FMCS services include:

- Skills development training for collective-bargaining negotiation, committee effectiveness, and conflict resolution (available at <https://www.fmcs.gov/services/education-and-outreach/skills-development-training/>);
- Education on contract administration (available at <https://www.fmcs.gov/services/building-labor-management-relationships/>); and
- Mediation, if you need additional assistance and support with your initial contract negotiations (available at <https://www.fmcs.gov/services/resolving-labor-management-disputes/collective-bargaining-mediation/>).

FMCS is a Congressionally funded agency offering support to both unions and employers at workplaces and these FMCS services and resources are provided **at no cost**. FMCS services are customized to the specific needs of employer and union leadership groups and FMCS is available to assist with next steps and/or answer questions that come up throughout an initial collective-bargaining agreement negotiation process, as well as for future stages of a labor-management relationship.

For more information on the full range of FMCS services and how these services can be helpful throughout various stages of the collective bargaining process, see OM 22-08. To discuss the specific needs of your group, please reach out to FMCS via email at initialcontract@fmcs.gov or by phone at (202) 606-8100.