

43 Changes in the name of the certified or recognized exclusive representative

This section discusses the concepts and procedures for processing petitions to amend a certification or recognition due to changes in the name of the certified or recognized labor organization. Such changes fall within two categories:

A. Technical or nominal changes:

These changes occur when the union merely seeks a technical or nominal change in its certification due to a clerical or administrative error. See *National Aeronautics and Space Administration, Headquarters, Administrative Division*, 12 FLRA 152 (1983) (granted a name change for the exclusive representative - no discussion of *Montrose* factors).

B. Montrose: changes in affiliation or mergers of labor organizations:

When a petitioner seeks amendment to reflect a change in affiliation resulting from either a reaffiliation or a merger of unions, two conditions must be met. The two conditions that must be met to determine whether the designation of the exclusive representative of a recognized or certified unit may be amended are:

1. **Due Process:** *Montrose* sets out specific procedures to ensure that union members have an adequate opportunity to vote on the change.
2. **Continuity of Representation:** Any change in an affiliation may not affect the continuity of the unit employees' representation and clearly does not leave open questions concerning such representation.

For more detailed information on technical changes and Montrose see RCL 7.

Relevant information:

- 1) Existing Recognition
 - a) certification of representation or letter of recognition for affected unit;
 - b) copy of existing collective bargaining agreement(s) covering affected unit; and/or

- c) background only: number of employees in affected bargaining unit.
- 2) Special Meeting
- a) What factors did incumbent consider in setting date, time and place of meeting? Was the meeting held at place and time when regular membership meetings would normally be held? If not, why not and where was it held?
 - b) Copy of the notice of the meeting (e.g., letters, bulletins, post cards, postings, advertisements, etc.). Method of notice distribution (e.g., mailed to last known home address, mailed to work address using internal mail system, posted on union bulletin boards, etc.). Was the notice distributed differently than other meeting notices; if so, how?
 - c) Extent of advance notice given to members of special meeting. Is this different from the amount of notice given of other union meetings? If not, why was there a difference?
 - d) Number of employees in the bargaining unit; number of union members in affected unit; number of such members in attendance at meeting; number of members who voted and copies of any existing attendance records for meeting.
 - e) What was discussed at the meeting, i.e., was the proposed change in affiliation the sole purpose/topic of the meeting? If not, what else was discussed at this meeting?
 - f) Who, what, when, where, and how as to the events at the special meeting. In particular, what were the members told about the proposed change? What was the substance of the discussion? Were questions asked? If so, what were they and what answers were given? Obtain copies of any meeting minutes.
 - g) Description of site used to conduct election and the procedures used to ensure secrecy of ballot. If the incumbent represents more than one unit, was vote limited to union members from affected unit?
 - h) What was done to safeguard ballots during the vote itself

and between the voting and the ballot count? What were the procedures used to conduct the election and count the ballots? Who counted the ballots? If no election was held during the special meeting, why not? Was election held sometime thereafter? If so, when and using what procedures?

- i) Copy of the ballot.
 - j) What was the outcome of the election? Obtain evidence, such as tally, results certification or minutes.
- 3) Continuity of Representation:
- a) Description of whether and, if so, which local officers/representatives of the incumbent be retained by the gaining labor organization.
 - b) Description of the differences, if any, between the officer/steward structures of the incumbent and gaining labor organizations. Similar information on differences in overall representational capabilities.
 - c) Description of the differences, if any, between the dues structures of the incumbent and the gaining labor organization.
 - d) Has the gaining union agreed to assume responsibility for administering the incumbent's contract and otherwise to represent the unit? Are there any agreements between the incumbent and the gaining union concerning finances, such as transfer of an arbitration fund or other fund? Is there any evidence to suggest that the gaining union is not capable of representing the unit?
 - e) Discuss any organizational changes to the extent that any changes in the organizational structure will affect the union's representation of the unit, authority to administer and execute the collective bargaining agreement and constitution.
 - f) Based on the size of the unit and the size of the membership, is there a reasonable cause to believe that a QCR exists? See also *RCL 4* and *HOG 40*.

C. Impact of Trusteeships on Reaffiliation Petitions:

1. Trusteeship Imposed After the Filing of the Petition: when a trusteeship is imposed after a reaffiliation vote and after the filing of a petition to change the certification, the trusteeship cannot affect the processing of the petition and the issuance of a new certification. *New Mexico Army and Air National Guard*, 56 FLRA 145, 149 (2000).

2. Trusteeship Imposed Prior to the Petition, Whether Before or After the Vote:

The Assistant Secretary has taken a position in cases where a party has challenged the legality of the purpose of a trusteeship imposed to block a reaffiliation vote. The parties in these cases had *Montrose* petitions pending in the Regions which had been deferred pending the Assistant Secretary's determination on the validity of the trusteeships which were imposed prior to the filing of the petition. The Assistant Secretary took the legal position that parent labor organizations cannot impose a trusteeship simply to prevent a local from disaffiliating from the parent organization. **When there is no pending case before the Department of Labor and the trusteeship was imposed prior to the filing of the petition, the Regional Director examines the validity of the purpose of a trusteeship.** In view of the legal position taken by the Assistant Secretary and noting particularly that it is the Assistant Secretary and not the Office of the General Counsel that has established the test for determining the validity of trusteeships, **Regions limit the examination to a factual finding of whether the illegal purpose of blocking reaffiliation was the purpose for imposing the trusteeship.**

With respect to the procedural validity of the trusteeship, the Regions:

- < ascertain whether the matter is pending before the Department of Labor;
- < examine the procedural requirements of the parent union's constitution and bylaws and decide if those provisions were followed;
- < obtain a copy of the national union's constitution and bylaws;
- < obtain a copy of the letter from the national placing the local exclusive representative under trusteeship;
- < decide if the local union was afforded a fair hearing; and
- < determine if the trusteeship was authorized or ratified after that hearing as provided for in the parent union's constitution and bylaws.

For detailed guidance on this topic see RCL 7.

