7 *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).

In *Naval Aviation Depot, Naval Air Station, Alameda, California (NAS Alameda),* 47 FLRA 242 (1993), the Authority granted the Activity's petition to change the name of the Activity, but denied the Union's request to amend the certification to reflect a change in the local designation within the same international union. The Authority stated: "in order to amend the certification issued by the Authority to reflect a change in the designation of the exclusive representative for the bargaining unit in this case from IAM Lodge 739 to IAM Lodge 1584, it was necessary to follow the procedures required by *Montrose*." The Authority cited *Florida National Guard, St. Augustine, Florida (FNG II),* 34 FLRA 223 (1990) ; and *Florida National Guard (FNG I),* 25 FLRA 728 (1987). In *FNG I*, which the Authority applied the *Montrose* procedures where two locals within the same national union merged, and in *Florida National Guard II*, the Authority applied the *Montrose* procedures where, as here, two locals within the same international union merged. The Authority stated in *NAS Alameda* that: "[I]n this case, it has not been demonstrated that the merger conforms to the wishes of the membership of IAM Lodge 739, the certified exclusive representative of the Activity's employees." *NAS Alameda* at 245, 246.

The Regions should look out for any petition where the petitioner seeks to effect a change in affiliation from one local union to another local union of the same national or international union, but the *Montrose* criteria have not been met. More clarification on this issue from the Authority may be helpful. **See *CHM 58.3.19.***

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. These two conditions were first described in *Veterans Administration Hospital, Montrose, New York* (*Montrose*), 4 A/SLMR 858 (1974). The Authority specifically adopted *Montrose* in *Florida National Guard, St. Augustine, Florida* (*FNG I*), 25 FLRA 728 (1987).

Montrose cases are distinguished from cases in which the union merely seeks a technical or nominal change in its certification due to a clerical or administrative error. However, a simple change in the numerical designation of a local is subject to the *Montrose* requirements unless the union can show the change was purely technical.

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. These are:

< the proposed change in affiliation is the subject of a special meeting of the members of the <u>incumbent</u> labor organization, called for this purpose only, with adequate advance notice provided to the entire membership;

< the meeting takes place at a time and place convenient to all members;

< adequate time for discussion of the proposed change was provided, with all members given an opportunity to raise questions within the bounds of normal parliamentary procedures; and

< a vote by the <u>members</u> of the incumbent labor organization was taken by secret ballot, with the ballot clearly stating the change proposed and the choices inherent therein.

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. *See Montrose,* 4 A/SLMR 858, 860. The Authority has not identified the specific factors or number of

factors it will consider in deciding this issue. However, elements to weigh include:

< continuity of officers or representatives,

< local autonomy and control of day-to-day operations, and

< whether the gaining union has agreed to administer the existing contract. *U.S. Department of the Army, Rock Island Arsenal, Rock Island, Illinois* (*Rock Island*), 46 FLRA 76 (1992) citing *NLRB v. Financial Institution of Employees of America, Local 1182 (Financial Institution),* 475 U.S. 192 (1986).

Financial Institution included a discussion concerning the difference between affiliation and other organizational changes that alter a union's "identity." The discussion may be helpful in cases where there is an issue related to continuity of unit employees' representation. The Court appeared to limit the review to identifying organizational changes, rather than the motivation behind such changes. The Supreme Court noted that the Board recognized that "an affiliation does not create a new organization, nor does it result in the dissolution of an already existing organization." The Court noted that in a change of affiliation, the union will determine "whether any administrative or organizational changes are necessary in the affiliating organization. If the changes are sufficiently dramatic to alter the union's identity, affiliation may raise a question of representation." *Financial Institution,* at 206.

3. Examples of changes in affiliation: There are various types of changes in affiliation which may involve application of *Montrose.* For example, two national unions may merge or two or more locals of a national union may merge. A local union affiliated with one national union may reaffiliate with another national union. A local union may become a new independent union. A local union may split into two or more affiliates of a national union.

4. Application of Standards: The Authority applies the *Montrose* standards on a case-by-case, unit-by-unit basis and has considered virtually every aspect of each standard.

< Any petitions that seek to amend a recognition or certification as a result of reaffiliation or merger must follow the procedures established in *Montrose*. These procedures were designed to ensure that an amendment of certification of "an exclusive representative in an existing

unit" conforms to the desires of the membership of that unit. *U.S. Department of the Interior, Bureau of Land Management, Phoenix, Arizona (BLM)*, 56 FLRA 202 (2000) citing *Rock Island,* 46 FLRA at 79. A union which has recognition or certification for several units may reaffiliate with another union, but the Montrose due process standards are applied on a unit specific basis and the continuity of representation is assessed for each separate unit. For instance, specific information is obtained regarding the union's membership in each unit for which the union seeks to amend the recognition or certification.

< A change in affiliation vote must be open to all union members in the affected unit, not to all members of the bargaining unit. *Bureau of Indian Affairs, Gallup, New Mexico*, 34 FLRA 428 (1990); *Financial Institution*, 475 U.S. 192 (1986).

< A change in affiliation may not be used to change the scope of the existing bargaining unit. Thus, *Montrose* procedures may not be used to sever a group of employees from an existing bargaining unit or to extend recognition to a category of previously unrepresented employees. Further, a petition to reflect a change in affiliation may not be used to and, if granted, does not result in consolidation of bargaining units. *Florida National Guard, St. Augustine, Florida (FNG II)*, 34 FLRA 223 (1990).

< *Montrose* does not apply to a change in affiliation involving a labor organization other than an exclusive representative. *U.S. Department of Defense, National Guard Bureau, Division of Military and Naval Affairs, Latham, New York*, 46 FLRA 1468 (1993).

< The notice of the special meeting must clearly and adequately inform employees of the nature of the proposed change. *See Union of Federal Employees (UFE),* 41 FLRA 562 (1991), but *compare U.S. Department of the Interior, Bureau of Indian Affairs, Gallup, New Mexico,* 33 FLRA 482 (1988), 34 FLRA 428 (1990), and 35 FLRA 99 (1990) [*BIA I, II, and III*, respectively] in which no special meeting was required in the unusual circumstances present. The Authority determined where geographic dispersion precludes a special meeting of all of the members of the bargaining unit, a mail ballot may be substituted.

< The certified exclusive representative is not required to notify the national labor organization of a disaffiliation vote. *New Mexico Army and Air National Guard (New Mexico AANG),* 56 FLRA 145, 149 (2000).

< There is no requirement that any specific number or percentage of members must cast ballots in order for an affiliation change to be effective. *See Rock Island*, 46 FLRA 76 (1992). There must be union members in the unit and that the members were sent notice of the meeting. *UFE,* at 574.

< Where there are no members of the union in the bargaining unit, a *Montrose* is not appropriate since the requirements established in Montrose were designed to ensure that an amendment of certification of an exclusive representative in an existing unit conforms to the desires of the membership of that unit. *BLM,* 56 FLRA at 207.

< The ballot must inform the members of the choices inherent in the election so that the members may make a reasoned decision on how to vote. Reasonable precautions must also be taken to ensure the secrecy of the ballots so that the privacy and free choice of voters is not compromised by election conduct. *UFE*, at 587.

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 AANG*, 56 FLRA at 149. Thus, for purposes of processing the reaffiliation petition, the validity of the trusteeship is not an issue.

   a. Any national union or the trustee on behalf of the national union requesting to intervene based on its interest in ensuring that the local exclusive representative affiliated with the national union has properly followed the Montrose standards is allowed to participate as an intervening party with the right to file an application for review with the Authority. The national labor organization is a party "affected by issues raised in the petition" and is notified of the petition in accordance with § 2422.6 of the regulations. *Utah Army National Guard, U.S. Department of the Army, Draper, Utah (Utah ARNG),* an unnumbered decision dated April 16, 1999.

b. The Region deals with the local union which filed the petition as the petitioner throughout the processing of the petition, regardless of the imposition of a trusteeship. Thus, requests by the trustee or national union to withdraw a petition filed by a local exclusive representative are denied.

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

a. A trusteeship imposed before a petition, if valid, results in dismissal of the petition. The framework of the Statute requires the "vote - trusteeship - petition" scenario to be treated in the same manner as if the trusteeship had been imposed before the reaffiliation vote occurred i.e. - the "trusteeship - vote - petition" scenario. Thus, if otherwise presumed valid (discussed below), the trusteeship is deemed effective and any individual filing a petition seeking a change in the certification must be authorized to do so by the exclusive representative's administrator - the trustee. Thus, whether the reaffiliation vote precedes or is subsequent to the imposition of the trusteeship, if the trusteeship is valid, the Regions recognize the designated trustee as the representative of the union. The critical event is not whether the reaffiliation vote preceded the trusteeship, but whether the trusteeship preceded the filing of the petition.

b. Determining the Procedural Validity of the Trusteeship:

1) Procedural Validity of Trusteeship Pending Before the Department of Labor

In *U.S. Environmental Protection Agency, Washington, D.C. and National Federation of Federal Employees, Local 2050 (EPA),* 52 FLRA 772 (1996), a situation where the trusteeship was imposed prior to a reaffiliation vote and the petition ("trusteeship, vote and petition" situation), the local union placed in trusteeship filed a complaint with the Assistant Secretary challenging the legality of the trusteeship. Where the trusteeship was imposed prior to the filing of the petition and the validity

of the trusteeship was pending before the Department of Labor, the Authority provided the following guidance to the Regional Directors:

(a) Where the Regional Director determines that a trusteeship was established "in conformity with the procedural requirements of [the parent labor organization's] constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution and bylaws[,]" as provided by 29 C.F.R. § 458.28, the Regional Director, in the absence of a final decision by the Assistant Secretary resolving the trusteeship matter, will presume the validity of the trusteeship and will dismiss the petition on the ground that the person purporting to act for the incumbent labor organization has no authority to act.

(b) Where the Regional Director determines that a trusteeship was not established "in conformity with the procedural requirements of [the parent labor organization's] constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution and bylaws[,]" as provided by 29 C.F.R. § 458.28, the Regional Director, in the absence of a final decision by the Assistant Secretary resolving the trusteeship matter, will place the petition in abeyance. Upon being notified by the parties of the issuance of a final decision by the Assistant Secretary, the Regional Director will take appropriate action in light of that decision to either process or dismiss the petition [footnote omitted].

(2) Procedural Validity of Trusteeship Not Pending Before the Department of Labor

A legal issue remained unanswered in *EPA* at footnote 13 - namely, the effect that will be given to the failure of a local union placed in trusteeship to file a complaint with the Assistant Secretary challenging the legality of a trusteeship. Based on the first enumerated principle in *EPA*, Regional Directors also determine in this scenario whether a trusteeship was established in conformity with the procedural requirements of the parent labor organization's constitution and bylaws and authorized or ratified after a fair hearing even if no party has filed a challenge with the Assistant Secretary.[1] If the Regional

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[1] The Labor-Management Reporting and Disclosure Act of 1959, as amended (29 U.S.C. § 464(c)), and implementing Department of Labor regulations (29 C.F.R. § 458.28), establish the criteria for presuming the validity of a trusteeship for eighteen months. 29 U.S.C. § 464(c) provides:

> In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution and bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for the purpose allowable under section 462 of this title....

29 C.F.R. § 458.28 provides:

> In any proceeding involving § 458.26, a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution and bylaws shall be presumed valid for a period of 18 months from the date of its establishment and shall not be subject to attack during such period

(continued...)

Director finds that the procedural requirements have been met, the Regional Director presumes "the validity of the trusteeship," just as if there had been a challenge filed with the Assistant Secretary. The principle established by the Authority in *EPA* remains valid even though no challenge was filed with the Assistant Secretary. Thus, since the Authority has mandated that Regional Directors may make such threshold decisions and presume the validity of a trusteeship based on procedural grounds when a challenge is pending before the Assistant Secretary, Regional Directors have that same authority when no challenge has been filed with the Assistant Secretary. To hold otherwise, would tend to discourage a party that wishes to challenge a trusteeship from filing with the Assistant Secretary based on the strategy that not to file would prevent the Regional Director from presuming the validity of the trusteeship on procedural grounds.

c. Determining Whether the Trusteeship was Established for a Valid Purpose

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.[2] The Assistant Secretary issued a complaint in one case alleging that imposition of such a trusteeship violated section 7120(d) of the Statute, as

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[1](...continued)

> except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for purposes allowable under § 458.26. After the expiration of 18 months the trusteeship shall be presumed invalid in any such proceeding, unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under § 458.26.

[2] See e.g., AFL-CIO Laundry and Dry Cleaning International Union v. AFL-CIO Laundry et. al., 70 F. 3d 717 (1st Cir. 1995)("[Co]urts have widely recognized that preventing disaffiliation is not a proper purpose under [29 U.S.C.] § 462 for imposition of a trustee.").

implemented by 29 C.F.R. § 458.26 because the trusteeship was imposed for an improper purpose. In view of the pending litigation, the Region continued to defer processing those reaffiliation petitions.[3]

The Authority to date only has had an opportunity to discuss trusteeships and reaffiliation petitions in one case where the matter was pending before the Assistant Secretary. In order to obtain further guidance from the Authority in a manner that provides for representation petitions to be processed expeditiously, the Regional Director also examines the validity of the purpose of a trusteeship when there is no pending case before the Department of Labor and the trusteeship was imposed prior to the filing of the petition. 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. The Regions can not make determinations as to whether other asserted purposes are valid under 29 U.S.C. § 462.

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

< examine the procedural requirements of the parent union's constitution and bylaws and decide if those provisions were followed;

< 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.

With respect to purpose of the trusteeship, the Regional Directors also determine if the purpose of the trusteeship was to preclude reaffiliation. In situations: (1) where there is no pending Department of Labor proceeding when a petition is filed after imposition of the trusteeship; and (2) the Region finds that the trusteeship lacks either procedural validity or was established to block reaffiliation - the Region obtains clearance from the Office of the General Counsel prior to continue processing the reaffiliation petition.

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[3] These petitions involve the National Federation of Federal Employees (NFFE) and NFFE Local 28 at Fort Sam Houston, Texas.

D. Unresolved Issues: The OGC identified several unresolved issues that were not before the Authority cases discussed herein. The Regions should be alert to any cases:

< Involving an agency's failure to recognize the incumbent when a trusteeship is imposed after a *Montrose* petition is filed.

< Raising issues of the continuation of NFFE as a labor organization.

< Where the Region determines that a trusteeship imposed prior to the filing of a *Montrose* petition is invalid, procedurally or substantively.

< In which the national labor organization revokes the charter of the local union that holds the certification during a *Montrose* proceeding.

< Any *Montrose* petitions where a very small percentage of the employees are union members and vote for reaffiliation, raising the possibility that there is a question as to continued majority status that affects the continuity of representation criteria. *BLM*, 56 FLRA 202.

See *CHM 58.3.20*.

E. Filing Procedures:

< Only an authorized agent of the incumbent labor organization has standing to file a petition to amend the incumbent's certification. *U.S. Army Reserve Command, 88th Regional Support Command, Fort Snelling, Minnesota*, 53 FLRA 1174, 1178 (1998).

< The "gaining" union in a *Montrose* situation may file the petition on behalf of the incumbent petitioner if it is designated by the incumbent as its representative. *BLM*, 56 FLRA 202 at n.1.

< In accordance with § 2422.6 of the regulations, the Regions serve a copy of a *Montrose* petition on the national union of the incumbent local that is seeking to change its affiliation. *New Mexico AANG,* 56 FLRA 145.

< In *Utah ARNG*, an unnumbered decision dated April 16, 1999, the Authority denied an application for review of the Regional Director's Decision and Order where the unions on the reaffiliation ballot where granted "interested party" status. The application for review was filed by a third party on the reaffiliation ballot. In a footnote, the Authority noted that

the Regional Director granted the gaining union and another union that was on the ballot "interested party" status. The Authority denied review, noting the unions were granted "interested party" status and not "intervenor status." Neither the regulations nor the Statute provide for "interested party" status and the Authority did not differentiate between "interested parties" and intervenors in the footnote.

< The Regulations, however, do not provide a procedure for the union(s) on the reaffiliation ballot to intervene, although the potential gaining union is clearly affected by issues raised in the petition (see § 2421.21 of the regulations and *CHM 5.2* and *CHM 15.5.2*). The intervention section of the regulations, § 2422.8, does not appear to specifically provide a procedure that permits the potential gaining union, other unions that were on the ballot or the parent of the incumbent local to intervene in the petition. Consistent with *Utah ARNG*, these unions are "affected by issues raised" and pursuant to § 2422.6 are notified of the pending petition in accordance with *CHM 15.10* and *CHM 17.13.*

See HOG 43 for specific guidance on developing a record about amending the name of the exclusive representative and trusteeships at hearing.