

66 FLRA No. 81

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
NEVADA STATE OFFICE
RENO, NEVADA
(Activity)

and

NATIONAL FEDERATION
OF FEDERAL EMPLOYEES
IAMAW
FEDERAL DISTRICT 1
(Petitioner/Labor Organization)

and

NATIONAL FEDERATION
OF FEDERAL EMPLOYEES
LOCAL 2174
(Exclusive Representative/Labor Organization)

and

NATIONAL FEDERATION
OF FEDERAL EMPLOYEES
IAMAW
LOCAL 2152
AFL-CIO
(Labor Organization)

SF-RP-11-0035

ORDER DENYING APPLICATION FOR REVIEW

January 19, 2012

Before the Authority: Carol Waller Pope, Chairman, and
Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This case is before the Authority on an application for review (application) filed by the Activity under § 2422.31(c) of the Authority's Regulations.¹

¹ Section 2422.31(c) of the Authority's Regulations provides, in pertinent part:

(c) *Review.* The Authority may grant an application for review only when the application demonstrates that review is

Neither the Petitioner (NFFE), nor the other two labor organizations (Local 2174 and Local 2152), filed an opposition to the Activity's application.

NFFE filed a petition to amend its certification to reflect a merger of Local 2174 with Local 2152 pursuant to § 7111(b)(2) of the Federal Service Labor-Management Relations Statute (the Statute).² Determining that NFFE had satisfied the legal conditions for amending its certification to reflect a merger, including the procedural criteria for conducting a vote by its members to change affiliation, the Regional Director (RD) granted the petition.

For the reasons that follow, we deny the Activity's application.

II. Background and RD's Decision

Local 2174 represents a unit of professional and non-professional employees at the Activity's Reno, Sparks, and Tonopah, Nevada offices. RD's Decision at 1-2. Local 2174's members voted at a special meeting to change affiliation from Local 2174 to Local 2152, which represents a unit of employees at the Activity's California office. *Id.*

Several months later, NFFE filed a petition on behalf of Local 2174 to amend its certification as exclusive representative to reflect the change in affiliation from Local 2174 to Local 2152. *Id.* at 1.

As required by Authority case law in situations involving a change in affiliation, the RD investigated whether appropriate due-process procedures were followed in conducting the vote by Local 2174's members. *Id.* at 3. The RD concluded that the change in affiliation satisfied due process because it was accomplished in a manner consistent with the criteria for changing affiliation first stated in *Veterans Administration Hospital, Montrose, New York*,

warranted on one or more of the following grounds:

....

(3) There is a genuine issue over whether the Regional Director has:

(i) Failed to apply established law;

....

(iii) Committed a clear and prejudicial error concerning a substantial factual matter.

² Section 7111(b)(2) of the Statute describes the processing of petitions seeking "an amendment to . . . a certification" of an exclusive representative.

4 A/SLMR 858 (1974), *review denied*, 3 FLRC 259 (1975) (*Montrose*).³ *Id.* at 3-4.

Specifically, the RD found that Local 2174 had approximately seven dues-paying members at the time of the vote, all of whom work at the Tonopah office. RD's Decision at 2. He also found that these members received adequate advance notice stating that a special meeting would be held solely to discuss and vote on whether Local 2174 should "merge" with Local 2152. *Id.* at 2-3. In addition, he found that at the special meeting the following month, two members of Local 2174 attended and were given the opportunity to discuss and raise questions about the proposed merger. *Id.* at 3. Further, the RD found that the members present at the meeting unanimously voted by secret ballot to change their affiliation from Local 2174 to Local 2152. *Id.* at 2-3. Accordingly, the RD granted Local 2174's petition to amend its certification. *Id.* at 4.

III. Activity's Application

The Activity claims that *Montrose* procedures were not followed because not all of Local 2174's dues-paying members were notified of the special meeting to change affiliation. Application at 4. Specifically, the Activity asserts that the RD erred by finding that there were seven dues-paying members who were all located at the Tonopah office. *Id.* at 3. Based on payroll records at the time of the vote, the Activity asserts that there were only three dues-paying members in the bargaining unit – two in the Tonopah office and one in the Reno office. *Id.* at 2, 4. Therefore, the Activity asserts, because of the failure to notify the member at the Reno office of the special meeting to change affiliation, *Montrose* procedures were not followed. *Id.* at 4.

In addition, the Activity asserts that *Montrose* was not satisfied because Local 2174 represents both professional and non-professional positions, and none of those who voted encumbered non-professional positions. *Id.* at 5.

³ The RD found that, at a minimum, the Authority requires that:

The proposed change in affiliation must be the sole subject of a special meeting of the members of the incumbent labor organization, with adequate advance notice provided to the entire membership; [t]he meeting should take place at a time and place convenient to all members; [a]dequate time for discussion of the proposed change must be provided, and members given an opportunity to raise questions[;] and [a] secret ballot vote must occur, and the ballot must state the change proposed and the choices inherent in that change.

RD's Decision at 3 (citing *Montrose*, 4 A/SLMR at 860).

IV. Analysis and Conclusions

- A. The Activity has not established that the RD committed a clear and prejudicial error concerning a substantial factual matter.

Under 5 C.F.R. § 2422.31(c)(3)(iii), the Authority may grant an application for review when the application demonstrates that there is a genuine issue over whether the RD has committed a clear and prejudicial error concerning a substantial factual matter.

In its application, the Activity argues that, based on payroll records, all dues-paying members of Local 2174 were not notified of the special meeting to change affiliation. Application at 4-5. However, the Activity has failed to provide any specific evidence in support of this claim. The claim is therefore a bare assertion. *See U.S. Dep't of the Navy, Aviation Support Detachment, Norfolk, Va.*, 64 FLRA 252, 254 (2009). Accordingly, we find that the Activity has failed to demonstrate that the RD's determination that all dues-paying members were notified constitutes a clear and prejudicial factual error within the meaning of 5 C.F.R. § 2422.31(c)(3)(iii). *Id.*

- B. The Activity has not established that the RD failed to apply established law.

Under 5 C.F.R. § 2422.31(c)(3)(i), the Authority may grant an application for review when the application demonstrates that there is a genuine issue over whether the RD failed to apply established law.

The Activity claims that *Montrose* was not satisfied because none of those who voted in the special election encumbered non-professional positions. Application at 5. Contrary to the Activity's claim, and as indicated *supra* note 3, *Montrose* addresses only the procedural prerequisites for a change in affiliation. *See Montrose*, 4 A/SLMR at 860. And, as relevant here, all that *Montrose* requires is that those who vote be members of the incumbent labor organization. *Id.*; *U.S. Dep't of the Interior, Bureau of Indian Affairs, Navajo Area, Gallup, N.M.*, 34 FLRA 428, 445 (1990). Accordingly, *Montrose* does not support a conclusion that the RD erred by granting a change in affiliation based solely on the votes of members who encumbered professional positions.

V. Order

The application for review is denied.