

64 FLRA No. 96

UNITED STATES
DEPARTMENT OF THE NAVY
COMMANDER, NAVY REGION MID-ATLANTIC
PUBLIC SAFETY PROGRAM MANAGER
(Agency)

and

INTERNATIONAL BROTHERHOOD
OF POLICE OFFICERS
(Labor Organization/Petitioner)

WA-RP-09-0080

ORDER DENYING
APPLICATION FOR REVIEW

March 5, 2010

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 International Brotherhood of Police Officers (Union) under § 2422.31 of the Authority's Regulations.¹ The Agency filed an opposition to the Union's application.

The Regional Director (RD) denied the Union's petition to amend the unit description contained in the certification of representative (certification). For the following reasons, we deny the application.

1. Section 2422.31 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 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;
- (ii) Committed a prejudicial procedural error;
- (iii) Committed a clear and prejudicial error concerning a substantial factual matter.

II. Background and RD's Decision

The Union participated in a representation election for a unit of employees that includes police officers and other Agency personnel. As the election agreement did not specifically mention "police officers" in the description of the unit, the Union notified the Authority agent conducting the election that it wanted the unit description to include "police officers" expressly. *See* Decision at 4. The Authority agent informed the Union that a unit-description amendment would delay the election but that the Union could seek to amend the description after the election. *See id.* at 5-6. The Union then reviewed and signed the election agreement, rather than continuing to seek an amendment to the unit description. *See id.* at 3-4.

In the election agreement and the subsequent certification, the bargaining unit is described as follows:

INCLUDED: All nonprofessional employees of the Public Safety Program Manager, Security Directorate, and Dispatchers assigned to the Emergency Management Directorate, Commander, Navy Region Mid-Atlantic, U.S. Department of the Navy, including personnel located in Philadelphia, Pennsylvania.

EXCLUDED: All police officers located in Philadelphia, Pennsylvania, all professional employees, management officials, supervisors, and employees described in 5 U.S.C. [§] 7112(b)(2), (3), (4), (6), and (7).

Decision at 3.

After the Union won the election and was certified as the exclusive representative of the bargaining unit, the Union petitioned the RD to amend the certification's unit description so that it specifically included "police officers." *See id.* at 1-2. As the proposed amendment differed from the unit description in the election agreement, the RD issued an order to show cause why the petition should be granted. *See id.*; Order at 2.

In response, the Union argued that its proposed amendment was warranted because: (1) the majority of bargaining-unit members are police officers; (2) the Union signed the election agreement only to avoid an election delay, and only after the Authority agent stated that the Union could seek to amend the description after

certification; and (3) the proposed amendment would ensure that all of the units represented by the Union have descriptions that specifically mention “police officers.” Decision at 4; Union’s Resp. to Order at 2-3. The Agency also responded and opposed the petition “because the current descriptions adequately describe the employees in the bargaining unit[.]” Agency’s Resp. to Order at 3.

The RD denied the petition because: (1) it was undisputed that the unit description in the certification was accurate and unambiguous; (2) the Authority agent correctly informed the “experienced” Union representative that the Union could seek an amendment, but did not represent that an amendment attempt would succeed; and (3) unlike the unit at issue here, the Union’s other units contain only police officers and security guards, which is why those unit descriptions specifically mention such classifications. Decision at 5-6.

III. Positions of the Parties

A. Union’s Application

The Union argues that the RD committed “prejudicial legal and factual error[s]” by: (1) denying its petition for an “appropriate” amendment to the unit description; and (2) making allegedly misleading representations regarding the process for amending the unit description, with knowledge that the Union would rely upon those representations. See Application at 3-5 (citing § 2422.31(c)(3)). With regard to the first argument, the Union contends that the RD erred when he rejected the three arguments contained in the Union’s response to the RD’s show-cause order. *Id.* at 4. With regard to the second argument, the Union claims that its application “requires equitable consideration” because it relied on the statements of the Authority agent, and the Union had no reason to believe that the agent would represent that the Union could petition to amend the unit description unless a petition was likely to be successful. *Id.* at 4-5.

The Union asserts that the proposed amendment would not change the composition of the bargaining unit, and that, consequently, the RD failed to provide a valid reason for denying the requested amendment. *Id.* at 4. According to the Union, these are “compelling reasons” that necessitate review by the Authority. *Id.* at 3 (citing *U.S. Dep’t of the Navy, Portsmouth Naval Shipyard, Portsmouth, N.H.*, 38 FLRA 764, 769 (1990)).

B. Agency’s Opposition

The Agency contends that the Union’s application merely restates the arguments that were raised to and properly rejected by the RD, without evidence that the RD misapplied the relevant legal principles or misstated the pertinent facts. See Opp’n at 1-2 (citing § 2422.31(c)(3)).

IV. Analysis and Conclusions

We construe the application as arguing that review is warranted because the RD failed to apply established law, committed prejudicial procedural error, and committed a clear and prejudicial error concerning a substantial factual matter. See § 2422.31(c)(3)(i)-(iii). A petition to amend a certification is appropriate when either party seeks to have the certification conform to post-certification changes affecting the identity of either party, such as a change in the name of the agency or the exclusive representative. See *U.S. Dep’t of HHS, Admin. for Children & Families, Wash., D.C.*, 47 FLRA 247, 250 (1993) (*HHS*). See also *Dep’t of Def., Office of Dependents Educ.*, 15 FLRA 493, 495-96 (1984) (citing *Nat’l Aeronautics & Space Admin., Headquarters, Admin. Div.*, 12 FLRA 152 (1983)).

The Union concedes that there has been no change in the Agency’s or the Union’s name or composition, as set forth in the certification. Further, the Union concedes that the unit description is accurate and does not claim that it is ambiguous. Thus, there is no basis for finding that amendment of the certification is required, and the Union does not cite any legal authority to establish the contrary. See § 2422.31(c)(3)(i). Therefore, the application does not demonstrate that the RD failed to apply established law.

With respect to the Union’s claim that its application should be granted because of the RD’s “factual error[s.]” Application at 4, the application does not identify any substantial factual matters about which the RD clearly and prejudicially erred. See § 2422.31(c)(3)(iii). As a result, the application does not demonstrate that the RD committed a clear and prejudicial error concerning a substantial factual matter.

To the extent that the Union’s request for “equitable consideration” asserts that the RD committed prejudicial procedural error by failing to amend the unit description based on the Authority agent’s statements regarding the amendment process, Application at 4-5, such an assertion does not support granting the application. In this regard, as discussed above, the Union has not established that amending the certification is required to render the description accurate or eliminate

ambiguities. *See HHS*, 47 FLRA at 250. Thus, even if the Authority agent had not made the statements at issue, and the Union had continued to pursue its pre-election request to amend the unit description, there is no basis for finding that the Union's request would have been granted. Accordingly, the application does not demonstrate that the Union ultimately was prejudiced by the Authority agent's statements and, therefore, it does not demonstrate that the RD committed prejudicial procedural error. *See* § 2422.31(c)(3)(ii).

For the foregoing reasons, the Union has not established that review of the RD's decision is warranted.

V. Order

The application for review is denied.