

70 FLRA No. 48

UNITED STATES
DEPARTMENT OF HOMELAND SECURITY
FEDERAL LAW
ENFORCEMENT TRAINING CENTER
GLYNCO, GEORGIA
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2002, AFL-CIO
(Incumbent Union/Petitioner)

and

NATIONAL TREASURY
EMPLOYEES UNION
(Interested Party)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO
(Intervenor/Trustee)

AT-RP-16-0007

ORDER GRANTING
APPLICATION FOR REVIEW
AND REMANDING TO THE REGIONAL DIRECTOR

May 19, 2017

Before the Authority: Patrick Pizzella, Acting Chairman,
and Ernest DuBester, Member

I. Statement of the Case

The Incumbent Union petitioned Federal Labor Relations Authority Regional Director Richard S. Jones (RD) to amend its certification to reflect a change in affiliation to the Interested Party. In the attached decision, the RD found that it had been appropriate to place the petition in abeyance, pending the Department of Labor investigation of the Intervenor's trusteeship, as he could not presume that the trusteeship was valid. He then found that in light of an agreement reached later between the Intervenor and the Department of Labor, it was appropriate to process the Incumbent Union's petition. The RD granted the petition, finding that the Incumbent

Union had appropriately followed the procedures for effectuating a change in affiliation outlined in *Veterans Administration Hospital, Montrose, New York (Montrose)*,¹ and upheld by the Authority in *Florida National Guard, St. Augustine, Florida (St. Augustine)*.²

In its application for review, the Intervenor argues that the RD made three errors. First, the Intervenor contends that the RD committed a clear and prejudicial error concerning a substantial factual matter by failing to dismiss the petition because the officers of the Incumbent Union lacked standing. Second, the Intervenor argues that the RD committed a prejudicial procedural error by failing to share with the Intervenor, during the investigation, documents and information relied on in his decision. Third, the Intervenor contends that the RD failed to apply established law. Specifically, the Intervenor argues that the RD exceeded his authority and misinterpreted and failed to apply *U.S. EPA, Washington, D.C. (EPA)*.³

As the RD's decision does not address the impact of the Intervenor's trusteeship on the Incumbent Union's standing to file its petition, or the impact of subsequent events, the Authority grants the application for review, and remands the case to the RD for further findings.

II. Background and RD's Decision

On December 22, 2015, an officer of the Incumbent Union filed a petition with the RD to change its affiliation from the Intervenor to the Interested Party. The petition argued that it had correctly followed the *Montrose* procedures for a change-in-affiliation vote, held that day. Forty dues-paying members voted by secret ballot and were unanimous in voting to change affiliation to the Interested Party.

By early January 2016, the Atlanta Regional Office learned that the Intervenor had imposed a trusteeship on the Incumbent Union. At about the same time, the Incumbent Union contacted the Department of Labor's Office of Labor Management Standards (OLMS) and alleged that the Intervenor placed the Incumbent Union in trusteeship for the improper purpose of preventing disaffiliation. One month later, the Atlanta Regional Office held a conference call with the unions—the Incumbent Union, the Intervenor, and the Interested Party—in which they agreed that the trusteeship was imposed prior to the December 22 filing. The next day, the RD issued a letter placing the case in

¹ 4 A/SLMR 858 (1974).

² 25 FLRA 728 (1987).

³ 52 FLRA 772 (1996).

abeyance, pending the Department of Labor's investigation into the validity of the trusteeship. The RD also informed all the parties that they may submit any additional evidence for consideration within a month.

In late November 2016, OLMS filed with the Secretary of Labor a complaint against the Intervenor alleging that the trusteeship was established for an improper purpose – to prevent disaffiliation. Soon thereafter, OLMS and the Intervenor filed a joint motion to dismiss the complaint, stating that the parties had entered into an agreement, in which the Intervenor agreed to lift the trusteeship and restore autonomy to the Incumbent Union, with an election for Incumbent Union officers to be held in the spring of 2017. In May 2017, the Department of Labor issued its determination that there was probable cause to believe that the trusteeship had been imposed for an improper purpose, but that this had been remedied by a new election of Incumbent Union officers in March 2017, terminating the trusteeship and restoring local autonomy.⁴ Accordingly, the Department of Labor determined that further enforcement proceedings were not warranted.

In his decision, the RD found that it had been appropriate to place the petition in abeyance, pending the Department of Labor investigation, as he could not presume the trusteeship was valid. He found that in light of the agreement between the Intervenor and the Department of Labor, it was now appropriate to process the Incumbent Union's petition. He then granted the petition.

The RD found that the Incumbent Union appropriately followed the process outlined in *Montrose* and *St. Augustine* to effectuate a change in affiliation.⁵ Consequently, the RD amended the certification to reflect the change in affiliation to the Interested Party.

The Intervenor then filed this application for review. No opposition was filed.

III. Analysis and Conclusion: As it is unclear whether the Incumbent Union had standing to file its petition when it did so, or whether subsequent events have mooted any issues in the case, we grant the application for review and remand to the RD for further findings.

The Intervenor argues that the RD committed a clear and prejudicial error concerning a substantial

factual matter and failed to apply established law by failing to dismiss the petition based on lack of standing of the officers of the Incumbent Union.⁶ The Intervenor argues that the RD “erroneously granted standing to former . . . officers” to file the petition.⁷ Specifically, the Intervenor argues that the RD “processed th[e] petition with [the Incumbent Union] as the ‘Petitioner,’ though no one with authority ever authorized the petition” and *EPA* required the RD to dismiss the petition.⁸ The Intervenor argues that only its trustee was authorized to act on behalf of the Incumbent Union.⁹ It cites *EPA* for the proposition that once a trusteeship is imposed, a former local officer “had no standing to file a petition seeking to change affiliation.”¹⁰

The Intervenor argues that the RD erred in his understanding of “whether the previous officers had been restored following the Department of Labor investigation of the trusteeship.”¹¹ The Intervenor states that as part of the imposition of the trusteeship on December 18, 2015, the local officers were removed from office.¹² Further, the Intervenor contends that the RD's decision

to allow [Incumbent Union officers to] act on behalf of the [Incumbent Union], and to designate the [Incumbent Union] the ‘Petitioner’ was a clear and prejudicial error of fact. Pursuant to the clear terms of the trusteeship, and to the precedent established in *EPA*, neither [of two Incumbent Union officers] had authority to file the petition on behalf of the [Incumbent Union], as they were both removed from office at the time the petition was filed and therefore had no authority. . . . [N]othing in the [d]ecision suggests that anyone who did have authority to act for the [Incumbent Union] during the relevant time period ever consented to the filing of the petition. . . . The [RD] committ[ed] a clear and prejudicial error of fact and fail[ed] to apply established law by implying that the authority of the [l]ocal officers removed as a result of the trusteeship had been restored and that they therefore had standing to pursue the petition. . . . [The RD] erroneously

⁴ U.S. Department of Labor Determination Letter at 2 (May 2, 2017). Pursuant to § 2429.5 of the Authority's Regulations, the Authority takes official notice of the Department of Labor's determination letter. 5 C.F.R. § 2429.5.

⁵ RD's Decision at 4-5 (quoting *Montrose*, 4 A/SLMR at 860).

⁶ Application for Review at 30.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 8, 11-12, 16 n.6.

¹⁰ *Id.* at 27 (citing *EPA*, 52 FLRA at 782).

¹¹ *Id.* at 31.

¹² *Id.*

found that the petitioners . . . had been restored authority to act for the [l]ocal, when the facts clearly show that they never regained their positions as officers.¹³

The Intervenor contends that as trustee it “never sanctioned the processing of the petition filed on its behalf” and that the RD erred in not dismissing the petition.¹⁴

In *EPA*, the local had filed a petition to amend its certification to reflect an affiliation change from NFFE to the Environmental Employees Collectively Organized.¹⁵ The regional director dismissed the petition, and, on review, the Authority considered whether an officer of the local had standing to file the petition considering that NFFE had placed the local under trusteeship before the special meeting to consider a change in affiliation had even taken place.¹⁶ The regional director had found that the trusteeship was imposed in accordance with 29 C.F.R. § 458.28, and so presuming its validity, dismissed the petition because the local officer’s removal from office, as a result of the imposition of the trusteeship, left him with no standing to file the petition on behalf of the local.¹⁷

The Authority upheld the decision, and outlined how a regional director should evaluate the decision to process a petition under similar circumstances:

1. 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 [of the Department of Labor] 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.

2. 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.¹⁸

The Authority found the regional director properly presumed the validity of the trusteeship and noted that the Department of Labor had dismissed the local’s complaint.¹⁹

With regard to the officer’s standing to file the petition, the Authority in *EPA* found that, while § 2422.1 of the Regulations provides that a petition to amend a certificate may be filed by the labor organization,²⁰ there was no provision for such a petition to be filed by an individual person.²¹ Because the local officer was already stripped of his authority to act on behalf of the local, by the imposition of the trusteeship, he had no standing to file a petition on behalf of the local. Accordingly, the Authority dismissed the petition.²²

In light of the Authority’s decision in *EPA*, it is unclear whether the Incumbent Union’s officers had standing when they filed their petition, or what effect the Intervenor’s actions in imposing a trusteeship had in removing them from office.

The Authority will remand a petition if it cannot make the determinations necessary to resolve the

¹³ *Id.* at 32-34.

¹⁴ *Id.* at 34.

¹⁵ 52 FLRA at 772.

¹⁶ *Id.* at 773.

¹⁷ *Id.* at 775-76.

¹⁸ *Id.* at 781-82.

¹⁹ *Id.* at 782, 774-75 n.3.

²⁰ 5 C.F.R. § 2422.1.

²¹ See *EPA*, 52 FLRA at 782-83.

²² *Id.*

petition.²³ Because the record does not permit us to resolve the dispute, we remand the petition to the RD to make further findings. In remanding, we direct the RD to investigate and provide more information on the issue of standing, including additional details on when and how the trusteeship became effective and the impact of the Department of Labor's determination concerning the impropriety of the trusteeship, and whether the March 2017 election moots any issues. While the decision states that the parties agreed that the trusteeship was imposed prior to the filing of the petition,²⁴ the decision does not explain how the trusteeship became effective and whether it took effect prior to the Incumbent Union's actions to disaffiliate. If the trusteeship was imposed after the Incumbent Union filed the petition, the trusteeship would have had no effect on the petition.²⁵ As we remand for further findings, we do not address the Intervenor's additional arguments.²⁶

IV. Order

We grant the Intervenor's application for review and remand the petition to the RD for further findings.

²³ *U.S. Dep't of the Interior, Bureau of Ocean Energy Mgmt. & U.S. Dep't of the Interior, Bureau of Safety & Envtl. Enf't, New Orleans, La.*, 67 FLRA 98, 100 (2012) (*Ocean Energy*).

²⁴ RD's Decision at 2.

²⁵ *N.M. Army & Air Nat'l Guard*, 56 FLRA 145, 149 (2000).

²⁶ *Ocean Energy*, 67 FLRA at 100 (premature to address arguments that could become moot after remand).

UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS
AUTHORITY
ATLANTA REGION

DEPARTMENT OF HOMELAND SECURITY
FEDERAL LAW ENFORCEMENT TRAINING
CENTER
GLYNCO, GEORGIA
(Agency)

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2002,
AFL-CIO
(Incumbent Union/Petitioner)

and

NATIONAL TREASURY EMPLOYEES UNION
(Interested Party)

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO
(Intervenor/Trustee)

AT-RP-16-0007

DECISION AND ORDER

I. Statement of the Case

The American Federation of Government Employees, Local 2002 (Petitioner or Local 2002) filed this Petition on December 22, 2015, seeking to amend the certification of representation held by Local 2002 to reflect a change in affiliation to the National Treasury Employees Union.

At the time that the Petition was filed, neither the Region, the Petitioner, nor the members was aware that the parent organization of Local 2002, the American Federation of Government Employees, AFL-CIO (AFGE) had imposed trusteeship on the Local on December 18, 2015. The Region became aware of the trusteeship on January 6, 2016, after the Petition was filed, when the employing agency--the Department of Homeland Security, Federal Law Enforcement Training Center, Glynco, Georgia (the Agency) informed it during preparation for the opening letter for distribution to the

parties. In the meanwhile, Local 2002 officers were locked out of the Union office in Glynco, Georgia. As a result, on January 21, 2016, the Petitioner filed a complaint with the Department of Labor's Office of Labor Management Standards contending that its parent organization established a trusteeship on Local 2002 for the improper purpose of preventing Local 2002 from disaffiliating from AFGE.

Petitioner contends, without contradiction, that it correctly followed the procedures for a change in affiliation vote and therefore, the amendment to the certification should be granted. An internal union hearing was held on February 3, 2016, and AFGE ratified the trusteeship on February 10, 2016.

The Region conducted a conference call on March 2, 2016, pursuant to section 2422.13(b) of the Authority's regulations. The Agency opted not to participate in the conference call and the parties agreed that it was not necessary for the Agency to be on the call due to the circumstances surrounding the trusteeship. On the conference call, all parties agreed that the trusteeship was imposed prior to the petition being filed.¹ As a result, the Region placed the Petition in abeyance pending the determination of the Department of Labor, Office of Labor-Management Standards' investigation (Case #4106006815-09) concerning the validity of AFGE's trusteeship of Local 2002.²

Almost one year after the Petition was filed, on November 28, 2016, the Department of Labor completed its investigation and issued a Complaint alleging that parent organization AFGE established the trusteeship on Local 2002 for an improper purpose -- to prevent the Local from disaffiliating from AFGE. In its Complaint, the Department of Labor prayed for an Order for an Administrative Law Judge to direct AFGE to set aside the trusteeship and restore the local autonomy. On January 13, 2017, the Department of Labor entered into an agreement with AFGE, whereby the Department of

¹ If the trusteeship had not been imposed until after the Petition was filed, processing of the Petition would not have been affected. *New Mexico Army and Air Nat'l Guard*, 56 FLRA 145 (2000).

² Although in certain circumstances it is proper for a Regional Director to presume the validity of a trusteeship, that was not the case here. There was no evidence to suggest any purpose for this trusteeship other than to prevent the Local 2002 from disaffiliating from AFGE. Indeed, the sole basis for the trusteeship set forth in AFGE's document imposing the Trusteeship dated December 18, 2015, was "secession," citing the notice of the impending affiliation vote. In such circumstances, a Regional Director must place a petition in abeyance pending a final decision by the Assistant Secretary of Labor, who has initial jurisdiction to determine the validity of a trusteeship. *U.S. Envtl. Prot. Agency, Wash., D.C.*, 52 FLRA 772, 780-81 (1996).

Labor advised that it is its “position that the National imposed a trusteeship on Local 2002 for an improper purpose when it imposed the trusteeship for the sole purpose of preventing disaffiliation.” The Department of Labor went on to state that to resolve the matter the National has agreed to lift the trusteeship by restoring autonomy to Local 2002. By signature dated January 17, 2017, AFGE National President J. David Cox accepted the agreement. As a result, on January 18, 2017, the Department of Labor filed a “Joint Motion to Dismiss” the complaint dated November 28, 2016 and advised that it will be supervising an election in April of 2017 of new Local 2002 officers.

Thus, Local 2002 is no longer in trusteeship, it having been declared invalid. Accordingly, it is proper to take the Petition out of abeyance status and render a decision.

Based on the entire record, I find that the petition should be granted. My findings and conclusions follow.

II. Findings

On December 7, 2005, in Case No. AT-RP-05-0016, the Atlanta Regional Director amended the certification granted to Local 2002, and the bargaining unit is described as follows:

Included: All non-professional employees of the Federal Law Enforcement Training Center, U.S. Department of Homeland Security.

Excluded: Professional employees, management officials, supervisors, temporary employees, detailed non-FLETC employees, term employees, and employees as described in 5 U.S.C. § 7112(b)(2), (3), (4), (6) and (7).

On December 17, 2015, Local 2002 distributed notice by email of a special meeting to take place simultaneously at designated locations in each of the four work sites in Glynco, Georgia (5:00 PM EST); Charleston, South Carolina (5:00 PM EST); Artesia, New Mexico (3:00 PM MST); and Cheltenham, Maryland (5:00 PM EST) on December 22, 2015. This notice stated that the purpose of the meeting is to debate and determine whether Local 2002 should change its affiliation from AFGE to NTEU. The Notice stated that only dues-paying members in good standing will be given the opportunity to discuss and debate the merits of the change, and at the conclusion of the debate each location

will conduct a secret ballot election. The Notice also provided an example of how the ballot would read. Adequate advance notice was provided to the entire membership of the incumbent labor organization.

On December 22, 2015, the aforementioned meeting took place at the designated locations stated on the notice by way of conference call. This represented a time and place convenient to all members of Local 2002. Forty (40) dues-paying members were present. Adequate time for discussion of the proposed change in affiliation was provided, with all members given the opportunity to raise questions within the bounds of normal parliamentary procedures. Voting on the question was then taken by secret ballot, with the ballot clearly stating the change proposed and the choices inherent therein. Forty members voted, all in favor of changing affiliation from AFGE to NTEU.

The Petitioner followed the procedures designed to ensure that members had advance notice and an opportunity to participate in a discussion and vote; the ballot was clear as to the choice; and the secrecy of the ballots was maintained at all times.

The investigation also confirmed that the change in affiliation has not resulted in a dramatic change to Local 2002 as to raise a question concerning representation. In this regard, the autonomy of day-to-day operations has been restored to Local 2002 and employees continued to be governed by the existing collective bargaining agreement. In addition, the evidence reflects that the change in affiliation will not change the handling of labor relations issues or any other condition of employment.

III. Analysis and Conclusions

A. It is Appropriate to Process the Amendment of Certification Petition

Based on the results of the Department of Labor's Office of Labor-Management Standards investigation³ and in light of the agreement that the Department of Labor and AFGE, entered into on January 17, 2017,⁴ I agree with the Department of Labor's findings that AFGE imposed trusteeship on Local 2002 simply to prevent them from disaffiliating. As noted above, the document imposing the trusteeship on December 18, 2015, cites the affiliation vote as its sole basis, which is not a valid basis for imposing a trusteeship.

Accordingly, I conclude that the Petition should be taken out of abeyance and be processed.

B. It is Appropriate to Grant the Amendment of Certification Petition

To ensure that a change in affiliation conforms to the desires of the membership and that no question concerning representation exists, procedural requirements as set forth in *Veterans Admin. Hospital, Montrose N.Y.*, 4 A/SLMR 858 (1974) (*Montrose*) were specifically adopted by the Federal Labor Relations Authority in *Fla. Nat'l Guard, St. Augustine, Fla.*, 25 FLRA 728 (1987) and affirmed in subsequent cases. Specifically, *Montrose* requires that the following procedures be followed to ensure that an amendment of certification conforms to the desires of the membership and that no question concerning representation exists:

(1) a proposed change in affiliation should be the subject of a special meeting of the members of the incumbent labor organization, called for this purpose only, with adequate advance notice provided to the entire membership;

(2) the meeting should take place at a time and place convenient to all members;

³ The Department of Labor's Complaint issued on November 28, 2016 advised in paragraph 17 that its investigative findings revealed that the AFGE, AFL-CIO established a trusteeship on Local 2002 for an improper purpose when it established the trusteeship to prevent the local from disaffiliating from AFGE.

⁴ By letter, the Department of Labor advised "it is the Department's position that the National imposed a trusteeship on Local 2002 for an improper purpose when it imposed the trusteeship for the sole purpose of preventing disaffiliation." AFGE concurred, and, "to resolve the matter the National agreed to lift the trusteeship by restoring autonomy to Local 2002."

(3) adequate time for discussion of the proposed change should be provided, with all members given an opportunity to raise questions within the bounds of normal parliamentary procedure; and

(4) a vote by the members of the incumbent labor organization on the question should be taken by secret ballot, with the ballot clearly stating the change proposed and the choices inherent therein.

The Authority has consistently employed this process when a proposed amendment of an existing certification is based upon a change in affiliation. See, for example, *U.S. Dep't of Defense, Nat'l Guard Bureau New York, Nat'l Guard Division of Military and Naval Affairs, Latham, N.Y.*, 46 FLRA 1468 (1993); *Dep't of the Interior, Bureau of Indian Affairs, Navajo Area, Gallup, N.M.*, 34 FLRA 428 (1990).

Based on the evidence in this case, I conclude that AFGE Local 2002 followed the requisite procedures for effectuating a change in affiliation. Specifically, I conclude that the procedures followed by Local 2002 conformed to those outlined in *Montrose*. In this regard, the procedures used provided the members with the necessary advance notice of the December 22, 2015 special meeting, which was held at a convenient time and location. This meeting was called for the specific purpose of effectuating a change in affiliation, and at this meeting, the members had an opportunity to participate in the discussions concerning this matter. The members then voted by secret ballot and the ballots for each potential reaffiliation vote provided clear choices. I further find no question concerning continuity of representation. In this regard, the evidence reflects that the current collective bargaining agreement continues and will continue by its terms, and the day-to-day operations will remain unchanged.

IV. Order

I find that the change in affiliation from American Federation of Government Employees, Local 2002, AFL-CIO to National Treasury Employees Union has complied with the Authority's requirements and is therefore appropriate. Absent a party filing an application for review, I will issue an Amendment of Certification ordering that the bargaining unit for which the American Federation of Government Employees, Local 2002, AFL-CIO was certified as the bargaining representative on December 7, 2005, in Case No. AT--RP-05-0016, be amended to reflect the change in affiliation from the American Federation of Government Employees, Local 2002, AFL-CIO to the National Treasury Employees Union. The unit will be

described as follows:

Included: All non-professional employees of the Federal Law Enforcement Training Center, U.S. Department of Homeland Security.

Excluded: Professional employees, management officials, supervisors, temporary employees, detailed non-FLETC employees, term employees, and employees as described in 5 U.S.C. § 7112(b)(2), (3), (4), (6) and (7).

V. Right to Seek Review

Under section 7105(f) of the Statute and section 2422.31(a) of the Authority's Regulations, a party may file an application for review with the Authority within sixty days of this Decision. The application for review must be filed with the Authority by **March 28, 2017**, and addressed to the Chief, Office of Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 201, 1400 K Street, NW, Washington, DC 20424-0001. The parties are encouraged to file an application for review electronically through the Authority's website, www.flra.gov.⁵

Dated: January 27, 2017

Richard S. Jones
Regional Director
Federal Labor Relations Authority, Atlanta Region
South Tower, Suite 1950
225 Peachtree Street
Atlanta, Georgia 30303

⁵ To file an application for review electronically, go to the Authority's website at www.flra.gov, select **eFile** under the **Filing a Case** tab and follow the instructions.