

**OFFICE OF COMPLIANCE
LA 200, John Adams Building
110 Second Street, S.E.
Washington, D.C. 20540-1999**

<hr style="border-top: 1px solid black;"/>)	
INTERNATIONAL BROTHERHOOD OF)	
TEAMSTERS LOCAL UNION)	
NOS. 246 AND 639, AFL-CIO)	
)	
Petitioner,)	
)	
and)	Case No. 03-LM(AC)-01
)	Date: January 14, 2004
OFFICE OF THE SENATE SERGEANT AT ARMS,)	
)	
Employing Office.)	
<hr style="border-top: 1px solid black;"/>)	

**Before the Board of Directors: Susan S. Robfogel, Chair. Alan V. Friedman;
Roberta L. Holzwarth; Barbara Childs Wallace, Members.¹**

SUPPLEMENTAL DECISION AND ORDER²

I. INTRODUCTION

The Petitioner labor organization seeks to amend the December 19, 2002 collective bargaining agent certification³ for the Employing Office's Capitol Facilities Branch to substitute Teamsters Local 639 for Teamsters Local 246 as the certified exclusive bargaining representative. The Petitioner asserts that as a consequence of a membership merger election

¹Member Camens did not participate in the deciding of this case.

² The Board had previously overruled the Employing Office's objection to the Executive Director processing this representation case amendment to certification petition. *International Brotherhood of Teamsters Local Unions Nos. 246 and 639, AFL-CIO and Office of the Senate Sergeant at Arms*, Case No. 03-LM(AC)-01 (July 11, 2003).

³ Office of Compliance Case No. 02-LM-01.

Local 246 merged into Local 639 in January 2003.

II. PARTIES' POSITIONS

The Employing Office opposes the amendment to certification petition and asks that it be dismissed on several technical grounds. The Employing Office also asserts that the petition is fatally flawed because the election for Teamsters Local 246 to merge into Teamsters Local 639 failed to meet due process standards reflected in key Federal Labor Relations Authority precedents. The Employing Office noted, *inter alia*, that no bargaining unit member was eligible to vote in the merger election because none were members of Teamsters Local 246.

Petitioner submits that the merger election complied with guiding case law precedent, afforded due process, and provided full continuity of representation by the merged Local 639 retaining the same constitution, dues structure, and servicing union business agents that this bargaining unit previously enjoyed through Teamsters Local 246. Petitioner submits that because Teamsters Local 246 was under International trusteeship at the time of the merger election, the Local's membership would not lose their elective officers because there were none. Petitioner acknowledged, however, that no bargaining unit member, at that time, was eligible to vote in the merger election.. Finally, the Petitioner asked the Board, should it find the petition deficient, to sanction from among three prospective curative courses of action the Petitioner posited.⁴

III. DISCUSSION

The Federal Labor Relations Authority ("Authority"), in also applying Title V, U.S.C. Chapter 71 of the Federal Service Labor-Management Relations Statute, has well settled case law in the area of amendment to certification petitions involving labor organization affiliations or mergers. In either situation, two conditions must be met: due process and continuity of representation. These two conditions were first described by the Assistant Secretary of Labor for Labor Management Relations, under the Executive Order 11491 Program, 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*, 25 FLRA 728 (1987).⁵

⁴ The Board declines the Petitioner's invitation in view of its policy against issuing advisory opinions. *See § 2429.10 of the Office's Labor-Management Regulations.*

⁵ *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. Union mergers plainly do not fall within this category.

Montrose sets out specific procedures to ensure that union members have an adequate opportunity to vote on mergers or changes in affiliation. These due process standards encompass adequate advance notice, special and convenient meetings for fair discussion of the proposed change, and a secret ballot vote among the union bargaining unit members clearly stating the proposed change and the choices inherent therein.

Any change in affiliation may not affect the continuity of the union employees' representation and nor may it leave open questions concerning such representation. The Authority has identified elements to weigh, including: 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 1183*, 475 U.S. 192 (1986).

According to the Authority, any petitions that seek to amend a recognition or certification as a result of a reaffiliation or merger must follow the procedures established in *Montrose*. These procedures were designed to ensure that an amendment to 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 change in affiliation vote must be open to all union members in the affected unit but 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). 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). However, there must be union members in the unit and proof that the members were sent notice of the meeting. *See Union of Federal Employees*, 41 FLRA 562 at 574 (1991). Where there are no members of the union in the bargaining unit, *Montrose* does not permit the amendment of a certification because the *Montrose* requirements were designed to ensure that the sought amendment conforms to the desires of the bargaining unit's members. *See BLM*, 56 FLRA at 207.⁶

Based upon the foregoing, we conclude that the total lack of union membership in this

⁶ The Authority stated in this regard: "In the case of the professional unit, the undisputed evidence establishes that there were no members in the professional unit. Therefore, the *Montrose* requirements, including the requirement of a vote by the members, could not be met, nor could it be determined if the change in affiliation conformed to the desires of the professional unit. As these prerequisites could not be met, we deny the application for review on this issue.

bargaining unit precluded a merger election consistent with the *Montrose* requirements. We, therefore, must dismiss the instant petition because a *Montrose*-compliant merger election is a condition precedent to amending a certification of representative in these circumstances.⁷

IV. ORDER

The petition to amend the certification in Case No. 02-LM-01 is hereby dismissed.

IT IS SO ORDERED.

Issued, at Washington, D.C.: January 14, 2004

⁷ In view of our holding on this central issue it is unnecessary for us to adjudicate the Employing Office's technical and other substantive objections to amending the certification herein.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2004, I delivered a copy of this Supplemental Decision and Order of the Board of Directors to the following parties by the below identified means:

First-Class Mail Postage-Prepaid
& Facsimile Mail

Jean M. Manning, Brenda J. Pence, Robert L. Rogers, Esqs.
Office of Senate Chief Counsel for Employment
Senate Hart Building, Room 103
Washington, D.C. 20510-7130
Facsimile: (202) 228-2557

E. Lindsey Maxwell II, Esq.
Beins, Axelrod, Kraft, Gleason & Gibson, P.C.
1717 Massachusetts Avenue, N.W., Suite 704
Washington, D.C. 20036
Facsimile: (202)328-7030

Kisha L. Harley
Office of Compliance