

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON REGIONAL OFFICE**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION
BALTIMORE DISTRICT
(Agency)**

and

Case No. WA-RP-90054

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 2486, AFL-CIO
(Labor Organization/Petitioner)**

and

**NATIONAL TREASURY EMPLOYEES UNION
(Labor Organization)**

DECISION AND ORDER

The American Federation of Government Employees, Local 2486, AFL-CIO (AFGE) filed a petition under section 7111(b)(2) of the Federal Service Labor-Management Relations Statute (Statute) seeking to amend the designation of the exclusive representative from AFGE to the National Treasury Employees Union (NTEU) for a unit of employees of the Department of Health and Human Services, Food and Drug Administration, Baltimore District (FDA). Pursuant to the provisions of section 7105(e)(1) of the Statute, the Authority has delegated its powers in connection with this case to the undersigned Regional Director.

Pursuant to section 2422.30 of the Authority's Rules and Regulations, and based upon the parties' stipulations, ¹ I find and conclude as follows:

¹The parties submitted stipulations in lieu of a hearing. In reaching the disposition herein, the undersigned has considered only those facts contained in the stipulations and accompanying exhibits.

The current Labor-Management Contract between AFGE and the FDA has been in effect since August 27, 1993, and has a five year expiration date with an automatic renewal clause for successive one year periods thereafter, unless either party gives written notice to the other of its desire to renegotiate or to terminate the Contract. Since the expiration date of the contract in August, 1998, the Contract between the FDA and AFGE has been renewed automatically for one year.

The AFGE was certified on April 12, 1971, in case no. 22-2304(RO) as the exclusive representative of a bargaining unit of employees of the FDA. Due to a reorganization order signed by the Secretary of Health and Human Services on October 31, 1995, the Food and Drug Administration was established as an operating Division (OPDIV). The Contract states that AFGE is the exclusive representative for a unit of employees consisting of the following:

INCLUDED: All professional and nonprofessional wage board and general schedule employees of the Food and Drug Administration, Baltimore District.

EXCLUDED: All management officials, supervisors, guards and employees described in 5 U.S.C. 7112 (b),(2),(3),(4),(6) and (7).

At the time the amended Petition was filed, April 14, 1999, there were approximately 74 employees in the existing bargaining unit. The subject petition was filed to amend the certification to reflect a change in affiliation from AFGE to NTEU.

No objection has been raised by any party to the proposed amendment and no party has disputed the facts presented in this matter.

BACKGROUND

On December 28, 1998, a special notice was distributed by the Executive Board to all AFGE members informing them that on January 28, 1999, there will be a membership meeting concerning the possible reaffiliation with NTEU. The notice informed the members that the issue of the proposed reaffiliation would be discussed at the meeting, and that there would be a membership vote. Subsequently, on February 8, 1999, the Executive Board notified the members that the special meeting was rescheduled to February 10, 1999, due to inclement weather conditions on January 28, 1999. On February 10, 1999, the meeting of AFGE members was held at 12:00 p.m. at the FDA District Office conference room. Approximately twelve (12) members attended. A discussion of the reaffiliation took place and all questions were answered regarding the proposed change of affiliation.

Subsequently, the active membership of the AFGE were given ballots and voted on the issue of the merger of AFGE into NTEU. The ballots stated the following:

- _____ I vote in favor of disaffiliation from AFGE, and re-affiliation with NTEU
- _____ I vote against disaffiliate from AFGE.

The members all voted by secret ballot. The vote was tallied and the outcome revealed that eleven (11) voted in favor of the reaffiliation with NTEU and one (1) voted against it. After the election, the reaffiliation with NTEU did not change or affect: (1) the collective bargaining agreement; (2) the make-up, autonomy and authority of the Executive Committee; (3) the control over all matters of bargaining and representation for the Bargaining Unit; or (4) the recognition for the bargaining unit with the Agency.

Based on the foregoing, and the stipulation submitted by the parties in this case, I conclude that AFGE Local 2486 has complied with the requisite procedures to reaffiliate with NTEU.

The U.S. Supreme Court in NLRB v. Financial Institution Employees of America, Local 1182, 475 U.S. 192 (1986) (Financial Institution Employees), set forth two conditions which are necessary in order to change affiliation of an exclusive representative in the private sector: (1) due process, in that union members must have an adequate opportunity to vote on the change; and (2) evidence of substantial continuity between the union existing before and after the change in affiliation. The Authority subsequently found that the Supreme Court's decision in Financial Institution Employees applies to the Federal sector. See U.S. Department of the Interior, Bureau of Indian Affairs, Navajo Area, Gallop, New Mexico, 34 FLRA 428 (1990).

In examining the due process procedures necessary to amend the designation of an exclusive representative in an existing unit to reflect a change in affiliation, the Authority has consistently applied the procedures established in Veterans Administration Hospital, Montrose, New York, 4 A/SLMR 858 (1974) (Montrose), *petition for review denied*, 3 FLRC 259 (1975). See also, U.S. Department of the Army, Rock Island Arsenal, Rock Island, Illinois, 46 FLRA 76 (1992); Union of Federal Employees, 41 FLRA 562 (1991); and Florida National Guard, St. Augustine, Florida, 34 FLRA 223 (1990). The four procedural criteria established under Montrose are as follows:

- (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) 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 procedures; 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.

As to the first Montrose procedural criteria, I find that "adequate advance notice" was given to the membership. On two occasions, December 28, 1998 and January 28, 1999, AFGE notified the entire membership of the proposed affiliation with NTEU and the Special Membership Meeting on February 10, 1999. The notice stated that the meeting was being held to discuss questions the members might have regarding the proposed reaffiliation with NTEU. Accordingly, I conclude that the December and January notices to members satisfies the "adequate advance notice" required under Montrose.

With respect to the second element necessary to establish a change in affiliation, i.e., the time and place of the meeting, the evidence shows that the meeting was held at 12:00 PM on February 10, 1999, in the District Conference Room. Under these circumstances, absent any evidence that members were denied the opportunity to vote because they could not attend the meeting, I conclude that the meeting took place at a time and place convenient for the membership to attend. In so finding, I note that there was no contention that the notice of the meeting was not given sufficiently in advance or that it was improperly delivered, and there is no evidence that any employees were prevented from exercising their right to participate by the conduct of any party.

With respect to the two remaining elements necessary to establish a change in

affiliation, i.e., the discussion at the meeting and the ballot for voting, the evidence conclusively satisfies both elements. At the February 10, 1999, Special Membership Meeting, the members discussed and answered all questions regarding the details of the proposed NTEU affiliation. Examination of the ballot shows it clearly reflected that the vote involved a reaffiliation with NTEU. Moreover, the evidence shows that the conditions of the election safeguarded the voter's right to mark their ballots in secret.

Accordingly, I find that the procedures required under Montrose have been met.

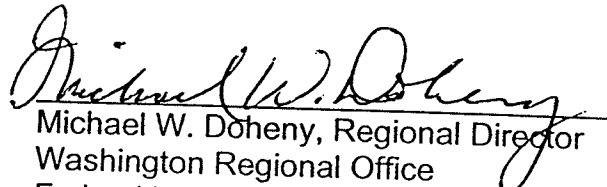
With respect to the second element determined by the Supreme Court in Financial Institution Employees to be necessary to establish a change in affiliation, i.e., substantial continuity, I also find that the facts and circumstances of this case illustrate adequate continuity between the local union existing before and after the merger vote. The parties stipulated that the affiliation will not affect or change the collective bargaining agreement; the make-up, autonomy, and authority of the Executive Committee; the exclusive control over all matters of bargaining and representation for the bargaining unit; or the exclusive recognition for the bargaining unit with the Agency. Consequently, I find that the evidence establishes that there was sufficient continuity of representation by the local union after the merger with NTEU pursuant to the election held on February 10, 1999.

Based on the foregoing, I find that the requirements for effectuating a change in the designation of the exclusive representative have been met. Accordingly, I find that the certification may be amended by changing the name of the exclusive representative from AGFE to NTEU.

Having found the certification may be amended, as requested, and the parties

having waived their right to file an application for review of the Decision and Order, and pursuant to section 2422.31 of the Regulations, IT IS HEREBY ORDERED that the certification granted to AFGE Local 2486 on April 12, 1971, in case no. 22-2304(RO) may be amended to change the name of the exclusive representative from AFGE Local 2486 to NTEU as set forth in the attached Amendment of Certification.

Dated at Washington, D.C., this 2nd day of July 1999.


Michael W. Doheny, Regional Director
Washington Regional Office
Federal Labor Relations Authority
Tech World Plaza North
800 K Street, NW, Suite 910
Washington, D.C. 20001

SERVICE SHEET

I certify that I have served the parties listed below a copy of the Decision and Order via U.S. Postage prepaid in *Food and Drug Administration*, Case No. WA-RP-90054:

Bill Nealon
Food and Drug Administration
U. S. Customhouse
2nd and Chestnut Streets, Room 900
Philadelphia, PA 19106
P 168 061 340

Elvis Morton
AFGE Local 2486
900 Madison Ave.
Baltimore, MD. 21201
P 168 061 341

Jeff Friday
NTEU
901 E Street, NW, Suite 100
Washington, DC 20004
P 168 061 342

REGULAR MAIL

Nancy A. Speight
Director of Program Development
Office of the General Counsel
Federal Labor Relations Authority
607 14th Street, NW., Suite 210
Washington, DC 20424-0001

DATED THIS 2nd day of July, 1999, at the Washington Regional Office, 800 K Street, N.W., Suite 910, Washington, D.C. 20001

A. Walker



UNITED STATES OF AMERICA
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DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION
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AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2486, AFL-CIO
(Petitioner/Labor Organization)

AND

NATIONAL TREASURY EMPLOYEES UNION
(labor Organization)

AMENDMENT OF CERTIFICATION

Pursuant to Section 2422.1 of the Regulations of the Federal Labor Relations Authority, a petition was filed seeking to amend the certification granted to the American Federation of Government Employees, Local 2486, AFL-CIO (AFGE), in Case No. 22-2304(RO), as the exclusive representative of certain employees of the Department of Health and Human Services, Food and Drug Administration, Baltimore District, by changing the designation of the exclusive representative for the existing bargaining unit, from AFGE to the National Treasury Employees Union(NTEU).

On July 2, 1999, I issued a Decision and Order finding that the certification may be amended as requested.

The parties waived their right to file an Application for Review. Pursuant to the authority vested in me as Regional Director,

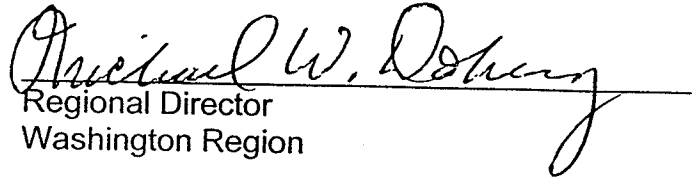
I ORDER that certification granted to AFGE, on April 12, 1971, in Case No. 22-2304 (RO), as the exclusive representative of the following unit of employees:

All professional and nonprofessional wage board and general schedule employees of the Food and Drug Administration, Baltimore District; but excluding all management officials, supervisors, guards, and employees described in 5

U.S.C. 7112 (b), (2),(3),(4),(6) and (7).

is amended by changing the exclusive representative from AFGE to the National Treasury Employees Union.

FEDERAL LABOR RELATIONS AUTHORITY


Regional Director
Washington Region

Dated: July 2, 1999

SERVICE SHEET

I certify that I have served the parties listed below a copy of the Amendment of Certification via U.S. Postage prepaid in *Food and Drug Administration*, Case No. WA-RP-90054:

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Nancy A. Speight
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DATED THIS 2nd day of July, 1999, at the Washington Regional Office, 800 K Street, N.W., Suite 910, Washington, D.C. 20001

A. Walker