

UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
SAN FRANCISCO REGION

U.S. DEPARTMENT OF VETERANS AFFAIRS
Agency

-and-

NATIONAL NURSES UNITED, AFL-CIO
Petitioner/Labor Organization

-and-

UNITED AMERICAN NURSES, AFL-CIO
Exclusive Representative

-and-

JUDIANN CHARTIER, ESQ.
Interested Party

CASE NO. WA-RP-10-0039

DECISION AND ORDER GRANTING PETITION
SEEKING AMENDMENT OF CERTIFICATION

A petition was filed on March 19, 2010 with the Federal Labor Relations Authority (Authority) under section 7111(b) of the Federal Service Labor-Management Relations Statute (Statute). On March 23, 2010, the petition was transferred to the San Francisco Region for processing. Section 7105(e)(1) of the Statute provides that the Authority may delegate to any Regional Director certain authorities and in section 2422.30(c) the Authority delegated me the authority to conduct investigations and hearings in representation matters and issue Decisions and Orders. Based upon my investigation and pursuant to section 2422.30 of the Authority's Rules and Regulations, I hereby find and conclude as follows:

STATEMENT OF THE CASE

National Nurses United, AFL-CIO (NNU) filed the petition in this case. NNU requests that a certification held by United American Nurses, AFL-CIO (UAN) for a unit of nurses of the U.S. Department of Veterans Affairs (VA) be amended to reflect a change in the affiliation of the exclusive representative *from* UAN *to* NNU.

Interested Party Added - Abeyance Request Denied

Beginning on May 14, 2010, Judiann Chartier, Esq., requested that NNU's petition be held in abeyance because of a pending lawsuit by her clients, the Illinois Nurses Association (INA) and four former officers of UAN. See *Converso, et al., v. UAN*, No. 1:09-cv-07336 (N.D. Ill. Dec. 3, 2009) (Order denying request for temporary restraining order). But, Chartier's letter acknowledged that "UAN seems to have complied with the requirements for a valid *Montrose* election." p. 3, n. 4

On June 28, 2010, Chartier submitted another letter. She explained that in the fall of 2010, the Court may rule on UAN's motion for summary judgment. In Chartier's letter, she again requested that this petition be held in abeyance until the lawsuit is resolved. She stated that "if the FLRA processes the instant petition, Plaintiffs recognize that the Court cannot undo the administrative proceeding." Chartier also requested that INA and the former UAN officers, who are parties to the lawsuit, all be considered interested parties in this case.

On July 8, 2010, I denied Chartier's request to hold the petition in abeyance, but I granted her interested party status on behalf of her clients over the objection of NNU. Section 2422.6 of the Regulations states that I will notify any party affected by the issues raised in the petition, and section 2421.21 makes it clear that when considering those who might be affected by the issues, that "should be construed broadly." See also *U.S. Dep't of the Interior, Bureau of Rec., Pacific N.W. Region, Grand Coulee Power Office, Wash. and Hungry Horse Field Office, Mont.*, 62 FLRA 522, n. 2 (2008) (Interested party status may be granted).

The VA Agrees With Purpose of NNU's Petition

By letter dated August 5, 2010, the VA stated it agrees with the objective of NNU's petition, to change affiliation from UAN to NNU, "so long as there has been a proper following of the procedures for accomplishing a change in affiliation (i.e. *Montrose* procedures), the Department has no objection." The letter from the VA further states:

As of the present date, the VA believes that the proposed change from UAN to NNU has not affected the continuity of representation or caused any question concerning representation. . . Additionally, based upon recent national labor management functions between the VA and UAN, the VA has been working directly with current UAN national representatives, including National President Alice Staggs and National Vice President Irma Westmoreland. As such, the Department should be able to seamlessly transition its labor management responsibilities based on our understanding of the UAN bargaining units and the designated national representatives.

FINDINGS

VA Certification at Issue, National VA Council Unit of Nurses

The investigation shows that a number of state nurses associations had affiliated with UAN, including INA. UAN holds only one certification in its own name* however, the VA nurse unit at issue here. This unit includes approximately 8,725 bargaining unit employees, and is referred to as a National VA Council (NVAC) unit.

The NVAC unit was established as a consolidated unit of nurses for 20 separate VA facilities on November 16, 2001, in Case No. WA-RP-01-0066. The unit was updated and now includes nurses at 22 facilities in 12 states. [Case No. CH-RP-03-0047, 2/4/2004; CH-RP-06-0029, 7/31/2006]. UAN and the VA have a master contract for the NVAC unit, which was effective on March 11, 2005. The contract has an automatic renewal provision and remains in effect.

NNU Formed in 2009

In early 2009, certain state nursing associations affiliated with UAN began discussing plans to form a national nurses union. Officials of the UAN's NVAC bargaining unit were among those who participated in these discussions, including NVAC President Alice Staggs. During this period, UAN and NVAC officials, and UAN business representatives, visited many VA facilities to inform dues-paying members about the discussions to form NNU. For example, on March 23-24, 2009, Ann Converso, then UAN President, and Hector Ramos, a UAN Business Representative, were available in a conference room at the Augusta VA to answer questions from the nurses. Ramos, who had been a UAN representative, is now an NNU representative, and continues to service the NVAC unit.

The NNU formation discussions culminated in a secret-ballot vote conducted by the American Arbitration Association (AAA) in November 2009. UAN had 63 delegates, and 10 were from the VA nurse bargaining unit. AAA mailed ballot packages to all 63 delegates, and certified that a majority of the 62 delegates who returned ballots supported the formation of NNU.

Following this, Chartier filed the lawsuit alleging that UAN had been improperly dissolved and merged into NNU. She requested a temporary restraining order, in part to prevent the NNU founding convention from taking place. But, the Judge refused to grant the requested relief, and the NNU founding convention took place on

* At one time, UAN was associated with the American Nurses Association (ANA). ANA was notified of this petition. On May 12, 2010, the General Counsel of ANA provided a letter to this office explaining that ANA "does not have a claim for representational status with respect to the consolidated bargaining unit recognized in WA-RP-01-0066."

December 8, 2009. Staggs, Vice-President Westmoreland, and other VA nurses were among the attendees.

Montrose Process

The investigation disclosed that UAN had 2,403 dues-paying members in the NVAC unit. I find that the process used to change the affiliation of the unit from UAN to NNU met the minimum standards required. Because the bargaining unit is geographically dispersed, a combination of mailings and meetings were used to inform the members about the process, and the vote was by mail ballot. The entire process is described below.

Two Mailings Sent to All Members

All members received two mailings before the ballot packages were sent out. The first mailing was sent before NNU's founding convention, and followed an October 2009 meeting between soon-to-be NNU officials and those of the UAN NVAC. This mailing was entitled "Q&A Regarding Legal and Governance Issues Raised by UAN NVAC" (Q&A 1). This is a 16-page document, which has 34 questions and answers.

The first question and answer explained that a "prerequisite to having the FLRA amend the national consolidated unit's certification to reflect NNU as its exclusive representative is a vote among the dues-paying members of the unit that confirms the membership's desire to continue as an organized bargaining unit under the banner of the National Nurses United." The answer to Question 1 also states that "UAN will, except for certain tasks necessary for an orderly wind-down, cease operations at the close of the NNU founding convention." Question 2, and the answer, were as follows:

If the NVAC membership votes against the merger, will we be left without representation? Would we be barred from seeking representation by our CMAs or any other union for a period of time?

The NVAC membership vote would *not* be a referendum on the merger itself. That referendum will occur at the November 2-3 Special NLA [National Labor Assembly]. The NVAC's membership vote, which would take place after the Special NLA if it ratifies the C & A Agreement [to form NNU] would be intended to provide the FLRA with confirmation of the membership's majority support for NNU as its collective bargaining representative.

If the membership votes not to confirm its majority support for NNU, the VA would have grounds to withdraw its recognition and abdicate the National Agreement, since the vote result would be an "objective" basis for a "good faith doubt" as to NNU's majority status. If the VA opts to

withdraw recognition based on the “no” vote of the VA membership, the members would be left without a union and without a national collective bargaining agreement. Although the VA’s withdrawal of recognition could be litigated in an unfair labor practice proceeding, the results of the vote would be a substantial impediment to NNU’s ability to defend its majority status and enforce the contract.

Additionally, although the C & A [Consolidation and Affiliation] Agreement provides for an autonomic transfer of bargaining rights to NNU, a “no” vote by the VA membership could result in NNU deciding to disclaim interest in representing the VA unit (because the unit had said, through the vote, that it did not want to be represented by NNU). If this occurs, the members will be left unrepresented and without a national contract.

Question and answer 13 explained that the organizational structure of the NVAC unit would not change as a result of changing affiliation to NNU. Question 26 asked how NVAC will receive representational assistance, including “Will the same consultants be available to the local units?” The answer provided, “we do not anticipate any change in the way that the local VA units are serviced.”

Second Mailing

The second letter to all members was just before the ballot packages were mailed. It was from the three co-presidents of NNU and sent on January 20, 2010. This letter explained how NNU was formed, a so-called consolidation of state nurses associations, and added, “we plan on asking the FLRA to amend UAN’s bargaining certification to reflect NNU as your union.” The letter then explained the consequences of the vote:

Without a certification from the FLRA that names NNU as your representative, the VA could use the consolidation as a reason to challenge the union’s continued representation of you and withdraw from the National Master Contract and the local supplements. We must not let that happen!

By voting “yes” you will:

- Protect your right to continued representation in collective bargaining
- Protect your National Master Contract, your local supplemental contracts and all of your contractual guarantees; and
- Ensure the ongoing, seamless administration of those contracts in order to protect your workplace rights

By voting "no" you could:

- Lose all contractual protections you currently enjoy
- Lose your right to be represented by a powerful national RN union, NNU in collective bargaining
- Forfeit the right to be part of the AFL-CIO and a strong national labor movement.

Special Meetings Held

Beginning in January 2010, special meetings were held at all but one of the 22 VA facilities. Due to bad weather, no meeting was held at the Jesse Brown VA Medical Center in Chicago. The meetings started on January 19, 2010 at the Manhattan VA, and the last one was at the North Chicago VA on February 5, 2010. The purpose of the meetings was to provide VA nurses an opportunity to have their questions about affiliation with NNU answered. The union was allowed to use the VA's email system to notify members of the meetings, and flyers about the meetings were posted on union bulletin boards in advance. For example, the flyer for the meeting at the Manhattan VA states:

ATTENTION ALL NURSES

Last month, our national union, the United American Nurses, participated in the founding of the first nation-wide nurses union that brings together more than 150,000 RNs from across the country. Our new organization, National Nurses United, not only means a more powerful voice for RNs, but new and exciting opportunities for us as VA nurses.

Come to meet with national leaders and staff representatives and find out more about what this means for VA nurses!

Date: January 19th, 2009
Time: 2:30 p.m. – 5:00 p.m.
Place: First Floor Auditorium

The only differences between this flyer and the ones for subsequent meetings are the dates, times, and places for each meeting.

The Assistant to the Executive Director of NNU, formerly the Executive Director of UAN, provided summaries of the special meetings that were written by the UAN/NNU business representatives. These business representatives and local UAN officials attended the special meetings at each facility. NNU officials also attended some meetings.

One UAN/NNU business representative attended meetings at eight different VA facilities, and Ramos attended ten other sessions. Ramos' report indicates that the meetings lasted all day, or were held at times to cover all shift changes. One of the questions asked by many of the members was if Ramos would continue to service the NVAC bargaining unit as part of NNU like he had for UAN. Ramos confirmed that he would. The members were also told that the NVAC officers, including those at the local level, the National Contract, and the local supplements, would remain intact.

Members further wanted to know if there would be any changes to the dues as a result of affiliation with NNU. The members were told that the dues would not change because of affiliation with NNU. UAN had previously approved a dues increase that took effect on January 1, 2010, and no additional changes were planned by NNU.

Ballot Packages Mailed

The local presidents at each VA facility within the NVAC unit supplied a UAN staff member with the names and current mailing addresses for all dues-paying members. This information was forwarded to AAA, which mailed ballot packages on January 21, 2010 to all 2,403 UAN dues-paying members. AAA sent out 40 duplicate ballots at the request of members, who had not received them due to bad addresses. Because of this, the deadline for returning ballots was extended from February 16 to February 23, 2010. The business reply return envelopes had control numbers, but ballots were first placed inside unmarked secret ballot envelopes. The instructions to the voters explained that the secret ballot envelopes would be separated from the return envelopes and mixed with other secret ballot envelopes before the count.

A cover letter signed by NVAC President Staggs was included with the ballot, and stated:

Since 2001, we have enjoyed the benefits of being in a consolidated unit of VA nurses represented by United American Nurses (UAN) a national union which exclusively represents RN's.

....

The NVAC Executive Committee unanimously supports each of you individually voting "yes" to approving the transfer of our certificate of representation to NNU.

The ballot package also included additional materials, a one-page question and answer document (Q&A 2); and the 19-page NNU Constitution. Some highlights from Q&A 2 are:

- NNU will continue to administer the National Master Contract, all local supplements and all MOUs that the UAN has entered into with the VA.

- Your locally-elected leaders will remain in place until regularly-scheduled elections are held. Your local unit will have the same autonomy that it currently enjoys in dealing with local management, handling grievances and otherwise assisting in your representation. The national and local staff, in coordination with NVAC, will continue to provide assistance to you and help protect your rights under your contracts.
- Since the consolidation of UAN and the formation of NNU, NVAC has continued in the same form, with the same elected leadership, as when part of UAN. It performs the same functions as it did before the consolidation and its bylaws remain in place.
- The amount of dues you pay to your national union has not changed.

The question on the ballot was:

Do you support the transfer of UAN's national bargaining rights to National Nurses United (NNU)?

- Yes, I approve
- No, I disapprove

The tally issued by AAA reflects that 496 members voted yes, and 29 voted no.

ANALYSIS – MONTROSE PROCEDURES WERE SATISFIED

Authority Standard for Changes in Affiliation

A representation petition is required in order to validate the process used to change the affiliation of a bargaining unit. The procedures used to effectuate the change must meet certain standards of due process, to insure that such a change accurately reflects the desires of the membership and that no question concerning representation exists. At a minimum, the Authority requires: (1) the proposed change in representation 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, which clearly states the change proposed and the choices inherent therein. *Fla. Nat'l Guard, St. Augustine, Fla.*, 25 FLRA 728, 729 (1987) (*Florida National Guard*); *Veterans Admin. Hosp., Montrose, N.Y.*, A/SLMR No. 470 (1984) (*Montrose*). Where employees in a unit are geographically dispersed so that it is not feasible to hold a

meeting of all members, the failure to do so in such circumstance is not cause to invalidate a *Montrose* election. *Dep't of the Army, U.S. Army Corps of Eng'rs. L.A. Dist., L.A., Cal.*, 56 FLRA 973, 977 (2000)(*USACE LA*).

The proposed change must neither affect the continuity of unit employees' representation, nor leave open any question concerning such representation. *Montrose*. Factors showing sufficient continuity of representation include preservation of the authority to administer collective bargaining agreements and retention of officers. *Union of Fed. Employees*, 41 FLRA 562, 582 (1991) (*UFE*). In addition, a "change in affiliation affects the designation of the exclusive representative for an existing unit . . . and does not change the scope of the bargaining unit in any way." *Nat'l Ass'n of Gov't Employees/Serv. Employees Int'l Union, Local 5000, AFL-CIO*, 52 FLRA 1068, 1076 (1997) (*NAGE*); *Florida National Guard*. Here, UAN officials have confirmed they have no intention of altering the scope of the existing NVAC unit through this petition. They merely want to substitute UAN with NNU.

Procedural Due Process Was Satisfied

I conclude that the procedures used to change affiliation from UAN to NNU afforded the required minimum due process. The members received several mailings which described the change in affiliation. Despite the geographic scope of the NVAC bargaining unit, following the formation of NNU, a special meeting was held at nearly every VA facility. Thus, members who had questions about affiliation were afforded the opportunity to have them answered in person. There was adequate notice of each meeting, which took place at convenient times. During each meeting, the merits of the change in affiliation and consequences were discussed.

The Authority has stated that the inherent choices for a change of affiliation must be clear and accurate. *UFE* at 584; *USACE LA* at 977. In *UFE*, the Regional Director found, and the Authority agreed, that the inherent choices given to support a "yes" vote were all described positively, while those for a "no" vote (to retain the existing union) were described negatively. *Id.* at 575. This failed to meet the *Montrose* requirements. *Id.* at 584. Here, some of the materials sent to the members before the vote describe the inherent choices of voting for NNU positively, and remaining with UAN negatively. For example, the letter the NNU co-presidents sent to the members describes a "yes" vote favorably, using terms such as "protect" and "ensure," while a "no" vote uses the words "lose" and "forfeit." These statements follow from those contained in the October 2009 Q&A 1 that if a majority of the members vote no, it could give the VA a good faith doubt of majority status or cause NNU to disclaim interest. Nonetheless, describing the inherent choices in this manner does appear accurate, or at least within the range of possible outcomes. Further, substantial information was provided to members over the course of several months. The information received as part of the mail-ballot package clearly states that NNU would maintain all officers and agreements entered into by UAN, and the dues would not change. Considering the totality of the information provided to the voters, I do not find that they were unduly

influenced. Unlike *USACE LA*, where the members were not told what could happen if they remained with the existing union, here the members received such information and could evaluate it. *Id.* at 975.

The ballot question was clearly written, and voters understood what they were asked to decide. *USACE LA* at 977. There is no requirement that any specific number or percentage of members cast ballots in order for a vote on a change in affiliation to be effective. *U.S. Dep't of the Army, Rock Island Arsenal, Rock Island, Ill.*, 46 FLRA 76, 83 (1992). The interested party does not challenge the *Montrose* process.

Accordingly, based upon my investigation, I find that the members received substantial information describing the change in affiliation over a several month period. The members were provided adequate advance notice and attended special meetings that were exclusively for the purpose of discussing the change in affiliation. These special meetings were held at places and times convenient to nearly all members. Adequate time for discussion was provided at each meeting, and later, a secret mail-ballot procedure was used. The procedure used was appropriate for this geographically dispersed bargaining unit. The ballot clearly stated the affiliation question, and materials were provided to describe the inherent choices. An overwhelming majority of those who voted were in favor of affiliation with NNU. I conclude that the procedures used to establish and conduct the meetings, and the vote for the change in affiliation, met the required standards. *UFE; USACE LA*.

Continuity of Representation Was Maintained

Sufficient continuity of representation is preserved because there have been no changes to the NVAC officers, local officials, and business representatives. For example, Staggs is still the NVAC President, and Ramos is still a business representative servicing the NVAC unit. NNU has repeatedly stated its willingness to adhere to the UAN-VA collective bargaining agreement. The VA agrees that it can deal with NNU. Regardless of the change in affiliation, the VA has continued to deal with the same representatives, including President Staggs. No questions concerning representation are left open, and the scope of the bargaining unit is not affected by the change of representative to NNU. *UFE* at 582. Since the procedures used to conduct the vote for the change in affiliation met the required standards and there is the requisite continuity of representation, the petitioned for amendment should be granted. *Montrose; Florida National Guard*.

CONCLUSION

Accordingly, the parties are advised that, pursuant to section 2422.31 of the Authority's Rules and Regulations, absent a timely-filed application for review of this Decision and Order, or if one is filed and denied, or if the Authority does not grant review of my action within sixty (60) days after the filing of an application for review, the undersigned will amend the consolidated unit described in Case No. WA-RP-01-0066, as updated. The name of the exclusive representative will be changed *from* the United American Nurses, AFL-CIO *to* National Nurses United, AFL-CIO, and the reference to the American Nurses Association will be eliminated.

Pursuant to section 2422.31 of the Authority's Rules and Regulations, a party may file an application for review of this Decision and Order within sixty (60) days of the date of this Decision and Order. This sixty (60) day time limit may not be extended or waived. Copies of the application for review must be served on the undersigned and on all other parties. A statement of such service must be filed with the application for review.

The application for review must be a self-contained document enabling the Authority to rule on the basis of its contents without the necessity of recourse to the record. The Authority will grant review only upon one or more of the grounds set forth in section 2422.31(c) of the Rules and Regulations. Any application filed must contain a summary of all evidence or rulings relating to the issues raised together with page citations from the transcript, if applicable, and supporting arguments. An application may not raise any issue or allege any facts not timely presented to the Regional Director.

The application for review must be filed with the Chief, Case Intake and Publication, Office of Case Adjudication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001 by the close of business, October 15, 2010. In accordance with section 2429.25 of the Rules and Regulations, an original and four copies must be submitted. Pursuant to section 2422.31(3)(f) of the Regulations, neither filing nor granting an application for review shall stay any action ordered by the Regional Director unless specifically ordered by the Authority.

Pursuant to section 2429.21(b) of the Rules and Regulations, the date of filing shall be determined by the date of mailing indicated by the postmark date. If no postmark date is evident on the mailing, it shall be presumed to have been mailed five days prior to receipt. If the filing is deposited with a commercial delivery service that will provide a record showing the date the document was tendered to the delivery service, it shall be considered filed on the date when the matter served is deposited with the commercial delivery service.

Dated: August 16, 2010



Gerald M. Cole, Regional Director
Federal Labor Relations Authority
San Francisco Region

Attachment: Certificate of Service

CERTIFICATE OF SERVICE

In the Matter of

Case No. WA-RP-10-0039

U.S. DEPARTMENT OF VETERANS AFFAIRS
Agency
-and-
NATIONAL NURSES UNITED, AFL-CIO
Petitioner/Labor Organization
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UNITED AMERICAN NURSES, AFL-CIO
Exclusive Representative
-and-
JUDIANN CHARTIER, ESQ.
Interested Party

This certifies that on August 16, 2010, the foregoing **DECISION AND ORDER GRANTING PETITION SEEKING AMENDMENT OF CERTIFICATION** was served upon the interested parties in this action as follows:

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