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OFFICE OF THE ARCHITECT OF THE CAPITOL, Employing Office, and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 26, Petitioner.	)	Case No. 18-LM-02 (RP)

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

DECISION AND ORDER OF THE BOARD OF DIRECTORS AMENDING CERTIFICATIONS OF REPRESENTATIVE

This case is before the Board on a Petition to amend four Certifications of Representative ("Petition") filed by Council 26 of the American Federation of State, County and Municipal Employees, Council 26 ("Council 26" or "Petitioner"). For the reasons that follow, we grant the Petition.

I. Introduction and Background

The Petitioner is a labor organization and is the duly-certified exclusive representative of the employees of the Office of the Architect of the Capitol ("AOC" or "Employing Office") in the following units:

> 1. All laborers, custodians and other non-skilled employees employed by the Architect of the Capitol in the House, Senate, and Capitol Office Buildings, excluding Architect of the Capitol employees employed in the skilled trades shops, the Power Plant, the U.S. Capitol Grounds, Library of Congress, Supreme Court, Botanic Gardens, the Central Office, the Senate Restaurants, as well as management officials,

supervisors and employees described in 5 U.S.C. § [7112](b)(2), (3), (4), (6), and (7);[1]

2. All full-time and regular part-time employees (defined as scheduled to work 20 or more hours per week) of the United States Botanic Garden, the Office of the Architect of the Capitol, except management officials, supervisors, interns, temporary employees who are appointed for a period of 90 days or less, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7);[2]

3. All non-skilled employees (including Laborers and Coal Loaders/Laborers) employed by the Capitol Power Plant of the Office of the Architect of the Capitol, except all other employees, including any part-time or temporary employees; all professional employees; management officials; supervisors; and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7);[3] and

4. All wage grade (WG) and wage leader (WL) employees, materials handlers, and supply technicians employed by the Architect of the Capitol, Library Buildings and Grounds, except employees of the masonry branch and general schedule (GS) employees, except those included above, supervisors, management officials and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (5), (6) and (7), as applied by the Congressional Accountability Act.[4]

As reflected in the parties' collective bargaining agreement, as the exclusive bargaining representative, Council 26 has delegated to AFSCME Local 626 the authority to act for and negotiate agreements covering all employees in these bargaining units.

Council 26 seeks to amend the foregoing Certifications to substitute AFSCME District Council 20 ("Council 20") for Council 26 as the certified exclusive bargaining representative. Council 26 asserts that it has now merged with Council 20, and that the members of these bargaining units have voted in favor of changing their affiliation/certification to Council 20.[5]

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[1] *See* Certification of Representative, *AOC & Council 26,* Case No. 97-LM-1 (Aug. 11, 1997).

[2] *See* Certification of Representative, *AOC & Council 26,* Case No. 98-LM-1 (Nov. 30, 1998).

[3] *See* Certification of Representative, *AOC & Council 26,* Case No. 99-LM-3 (Oct. 14, 1999).

[4] *See* Certification of Representative, *AOC & Council 26,* Case No. 06-LM-02 (Oct. 16, 2006).

[5] Council 26's Petition initially stated that its purpose was "[t]o change the AFSCME Local 626 affiliation from AFSCME Council 26 to AFSCME District Council 20." On June 12, 2018, however, Council 26 amended its Petition to state that its purpose was "[t]o amend the collective bargaining agent certification to substitute AFSCME District Council 20 for AFSCME Council 26."

II. The Parties' Positions

The Petitioner submits that the merger election complied with guiding case law precedent, afforded due process, and provided full continuity of representation by Council 20, with the merged entity retaining the same constitution, dues structure, and servicing union representative that these bargaining units previously had under Council 26.

The Employing Office does not oppose the Petition, but it has asked the Board to determine whether the individual filing the Petition on behalf of Council 26 had authority to do so.

III. Discussion

When Congress enacted the Congressional Accountability Act in 1995, it expressly extended the rights, protections, and responsibilities contained in chapter 71 of the Federal Service Labor Management Relations Statute to employees of employing offices in the legislative branch. 2 U.S.C. § 1351(a)(1). In this regard, the Federal Labor Relations Authority has ruled that, to amend the certification of an exclusive representative in an existing unit to reflect a change in affiliation or a merger, the procedures set forth in *Veterans Administration Hospital, Montrose, New York,* 4 A/SLMR 858 (1974), *review denied,* 3 F.L.R.C. 259 (1975) ("*Montrose*") must be followed. *See Florida National Guard, St. Augustine, Florida,* 25 F.L.R.A. 728 (1987). These procedures were designed to ensure that an amendment of a certification of an exclusive representative in an existing unit conforms to the desires of the membership of that unit. *U.S. Dep't of the Interior, Bureau of Land Mgmt., Phoenix, Ariz.,* 56 F.L.R.A. 202 (2000).

The Board has likewise adopted the *Montrose* requirements. *See Int'l Bhd. Of Teamsters, Locals 246 et al. & U.S. Capitol Police Bd.,* Case No. 03-LM-02 (AC), 2004 WL 5658965, at *1 (Jan. 14, 2004) ("*Teamsters Local 246*"). Thus, to ensure that an amendment of certification conforms to the desires of a union's membership, four procedural criteria must be met:

> (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;
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> (2) the meeting should take place at a time and place convenient to all members;
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> (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 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 F.L.R.A. 428 (1990). There is no requirement that any specific number or percentage of members must cast ballots in order for an affiliation change to be effective. There must, however, be union members in the unit and proof that the members were sent notice of the meeting. *Union of Fed. Emps.,* 41 F.L.R.A. 562, 574 (1991).

Having reviewed the record in this case and the circumstances culminating in the instant Petition to amend these Certifications, we conclude that the requisite procedural requirements have been met. Specifically, the Petitioner has presented uncontroverted evidence establishing that Local 626, on behalf of Council 26, provided advance written notice to the union members in the bargaining units at issue that a meeting would be conducted at a meeting at the Union office on April 18, 2018, called for the sole purpose of discussing and voting on the merger of Council 26 with Council 20. A secret vote was conducted using ballots that clearly described the proposed change, and the Union made accommodations so that members on all shifts could deliberate and vote. The tally of that secret ballot vote established that the members who participated unanimously voted in favor of ratifying the merger and changing the certification. Based on the foregoing, we conclude that the procedural safeguards set forth in *Montrose* were satisfied.

The Board, in addition to considering the *Montrose* procedural requirements, must also be satisfied that any change in affiliation or merger does not affect continuity of representation. *Teamsters Local 246,* 2004 WL 5658965, at *1. Here, the collective bargaining agreement remains in effect and there is no indication that the merger resulted in changes to union members' dues obligations. These facts support a finding that the merger did not disrupt continuity of representation.

We note, however, that on January 23, 2018, the President of the AFSCME International Union notified the AOC that it had placed Local 626 under administratorship, i.e., trusteeship, in accordance with the provisions of the AFSCME Constitution. Nonetheless, we conclude that the trusteeship did not disrupt continuity of representation. A trusteeship must be presumed to be valid where, as here, there is no challenge to its validity before the Secretary of Labor and there are no other bases in the record to doubt its validity. *See generally, U.S. Environmental Protection Agency, Washington, D.C. and National Federation of Federal Employees, Local 2050,* 52 F.L.R.A. 772 (1996); *see also Teamsters Local 246,* 2004 WL 5658965, **1-2 (amending certification of a local union that was under trusteeship at the time of the merger vote).

We find no basis to doubt the validity of the trusteeship in this case. As stated above, Council 26 has delegated to Local 626 the authority to act for and negotiate agreements

covering all employees in these bargaining units. The trusteeship concerned Local 626, not Council 26, which remained the certified representative of the units at issue. Both before and after the trusteeship, a duly authorized representative of Council 26 served these bargaining units. Specifically, in its letter advising AOC of the trusteeship of Local 626, AFSCME advised AOC that the authority to represent AFSCME Local 626 rested with the AFSCME Administrator and Deputy Administrator and such representatives as they designated. AFSCME, through the Administrator, designated Seth Couslar, an agent who was elected by the membership to act as an agent for Council 26 and Council 20, to serve as the representative for federal sector locals affiliated with Council 26, including Local 626. It is undisputed that, both before and after the merger vote, Mr. Couslar attended and continues to attend Local 626 membership meetings, and he continues to represent unit employees in grievance proceedings. Accordingly, we conclude that Mr. Couslar's designation by ASFCME to act on behalf of the employees in the units at issue preserved continuity of representation.[6]

Based upon the foregoing, we find that the merger election and the subject Petition satisfies the *Montrose* and continuity of representation factors discussed above. Accordingly, we shall grant the Petition.

ORDER

The Petition to amend the Certifications in Case Nos. 97-LM-1, 98-LM-1, 99-LM-3 and 06-LM-02 is hereby granted. The Certifications of Representative are amended to substitute AFSCME District Council 20 for AFSCME Council 26.

It is so **ORDERED**.

Issued, Washington, DC, June 28, 2018.

[6] As an elected representative of Council 26, as well as Council 20, we also find that Mr. Couslar had the authority to file the instant Petition.