11000-11009 PREINVESTIGATION

11000-11007 FILING OF PETITION

11000 Agency Objective

The expeditious processing of petitions filed pursuant to the Act represents one of the most significant aspects of the Agency's operations. The processing and resolution of petitions raising questions concerning representation, i.e., RC, RM, and RD petitions, are to be accorded the highest priority.

11000.1 Suit That Seeks to Enjoin Processing of Petition

If the Regional Director is served with a copy of a complaint in a suit to enjoin a representation proceeding, the Assistant General Counsel for Special Litigation should be advised immediately, and the matter should be referred promptly to that branch and the Division of Operations Management. Sec. 11750.1.

11001 Prefiling Assistance

Prefiling assistance may be obtained by contacting a Regional Office. Information concerning the processing of representation petitions is also available on the Agency's Internet web site (www. nlrb.gov).

11001.1 Report on Inquiries

Board agents serving as Information Officers should keep a record of time spent in rendering prefiling assistance and answering inquiries of the public and other Government agencies, as well as sufficient salient facts, as appropriate.

11001.2 Determination Whether Situation Covered

When a Board agent is contacted by an individual seeking information about or assistance in filing a petition, the agent should make an initial determination regarding whether the matter raised is one covered by the Act.

11001.3 Situation Not Covered

If the situation clearly is not covered by the representation provisions of the Act, the Board agent should point out this fact and discourage the filing of a petition. The individual should be advised that he/she still has the right to file a petition if he/she so desires. If a petition is filed under these circumstances, it should be processed just as any other. In any event, a brief memo of the salient facts should be prepared for the Regional Office records. Sec. 11001.1.

11001.4 Situation Covered

If the situation is one that would appear to be covered by the representation provisions of the Act, the individual should be advised of the right to file a petition. General information as to Board policy and procedure with respect to the type of situation involved may be outlined; however, care should be taken to advise that any ultimate result may hinge on various considerations. The individual should be told that the Agency's representation processes are, in the normal case, invoked by the filing of a petition and, in the absence of a petition, no investigation into the matter will be made.

11001.5 Information as Contrasted With Advice

Requests for prefiling assistance may be honored only to the extent that they seek information, as contrasted with advice, concerning rights, obligations and general contents of the Act. Answers should be succinct, and should include all reservations that are necessary in a field as fluid as the area covered by the Act. (For example, at one point or another, some such statement as "We cannot, of course, give advice," "cannot give advisory opinions," or "cannot commit the General Counsel or the Board" may be called for.) Extended correspondence should be discouraged and, if advice is persistently sought, resort to private counsel should be suggested. Under no circumstances should specific counsel be recommended.

Regional personnel should not give advisory opinions as to the legality of given conduct or contract clauses.

11001.6 Assistance in Preparation

Assistance in the preparation of a petition may be rendered to the filing party, to the extent that such assistance involves the furnishing of forms, reasonable support staff assistance, and the wording of the petition itself.

11001.7 Assistance in Drafting Language of RD and UD Showings of Interest

Secs. 11020–11034 discuss showing of interest in general; Secs. 11022.2 and 11506.5 discuss showing of interest in RD and UD cases, respectively.

Individual employees may call or visit Regional Offices seeking information regarding the filing of RD and UD petitions and the showing of interest requirements for such petitions. Board agents may provide assistance to such individuals, if requested, concerning the appropriate language to be used on showing of interest signature petitions.

In connection with RD petitions, Board agents may provide the following wording:

> "We the undersigned employees of _____ (the employer) no longer wish to be represented for purposes of collective bargaining by _____ (the union)."

In connection with UD petitions, Board agents may provide the following wording:

> "We the undersigned employees of _____ (the employer) want to withdraw the authority of _____(the union) to require, in the

> contract between the employer and the union, that we be union members or make certain lawful payments to the union in order to keep our jobs."

Marquez v. Screen Actors Guild, 119 S.Ct. 292 (1998); *Communications Workers v. Beck*, 487 U.S. 735 (1988).

The Board agent should also advise these individuals that the employees' signatures should be dated (Sec. 11027.3), preferably next to each signature. These individuals should further be advised that it would be helpful to the Agency if signers would also print their full names next to their signatures.

NOTE: The language on a list of signatures to be used as the showing of interest in support of a RD petition may not ordinarily be used as a showing of interest in support of a UD petition, or vice versa.

11001.8 Assistance in Remedying Defects

If petitions (or amendments thereto) are received in the Regional Office that contain errors on their face, assistance may be rendered in remedying the defects. In such cases, docketing may be delayed pending a prompt communication with the filing party. If the filing party insists that the petition be docketed as is, these wishes should be honored. If the filing party cannot be reached by the end of the day the petition is received, the petition normally should be docketed that day.

11002 Types of Petitions; Who May File; Where to File

11002.1 Types of Petitions

11002.1(a) Representation

A representation case, initiated by the filing of a petition under Section 9(c) of the Act, takes the form of:

(1) a RC case, asserting the designation of the filing party as the bargaining agent by a substantial number of employees in the described bargaining unit

(2) a RM case, alleging that one or more claims for recognition as the exclusive bargaining agent have been received by the employer or that the continued majority status of the incumbent union is in question

(3) a RD case, asserting that the certified or currently recognized bargaining agent is no longer the representative as defined in Section 9(a).

11002.1(b) Union-Security Deauthorization

A UD case is initiated by the filing of a petition under Section 9(e) of the Act, alleging that the employees covered by a union-security clause existing under the proviso in Section 8(a)(3) desire that the authority to maintain such a clause be rescinded.

11002.1(c) Unit Clarification

A UC case is initiated by the filing of a petition under Section 9(b) of the Act, alleging that a labor organization is currently recognized by the employer, but the petitioner seeks clarification of the placement of certain employees in the unit.

11002.1(d) Amendment of Certification

An AC case is initiated by the filing of a petition under Section 9(b) of the Act, seeking amendment of a certification. Amendments of certifications are most frequently sought when there is a change in the name or affiliation of the employer or the certified labor organization.

11002.2 Who May File

(a) RC or RD petition: A RC or RD petition may be filed by an employee or a group of employees, an individual or a labor organization acting on their behalf, or by two or more labor organizations acting jointly. **EXCEPTION:** Neither a supervisor nor a confidential employee may file a RD petition. *Star Brush Mfg*., 100 NLRB 679 (1952); *Clyde J. Merris*, 77 NLRB 1375 (1948).

(b) RM petition: A RM petition may be filed only by an employer.

(c) UD petition: A UD petition may be filed by an employee or a group of employees in the bargaining unit covered by a collective-bargaining agreement.

(d) UC or AC petition: A UC or AC petition may be filed by the labor organization or employer involved.

NOTE: The petition should clearly indicate the party filing it, as opposed to the representative who signs it.

11002.3 Where to File

A petition is filed in person, by mail, or by facsimile transmission. It is normally filed with the Regional Office in the Region in which the bargaining unit exists. If the unit exists in two or more Regions, the petition may be filed in any of such Regions. For filing with the General Counsel, see Sec. 102.72, Rules and Regulations.

11003 Types of Petitions; What to File

Forms (NLRB-502) for the filing of petitions are furnished by the Regional Offices or may be obtained on the Agency's Internet web site (www.nlrb.gov). Reasonably similar versions of the forms are acceptable. The forms are self-explanatory with respect to the information called for. Sec. 102.61, Rules and Regulations. Inclusion of telephone and facsimile numbers, when they exist and are known, is particularly helpful and should be encouraged.

11003.1 Required Submissions

11003.1(a) RC and RD Petitions

In a RC or RD case, the petition should be accompanied by the petitioner's showing of interest or be supplied within 48 hours after filing. Alternatively, it must be supplied within such further time as the Regional Director may allow, but in no event later than the last day on which the petition may timely be filed. Sec. 101.17, Statements of Procedure. A showing of interest should be accompanied by an alphabetical list of names appearing on such interest.

NOTE: The showing of interest may not be submitted by facsimile transmission. Sec. 102.114(g), Rules and Regulations. Secs. 11024.1 and 11026.1.

If the showing of interest is not received with the petition, processing of the petition should nonetheless be initiated upon receipt of the petition. Thereafter, the petition should not be processed further unless the showing of interest has been timely received.

11003.1(b) RM Petition

In a RM case, the petition should be accompanied by proof of demand for recognition made by a labor organization upon the employer or the employer's evidence of objective considerations (*Levitz Furniture Co. of the Pacific, Inc.*, 333 NLRB 717 (2001); Sec. 11042). If the proof of demand and/or the evidence of objective considerations is not received with the petition, the employer has 48 hours within which to submit such proof/evidence. However, processing of the petition should nonetheless be initiated upon receipt of the petition. Thereafter, the petition should not be processed further unless the proof of demand and/or the evidence of objective considerations has been timely received.

11003.1(c) Petition Related to 8(b)(7)(C) Charge

When a petition is filed involving an employer which is also involved in a pending 8(b)(7)(C) charge, the petitioning individual, labor organization, or employer is not required to allege that a claim was made on the employer for recognition or that the labor organization involved represents a substantial number of employees. Depending upon the outcome of the investigation of the 8(b)(7)(C) charge, the situation may result in the direction of an expedited election.

11003.1(d) UC, AC, and UD Petitions

See Secs. 11490-11516 regarding submissions with UC, AC, and UD petitions.

11004 Assignment of Case

After a petition has been docketed, it is assigned for investigation to a Board agent. Assignments should be made with the view that petitions, especially those raising questions concerning representation, will be processed as quickly and as efficiently as possible. The following factors should be considered in the assignment of cases.

(a) complexity of the case, relative to the respective skills of Board agents

(b) availability of Board agents

(c) respective workloads of Board agents

(d) location of the unit involved relative to cases presently assigned to respective Board agents

(e) familiarity with the case (e.g., because the Board agent received the petition initially or because the agent has handled prior cases involving the same employer)

Every effort should be made to assign a case so that the Board agent to whom the case will ultimately be assigned can begin the investigation immediately.

11006 Communicating With Parties and Their Representatives

Except where a party has designated an agent for exclusive service (Sec. 11008.7), the following instructions should be followed.

After a copy of the petition together with the initial communication has been served on the parties and an attorney or other representative has entered an appearance on behalf of a party, copies of all further documents served, with the exception of subpoenas, will be served on the attorney or representative of record in addition to the party. Sec. 102.111, Rules and Regulations. If a party is represented by more than one attorney or representative, service on any one of such persons in addition to the party satisfies the requirements of Sec. 102.111 of the Rules and Regulations, but, as a matter of courtesy, an effort should be made to serve all counsel or representatives who have entered an appearance on behalf of the party. Sec. 11840.

Copies should not be marked "courtesy" or otherwise distinguished from the original except as copies. Note particularly that copies of the following documents and communications should be sent to the party and to the attorney or representative of record:

(a) notices and orders issued in connection with unfair labor practice hearings, representation case hearings, and 10(k) hearings

(b) Regional Director's decisions, reports, and supplemental decisions

(c) dismissal letters

(d) letters approving withdrawal requests

(e) election agreements

(f) representation case certifications.

Where arrangements for an election have been agreed upon by the parties with participation by counsel or representative, notices of election should be sent directly to the parties, with copies to counsel or representative. By the same token, the letter requesting the *Excelsior* list of eligible voters which accompanies a copy of the approved consent or stipulated election agreement may be sent to the employer, with a copy to counsel or representative. Sec. 11312. The *Excelsior* list of eligible voters supplied by

the employer should be sent by the Regional Office directly to the petitioning and intervening parties involved. In addition, copies of correspondence that confirms some previously agreed-upon arrangement or appointment may be sent to the parties involved.

All other communications, both oral and written, should be with or through only the attorney or representative of record. However, whenever an attorney, representative, or party requests that copies of all written communications be sent to the party or has authorized that a party or person be contacted directly, such requests and/or authorizations should be honored.

11007 Case Filing Docket

All Regional, Subregional and Resident Offices will maintain and make readily available either a daily case filing docket Form NLRB-4706 or files containing copies of all petitions for inspection by members of the public. Copies of petitions should be maintained for the current and the immediately preceding calendar years.

11008-11009 INITIAL COMMUNICATIONS

11008 Initial Communications With All Parties

Upon the docketing of a petition, an acknowledgment of the filing is immediately sent to the petitioner. Notification of the filing, along with a copy of the petition, is also immediately sent to the employer and other interested parties. Parties are given the name and telephone number of the Board agent to whom the case has been assigned, along with an invitation to communicate with that individual if the party has any questions. These initial notifications are sent to the parties by facsimile transmission, whenever possible, in addition to being sent by regular mail.

Initial communications should include information about the joint conference and hearing being scheduled in the case and may also include the notice of hearing, notice of intent to issue notice of hearing, etc. The fact that the Regional Director intends to conduct the hearing, without postponement, on consecutive days until completed, should also be included. Secs. 11009.2(g), 11082.3, 11012, 11143, 11207, and 11207.1. However, it should be emphasized that it is the Agency's policy to make every effort to secure an election agreement and to avoid the delay and expense of a hearing. Sec. 11012.

11008.1 Interested Parties

Interested parties for the purposes of this Section consist of the employer involved and labor organizations and individuals who claim or are believed to claim to represent any employees within the unit claimed to be appropriate and/or whose contractual interests would be affected by the disposition of the case. They include:

(a) the petitioner

(b) the employer, if other than the petitioner

(c) any other employer which might be a joint employer (for example, a contractor, an employment service, or a supplier of leased or temporary employees) or the operator of a leased department in a case involving a retail store where there are leased departments

(d) any individual or labor organization named in the petition as having an interest in or as being party to a currently existing or recently expired collective-bargaining agreement covering any of the employees involved

(e) any labor organization that has notified the Regional Office by letter within the past 6 months that it represents any employees of the employer involved or is presently actively campaigning among employees of the employer

(f) any labor organization whose name appears as an interested party in any prior case involving the same employees that has closed within 2 years

(g) any individual or labor organization which is a party to a currently existing or recently expired collective-bargaining agreement covering other employees of the employer in other related units, when such information is made known to the Region.

If the interest of a party is not apparent at the outset, as soon as the party's interest becomes apparent, that party should be notified of the proceeding and its current status. If a labor organization, it should also be advised to submit its showing of interest within 48 hours. Sec. 11024.2. For purposes of initial communication, it is preferable to err on the side of considering a party to be interested rather than on the side of ignoring it. Blanket requests for notice of "all" petitions filed should not be honored.

11008.2 Petitioner; Submission of Showing of Interest

A petitioner should submit a showing of interest with its petition. Sec. 11003.1.

11008.3 Employer; Information Requested

A description of the information necessary for processing the case that is requested exclusively from the employer is set forth in Sec. 11009.

11008.4 All Parties; Information Requested

All parties should be requested to submit to the Board agent copies of any presently existing or recently expired collective-bargaining agreements covering any of the employees involved in the petition, as well as any correspondence bearing on the representation question. They should also be requested to notify the Board agent at once of any other interested parties who should be apprised of the proceedings. Sec. 11008.1. The parties should be advised that failure to disclose the existence of an interested party may affect the processing of the petition to a final conclusion. Sec. 11026.2(b). In appropriate situations, information concerning striking employees and their eligibility to vote under Section 9(c)(3) should also be obtained from the employer and all other parties having the necessary information. Secs. 11023.1, 11025.1, and 11314.4.

11008.5 Provision of Notice of Employees' Voting Rights

Form NLRB-5492 Notice to Employees should be sent to the employer with the initial communication and upon request should also be made available to the labor organization(s) involved. The leaflet "Your Government Conducts an Election for You on the Job" (Spanish edition available) contains significant "Rights of Employees," and should also be enclosed. Parties may reproduce the notice and the leaflet, provided they are not modified in any way.

11008.6 Right to Counsel; Notice of Appearance

The initial letters to the parties should be accompanied by Forms NLRB-4812 and NLRB-4701. Form NLRB-4812 advises participants of the right to be represented by counsel and summarizes the Board's procedures with respect to the petition. Form NLRB-4701, Notice of Appearance, is for the convenience of parties to notify the Agency of the name and address of counsel or other representative on their behalf. The form may be used at any stage of the case.

11008.7 Designation of Representative as Agent for Service of Documents

A party may designate the representative who has entered an appearance on its behalf in a Board proceeding as its agent for the exclusive service of all documents, with certain limited exceptions. Sec. 11006. Form NLRB-4813, the notice that the party must file to make the designation, should also be enclosed with the initial communication to the party. The notice must be signed by the party. When the form is filed, its terms will control the service thereafter. Only decisions directing an election, notice of an election, when so directed, and subpoenas will be served on the party. Copies of such documents served on the party subsequent to the initial petition, subpoenas excepted, will also be served on the representative. All other documents and written communications will be served only on the representative designated as agent. When forms are not filed, service will continue to be made in accordance with Sec. 11006. The designation, once filed, will remain valid until a revocation in writing is filed with the Regional Director. The designation, as well as any subsequent revocation, should be treated as part of the formal file in the same manner as Form NLRB-4701, Notice of Appearance. If the case is no longer under Regional Office control when such a designation or revocation is filed, the Regional Office should immediately notify the division or office in Washington in which the case is pending.

11009 Initial Letter to Employer

Upon the filing of a petition, the Regional Office should send a copy thereof to the employer with a letter. As an initial communication, this letter should be sent by facsimile transmission, if a facsimile number can be obtained.

11009.1 Information Requested

The letter should request the following from the employer:

(a) counsel or representative, if any (Secs. 11008.6 and 11008.7)

(b) a completed commerce questionnaire (enclosed)

(c) copies of correspondence and existing or recently expired collective-bargaining agreements, if any (Sec. 11008.4)

(d) a list, containing the alphabetized full names of the employees encompassed by the petition, together with their job classifications for the payroll period immediately preceding the filing date of the petition. Sec. 11025 discusses the preparation of the payroll list.

(e) the employer's position as to the appropriateness of the unit described in the petition.

11009.2 Information Proffered

The letter should advise the employer of the following:

(a) If the employer requests that a check be made of the showing of interest which has been submitted by the petitioner in support of its petition, the employer should submit a payroll list (Sec. 11009.1(d)). In view of the need to complete the check of the petitioner's showing at an early point in the processing of the case, the list should be submitted promptly. If no list is submitted, the number of employees estimated by the petitioner as comprising the alleged appropriate bargaining unit will be assumed to be accurate, and those designating the union as their bargaining agent will be assumed to be among those employed in the unit. Sec. 11030.2. A late-filed list will be considered untimely and no check of the showing of interest will be conducted against such a list, absent unusual circumstances. Sec. 11020.

(b) The payroll list (Sec. 11009.1(d)) will also be used to resolve possible eligibility and unit issues.

(c) In the event an election is agreed to or directed, the Agency requires that a list of full names and addresses of all the eligible voters be filed by the employer with the Regional Director, who will in turn make it available to all parties to the case. The list must be furnished to the Regional Director within 7 days of the direction of, or approval of an agreement to, an election, and the employer is being advised early of this requirement so that there will be ample time to prepare for the eventuality that such a list may become necessary. (This list is in addition to the payroll list of employees in the proposed unit requested above. Sec. 11009.1(d).)

(d) It has been the Agency's experience that, by the time a petition such as this has been filed, employees may have questions about what is going on and what may happen. While at this point in the handling of the case it is unknown what disposition will be made of the petition, experience demonstrates that an explanation of rights, responsibilities, and Board procedures can be helpful to employees. The Agency believes that employees should have readily available information about their rights and the proper conduct of employee representation elections and that at the same time employers and unions should be apprised of their responsibilities to refrain from conduct that could impede employees' freedom of choice. Accordingly, the Agency requests that the employer post the enclosed Notice to Employees Form NLRB-5492 (Sec. 11008.5) in conspicuous places in areas where the employees described in the enclosed petition work.

(e) If an election should be agreed to or directed, the employer will be required to post an official notice of election for 3 full working days prior to the date of the election. Sec. 103.20, Rules and Regulations.

(f) The name and telephone number of the Board agent to whom the case has been assigned along with an invitation to communicate with that individual if the employer has any questions.

(g) Information as to a conference and the hearing being scheduled in the case, and the Regional Director's intention to conduct the hearing, without postponement, on consecutive days until completed. Secs. 11008, 11012, 11082.3, 11143, 11207, and 11207.1.

11010–11042 PRELIMINARY INVESTIGATION

11010–11016 PROCESSING OF PETITION PRIOR TO HEARING OR ELECTION

11010 Initial Investigation

The techniques used in conducting representation case investigations do not lend themselves to a set of hard and fast rules, except it should be noted that investigation of a petition filed concurrently with an unfair labor practice charge must await a judgment as to the impact of the concurrent charge. Secs. 11730–11734.

When a petition is filed, and prior to any contact by the assigned Board agent, the Regional Director may issue a notice of hearing or a notice of intent to issue a notice of hearing concurrently with or immediately following the docketing of the petition. Secs. 11008 and 11009.2(g). Thereafter, if it appears during the Board agent's initial telephone communications with the parties that an election agreement will be secured in a short period of time, the assigned Board agent should inform the parties that upon the approval of the agreement, a previously issued notice of hearing will be withdrawn. Sec. 11012.

On receipt of the case, the Board agent should review the petition and any accompanying papers and check any prior related cases. With respect to any issues that may be anticipated on the basis of such examination, the Board agent should become familiar with the existing precedents, ensure that there are no fatal defects on the face of the petition, and check that the petitioner has presented a showing of interest that is adequate on the basis of its statement of the number of employees in the unit claimed to be appropriate (Secs. 11020–11034).

The Board agent should make the first telephone call regarding a petition as soon as possible after the filing, mail service and, if possible, facsimile service of the petition, preferably no later than the following day. This prompt followup communication reinforces the goal of expeditious processing expressed in the initial correspondence. The Board agent should use facsimile transmissions for circulating proposed and agreed-upon agreements as to election arrangements, as well as other documents.

11010.1 RC Petition

In RC cases, the first call usually should be made to the employer to secure commerce facts and the employer's information and position on various issues. The petitioner should then be called concerning these issues. Any intervenor is also called for similar information.

If it appears that an election would be the probable result of further processing, the Board agent may initiate efforts to obtain an election agreement. Parties should be told of the importance the Agency places on the expeditious processing of the petition. Further, the holding of an election, if appropriate, will occur as soon as possible, consistent with applicable casehandling guidelines.

11010.2 RM and RD Petitions

In RM and RD cases, usually the interested individuals or labor organizations, as well as the employer, should be called at the outset and the same information, with the necessary alterations, should be sought. As in RC cases, all parties in RM and RD cases should be told of the importance placed by the Agency on the expeditious processing of the petition and should be told that the holding of an election, if appropriate, will occur as soon as possible, consistent with applicable casehandling guidelines.

11011 Administrative Dismissal: No Question Concerning Representation

In order to warrant continued processing, a representation petition must meet the test: is there reasonable cause to believe that a question concerning representation affecting commerce exists? If it is clear that, unless future investigation alters the picture, the Board will not assert jurisdiction, the petitioner has insufficient interest (Secs. 11020–11034), the unit sought is inappropriate, the petition is not timely filed or for any other reason the petition would ultimately be dismissed, the petitioner should be made aware of this. If no further facts are available, a withdrawal request should be solicited and, absent withdrawal, the petition should be dismissed. Sec. 11100.

11012 Further Investigation

Prior to a scheduled hearing, the basic facts with respect to each potential issue should be secured. The Board agent should discuss all of the critical issues with the parties and the likelihood of the parties' positions prevailing. Attempts should be made to arrive at a firm commitment regarding an election agreement. In this regard, it is the Agency's policy to make every effort to secure an election agreement whenever possible to avoid the delay and expense of a hearing. Where possible, these efforts should also be directed toward having the election agreement executed early enough to notify the reporting service of the cancellation of the hearing in order to avoid the expense of late cancellation.

Continued investigation should be based mainly on further telephone contacts and correspondence. Where necessary, other investigative devices may be utilized, including correspondence and field trips, but it is anticipated that these usually will not be required. Information elicited in the investigation should be incorporated into the case file.

If the issues that separate the parties appear to require a hearing, the Board agent should, where appropriate, conduct a joint conference, in person or by phone, for the purpose of further exploring the possibilities of entering into an election agreement or of narrowing the issues to be litigated at a hearing. The conference should be conducted before the actual date of the hearing whenever possible. The Board agent should emphasize to the parties that a conference is in the mutual interest of all the parties, as well as the Agency.

If an in-person conference is to be held, it should normally be conducted in the Regional Office if the parties are located within the greater metropolitan area (75 miles). If deemed appropriate, parties outside this area may also be encouraged to come to the

Regional Office for a conference. There are a number of advantages associated with conducting the conference in the Regional Office. Aside from the savings achieved in travel and time, the Regional Office has caucus space, research resources, ready supervisory guidance, and an opportunity for managerial and supervisory intervention that may not be as readily available elsewhere.

During the conference, the parties and the Board agent can fully explore all potential areas of agreement in order to eliminate or limit, to the extent possible, the significant costs associated with a formal hearing. The parties should be encouraged to share information and documents at the conference. If conducted by telephone, documents may be exchanged by facsimile transmission.

The likelihood of parties' positions prevailing should be candidly discussed. If necessary, the appropriate supervisor or manager should intervene. If agreement is not reached, every effort should be made to narrow the issues that remain for the hearing. Parties should be encouraged to execute written stipulations on the issues that are not in dispute. Sec. 11187.2. The Board agent should also discuss with the parties the nature of the evidence to be presented and the order in which it will be elicited.

If a joint conference is not held before the day of the scheduled hearing, the hearing officer should conduct it prior to opening the hearing. Sec. 11180.

11012.1 Lack of Cooperation

Petitioners will be expected to provide the fullest cooperation and flexibility in connection with the processing of their petitions. Failure of petitioners to make available necessary facts that are in their possession may result in prompt dismissal. Failure of other parties to furnish information on a given point should lead to acceptance of credible information available on that point.

11014 Amendment

The petitioner on its own initiative, irrespective of developments in the pending investigation, may add to or delete from the original or last amended petition.

Assistance to the extent permitted in connection with the filing of the original petition (Secs. 11001.5–11001.8) may be rendered in connection with the filing of such amendments. Petitions may be amended after issuance of notice of hearing. In a petition that goes to hearing, oral amendments of the petition should be permitted during the hearing, as the unit description should conform to that being eventually sought. *Atlantic Richfield Co.*, 208 NLRB 142 (1974). Sec. 11204.

A petition is amended by inserting "Amended" (or "Second Amended," "Third Amended," etc.) before the word "Petition" in the regular petition form and by rewriting the contents of the petition to include the desired changes; in this regard, an amendment merely referring to the existing petition and stating what is being added to or dropped from the petition should not be used. When amended petitions are filed, interested parties should be notified of the amendment. An amendment filed after the dismissal of a

petition should be docketed as a new petition, no matter how titled, and assigned a new number.

11016 Priority of Issues

No attempt will be made here to cover the existing law governing representation cases. The following recital of usual issues and avenues of exploration, while not all inclusive, may be used for guidance.

(a) jurisdiction (Secs. 11700–11714)

(b) sufficiency of petitioner's and intervenor's showings of interest (Secs. 11020–11034) or employer's objective considerations (Sec. 11042)

(c) petitioner's and intervenor's status as labor organizations

(d) timeliness of petition: Section 9(c)(3) of the Act; certification year; contract bar; recent valid recognition

(e) bargaining unit issues and eligibility

(f) status of the question concerning representation

11017–11019 NO-RAIDING PROCEDURES AMONG LABOR ORGANIZATIONS

11017 Generally

There is a program established within the AFL–CIO for handling representation disputes (raiding) between and among affiliates of the AFL–CIO. The Executive Secretary coordinates the Agency's contacts with the AFL–CIO regarding no-raiding matters. This program is discussed in Sec. 11018.

For other no-raiding agreements, not involving the AFL–CIO, see Sec. 11019.

Within certain limitations, the Board's procedures accommodate these programs.

11018 AFL–CIO No-Raiding Procedure

This program has two components. The first, contained in Article XX of the AFL–CIO Constitution, applies to an organizational attack by one AFL–CIO union on the established bargaining relationship maintained by another AFL–CIO union. It is described in Sec. 11018.1. The second, contained in Article XXI of the AFL–CIO Constitution, applies to disputes between two or more AFL–CIO unions engaged in competing initial organizing activities among employees who presently are unrepresented or are represented by a labor organization not affiliated with the AFL–CIO. It is described in Sec. 11018.2.

11018.1 Article XX—Preexisting Collective-Bargaining Relationships

In all representation cases in which, among the parties, there are at least two affiliates of the AFL–CIO, one of which has an "established bargaining relationship" (i.e., is recognized by the employer as the collective-bargaining agent for the employees involved) or one of which has a colorable claim to a right to be so recognized, the following procedures will apply:

(a) The Regional Director should immediately notify the president of the AFL–CIO of the filing of the petition in a letter setting forth the parties involved. The Regional Director should also enclose a copy of the petition. Copies of the notification should be sent to: (i) all parties, (ii) the presidents of the parent International unions involved, and (iii) the Executive Secretary. The names and addresses of the president of the AFL–CIO and of the presidents of International unions may be found in the "List of Organizations Affiliated with the AFL–CIO" provided to each Regional Office or may be found in the "Directory of U.S. Labor Organizations," a Bureau of National Affairs publication. Questions regarding a union's affiliation with the AFL–CIO should be directed to the Executive Secretary

(b) The customary initial investigation of the petition should be completed. If the investigation reveals that there is no basis for proceeding on the petition, it should be dismissed, absent withdrawal. Secs. 11100–11104. In such case, the parties and other persons named above should be notified of the action.

(c) In cases in which the *petitioner* is an AFL–CIO affiliate, further action on the petition should be delayed for a 30-day period if necessary, from the date of notification to the persons named above, to permit use of the settlement provisions of Article XX.

In cases in which the petitioner is not an affiliate of the AFL–CIO, action on the petition should ordinarily continue. In the event the non-AFL–CIO-affiliated petitioner indicates its interest in a suspension of processing in order to allow the Article XX mechanism to operate, the Regional Director should obtain the positions of all the remaining parties. The Regional Director should then decide whether to suspend processing.

(d) On occasion, a 30-day letter will not have been sent because, in the opinion of the Regional Director, Article XX was not involved. In such cases, if a complaint is filed with the AFL–CIO under Article XX, if Article XX arguably applies and if the petitioner is an AFL–CIO affiliate, the Regional Director should honor a timely request to suspend processing of the case to permit operation of the no-raiding machinery. The procedures under this Section should thereafter be followed.

(e) If 30 days have elapsed since the issuance of the Regional Director's notification and suspension of processing (Secs. 11018.1(a) and (c)) and the Regional Director has not yet been informed that the no-raiding machinery has been completed, the Regional Director should notify the Executive Secretary. If the no-raiding machinery has been invoked and the matter is being processed, the petition will ordinarily continue to be suspended. If the no-raiding machinery has not been invoked, processing of the petition should be reactivated, absent extraordinary circumstances.

(f) The Agency does not decide whether Article XX applies and it does not enforce decisions made pursuant thereto; however, it is the Agency's policy to allow time for the operation of Article XX procedures, the outcome of which may result in the withdrawal of petitions, thereby avoiding unnecessary case-processing efforts. Sec. 11110.1.

11018.2 Article XXI—Initial Organizing Activities

Disputes between AFL–CIO affiliates engaged in competing initial organizing activities are subject to Article XXI of the AFL–CIO Constitution.

(a) Notification concerning the invocation of Article XXI normally will originate from the president of the AFL-CIO and will be directed to the Executive Secretary. After such notification, the Executive Secretary, if it is appropriate to do so, will inform the Regional Director to suspend processing of the petition for a period not to exceed 40 calendar days or until the Article XXI proceeding is concluded, whichever comes first. The Regional Director should so notify the parties and other persons involved, stating that pursuant to the Board's policy with respect to Article XXI, formal processing of the petition has been suspended for a period not to exceed 40 calendar days, absent further communication from the Regional Office.

(b) The customary initial investigation of the petition should be completed. If the investigation reveals that there is no basis for proceeding on the petition, it should be dismissed absent withdrawal. Secs. 11100–11104. In such case, the parties and other persons involved should be notified of the action.

(c) If an AFL–CIO affiliate which is a party to the representation proceeding requests the Regional Director to suspend formal processing of the petition based on Article XXI, the Regional Director should immediately forward the request to the Executive Secretary. If appropriate, the Executive Secretary will inform the Regional Director to suspend processing of the petition and provide appropriate notification in accord with Sec. 11018.2(a).

(d) When the Executive Secretary is advised of the conclusion of Article XXI proceedings, the Executive Secretary will so inform the Regional Director. Further processing of the petition should then be resumed. If 40 calendar days have elapsed and the Regional Director has not yet received information as to the status of the Article XXI proceedings, the Regional Director should notify the Executive Secretary and obtain guidance regarding further processing of the petition.

11019 Other No-Raiding Agreements

Occasionally, a Regional Director will be requested to suspend processing of a case to permit operation of no-raiding agreements other than those discussed in Section 11018. In such cases, a memorandum should be submitted to the Executive Secretary with a description and, if available, a copy of the no-raiding agreement. It is the Board's policy to follow similar procedures with respect to such agreements as it does with respect to the AFL–CIO no-raiding agreements, in cases where it appears that their

operation holds similar promise of resolving representation disputes among the parties to such agreements.

11020–11042 SHOWING OF INTEREST

These Sections are not applicable to petitions in which expedited 8(b)(7)(C) procedures are warranted. Sec. 101.23, Statements of Procedure.

Also see Sec. 11506.5 regarding the showing of interest in UD petitions.

11020–11023 INITIAL CONSIDERATIONS

11020 Purpose

The purpose of the demonstration of an adequate showing of interest on the part of labor organizations and individual petitioners that initiate or seek to participate in a representation case is to determine whether the conduct of an election serves a useful purpose under the statute, i.e., whether there is sufficient employee interest to warrant the expenditure of the Agency's time, effort and resources in conducting an election. This requirement prevents parties with little or no stake in a bargaining unit from abusing the Agency's machinery and interfering with the normal administration of the Act and reasonably assures that a genuine representation question exists. Therefore, it is essential that a check of the adequacy of the showing of interest (Sec. 11030) be performed in every case shortly after the filing of the petition, in order that issues concerning the showing of interest will be resolved before the case progresses beyond the initial stages. A record of the results of that check should be placed in the file. Sec. 11032.

An employer requesting that a payroll list be used for the purpose of checking the showing of interest should submit the list promptly (Sec. 11009.2(a)) in order that the check can be completed early on in the case. If no list is submitted, the number of employees estimated by the petitioner as comprising the alleged appropriate bargaining unit will be assumed to be accurate and those designating the union as their bargaining agent will be assumed to be among those employed in the unit. Sec. 11030.2. A late-filed list is untimely and no check of the showing of interest should be conducted against such a list, absent unusual circumstances. *Community Affairs, Inc*., 326 NLRB 311 (1998).

11021 Administrative Matter

The determination of the extent of interest is a purely administrative matter, wholly within the discretion of the Agency and is not dispositive of whether a representation question exists**.** While any information offered by a party bearing on the validity and authenticity of the showing should be considered, no party has a right to litigate the subject, either directly or collaterally, including during any representation hearing that may be held. When presented with supporting evidence that gives the Regional Director reasonable cause to believe that the showing of interest may have been

invalidated, the Regional Director should conduct a further administrative investigation. Secs. 11028.3, 11029.4, 11184, and 11184.1; *Perdue Farms, Inc.,* 328 NLRB 909 (1999).

11022 Form of Showing of Interest

The evidence of interest may take one of a number of forms. (Sec. 11027 discusses related issues (validity, designations, dates, ages, and time period) involving the showing of interest.)

11022.1 Union in RC, RM, and RD Petitions

A union will be regarded as satisfying the showing requirement as a petitioner in a RC case or as an intervenor in a RC, RM, or RD case if:

(a) it has submitted authorization cards or a list of signatures designating the union as the signers' agent for collective-bargaining purposes

(b) it has submitted evidence from its records as to the individuals who are members of the union

(c) it is the certified or currently recognized bargaining agent of the employees involved (in this circumstance, a union continues as a party, unless it disclaims interest in representing the employees involved (Sec. 11120))

(d) it is the party to a currently effective or recently expired exclusive collective-bargaining agreement covering the employees involved in whole or in part. In the construction industry, a recently expired 8(f) agreement will suffice as a union's showing of interest for a RC petition. *Stockton Roofing Co.*, 304 NLRB 699 (1991).

11022.2 Petitioner in RD

The showing requirement will be satisfied for a petitioner in a RD case if he/she has submitted cards or a signature list in support of the petition. The showing of interest for a RD petition is clear as to its intent if it indicates that the employees signing the showing no longer wish to be represented by the union. Sec. 11001.7. Signatures authorizing the petitioner to file a decertification petition also are acceptable. Sec. 101.17, Statements of Procedure.

NOTE: The language on a list of signatures to be used as the showing of interest in support of a RD petition may not ordinarily be used as a showing of interest in support of a UD petition, or vice versa.

11022.3 Parties in RM Petition

The employer's showing of interest in a RM case consists of proof of a demand for recognition made by one or more labor organizations or evidence of objective considerations relating to an incumbent labor organization's continued majority status. Secs. 11003.1(b) and 11042. A union or other collective-bargaining representative will be regarded as a claimant in a RM case if it is the representative or one of the representatives on the basis of whose majority claim the employer filed the instant petition.

11022.4 Petitioner in UD

Sec. 11506.5 discusses the showing of interest in a UD case.

11022.5 Person Acting on Behalf of Employees

A person acting on behalf of a substantial number of employees may file a petition or seek to intervene in a petition if the person satisfies the showing of interest requirement. Sec. 101.17, Statements of Procedure.

11023 Degree of Participation

A union will be entitled to the degree of participation warranted by the extent of its showing, as discussed below.

11023.1 Petitioner Interest

A petitioner, in order to justify further proceedings, must demonstrate designation by at least 30 percent of the employees in the unit it claims appropriate. (A RC petition filed with respect to a residual unit of employees must be supported by at least 30 percent of the employees in the residual unit, not the overall unit.)

Sec. 101.18 of the Statements of Procedure indicates that the 30-percent figure may be lowered where there are "special factors." Such situations are exceedingly rare; in the event the Regional Director believes special factors apply, clearance must be obtained from the Executive Secretary prior to any relaxation of the 30-percent rule.

STRIKE SITUATIONS: In a strike situation, the petitioner must make a showing of 30 percent of the normal complement of employees. (The normal complement would ordinarily be the complement employed at the time the strike commenced.) Such showing may be made among the strikers, nonstrikers, replacements, or any combination thereof. Secs. 11008.4 and 11025.1.

11023.2 Cross-Petitioner Interest

A union, in order to urge the adoption of an appropriate unit differing in substance from that claimed appropriate by a petitioner or the employer involved, must demonstrate designation by at least 30 percent of the employees in the unit thus urged. *Forstmann Woolen Co.*, 108 NLRB 1439 (1954); *Boeing Airplane Co.*, 86 NLRB 368 (1949).

11023.3 Full Intervenor Interest

A union that seeks to intervene on the basis of a showing of designation by at least 10 percent of the employees in any unit claimed appropriate by a petitioner, cross-petitioner, or involved employer may "block" an election agreement in such unit and it may participate fully in any hearing thereon. Cf. *Corn Products Refining Co.*, 87 NLRB 187 (1949).

11023.4 Participating Intervenor Interest

A union may intervene on a showing of less than 10 percent. This showing may be only one designation. *Union Carbide & Carbon Corp*., 89 NLRB 460 (1950). A participating intervenor may not "block'' an election agreement in such unit for any reason. Sec. 11088. However, it should be accorded a place on the ballot under the terms agreed on by the other parties. It may participate in a hearing, although it may not "block" stipulations entered into by the other parties at the hearing. Sec. 11194.5.

11023.5 Representative of Employees in Related Units

A union that seeks to intervene based on its status as the representative of other employees of the employer (other than the employees in the petitioned for unit) should be permitted to intervene in the proceeding and should be permitted to participate for the purpose of protecting its interests in the unit it represents. However, such a union should not be placed on the ballot if an election is held, absent demonstration of a showing of interest in the unit in which the election has been directed.

11024–11026 INFORMATION TO BE OBTAINED

11024 Required Information: Petitioner and Intervenor

11024.1 Petitioner Evidence of Interest

As discussed in Sec. 11003.1, in the event the petitioner does not submit evidence of interest upon the filing of the petition, it should supply such evidence with the petition, within 48 hours after filing the petition or within such time as the Regional Director may allow, but in no event later than the last day on which the petition may be timely filed. Sec. 101.17, Statements of Procedure.

Sec. 11026.1 discusses evidence of interest filed late by petitioners. Sec. 11030 discusses whether the petitioner may submit additional evidence of interest in the event a check of the payroll list submitted by the employer (Sec. 11025) reveals that the petitioner's evidence is insufficient.

NOTE: The showing of interest may not be submitted by facsimile transmission. Sec. 102.114, Rules and Regulations.

11024.2 Intervenor Evidence of Interest

An intervenor should submit its evidence of interest at the time of its assertion of interest or within 48 hours. Sec. 11003.1. Sec. 11026.2 discusses intervenors' late-filed submissions and the timeliness of such submissions relative to election agreements and hearings.

11024.3 Date Stamping of Designations by Regional Office

Evidence of designation, whether in the form of authorization cards or lists of signatures, should be date stamped on the reverse side when received by the Regional Office.

See Sec. 11027.3 concerning the dating by employees of authorization cards or lists of signatures.

11025 Requested Information: Employer

11025.1 Preparation of Payroll List

In the Regional Office's initial communication to the employer, it should be advised to submit a payroll list containing the alphabetized full names and classifications of the employees in the unit claimed to be appropriate for purposes of checking the showing of interest, if the employer requests such a check to be conducted, and to assist the Board agent assigned to the case in resolving possible eligibility and unit issues. Secs. 11009.1(d), 11009.2(a), and 11009.2(b). The payroll list submitted by the employer should be used to determine the employees employed in the unit sought by the petition. The payroll list should be of those employees as of a date about the time of or immediately preceding the filing of the petition. This timeframe also applies to seasonal industries and the construction industry. *Pike Co.,* 314 NLRB 691 (1994); Sec. 11027.5. In striker eligibility situations, the payroll list as of the date of the commencement of the strike and as of all other dates on which additional employees joined the strike should be obtained. Secs. 11023.1 and 11314.4.

As the case develops and other unit contentions are made, the employer should be asked for a list of employees in each such unit. Often, of course, the employer need only supplement the original list by submitting the appropriate additional information. Sec. 11030.5.

The procedure for checking the showing of interest against the payroll list is described in Sec. 11030. See Sec. 11020 for the procedures to follow if no list or an untimely list is provided.

11026 Late-Filed Evidence of Interest

As indicated (Secs. 11003.1, 11024.1, and 11024.2), evidence of interest should be filed at the time of filing or intervention (whichever applies) or within the period prescribed by the Region. If the evidence is not received within these timeframes, the procedures set forth in the following Sections should be implemented.

11026.1 Petitioner

If a petitioner's evidence is not timely received, the petition should be dismissed, absent withdrawal. Sec. 11011. If the evidence is received prior to the actual dismissal

and is otherwise timely, it may be accepted. A submission of evidence of interest after dismissal should not be accepted in support of the dismissed petition.

11026.2 Intervenor

Upon failure of a claiming intervenor to submit a showing of interest within 48 hours (Secs. 11008.1 and 11024.2), it should thereupon be regarded as having no interest. If subsequent submissions or additions are made, such late-filed evidence should be given the limited consideration specified below.

11026.2(a) Notice Given to Intervenor, But Evidence Not Submitted Within 48 Hours

If notice was given to the intervenor but evidence of interest was not submitted within 48 hours, two different circumstances may present themselves.

11026.2(a)(1) Evidence Submitted Prior to Approval of Election Agreement or Close of Hearing

If the 48-hour notice has been given and if evidence of an intervenor's showing is submitted after the 48-hour period has expired, but before an election agreement is approved or before a hearing has closed, whichever applies, the submitting union may thereafter be treated as a party to the extent warranted by its interest (Sec. 11023). *North American Aviation, Inc*., 109 NLRB 269 (1954).

11026.2(a)(2) Evidence Submitted After Approval of Election Agreement or Close of Hearing

If the 48-hour notice has been given and if evidence of an intervenor's showing is submitted after the 48-hour period has expired and after an election agreement has been approved or after a hearing has closed, whichever applies, the submitting union will not be permitted to participate in further proceedings. *Lufkin Foundry & Machine Co*., 83 NLRB 768 (1949); *United Boat Service Corp*., 55 NLRB 671 (1944). It may, however, be added to the ballot in an election agreement situation, if the parties to the election agreement stipulate that it may participate without regard to the timeliness of its showing. *Sprague Electric Co*., 81 NLRB 410 (1949).

11026.2(b) Notice Not Previously Given to Intervenor

If no preconsent or prehearing notice was ever given to a union — say, because its interest in the situation was unknown — its intervention should be permitted after approval of an election agreement or after the close of a hearing, only to the extent that its evidence of interest predates the approval of the election agreement or the close of the hearing, whichever applies. If the interest predates the event, the union should be accorded the same treatment as a union that timely submitted the same degree of interest (Sec. 11023), even if it is necessary to revoke approval of an election agreement or reopen a hearing. If the interest postdates the event, the union should not be permitted to intervene; except that it may be added to the ballot in an election agreement, if the signatories to the agreement stipulate to such participation without regard to the timeliness of the union's showing. *Mayfair Industries,* 126 NLRB 223 (1960).

A cross-petition, for purposes of this section, will be treated in the same fashion as a request to intervene.

11026.2(c) Attempts to Intervene in Runoff or Rerun Elections

Intervention for the first time in a runoff or rerun election should not be permitted. *Waste Management of New York*, 326 NLRB 1126 (1999); *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987); *General Motors Corp*., 17 NLRB 467 (1939).

11027-11029 OTHER CONSIDERATIONS

11027 Validity; Designations; Dates; Age; and Period

Also see Sec. 11022 concerning the form of the showing of interest.

11027.1 Validity

Although authorizations should be examined on their face (to check, for example, for signatures which appear to be in the same handwriting), their validity should be presumed unless called into question by the presentation of objective evidence. W-4 forms or other documents should not be accepted routinely for checking against signatures on the authorizations, absent objective evidence that provides a reasonable basis for challenging the showing of interest. Secs. 11028.1 and 11029.1.

11027.2 Designations

The authorization must run to the party submitting it in support of its interest. While this requirement should be liberally construed — authorizations running to a parent federation should be accepted on behalf of an International, authorizations running to the International should be accepted on behalf of a local of the International, and vice versa — designations in *blank* are not acceptable. Also, where the submitting party has, in the context of a schism within a labor organization, changed its *affiliation* from that appearing on the authorization, it should be rejected, if it was signed before the change in affiliation. A reasonable time may be given for submitting new authorizations. *Mohawk Business Machines Corp.*, 118 NLRB 168 (1957). However, if a change in affiliation has occurred in the context of a merger, new authorizations are not required. *Monmouth Medical Center*, 247 NLRB 508 (1980).

11027.3 Date of Authorization

The date on which the showing of interest signatures were obtained must be established. Signatures that are dated may be used for such purposes. One date for a page of signatures is adequate, although it is preferable that dates be next to each signature. Sec. 11001.7. In the event undated cards or signature lists have been submitted, the party submitting the showing of interest may establish the dates of signing by affidavit. *Dart Container Corp.*, 294 NLRB 798 (1989).

Although the undated showing must be submitted no later than the last day on which the petition may be timely filed (Sec. 11024.1), the affidavit establishing the date

of signing may be submitted beyond such day, although it should be submitted within a reasonable time after the filing of the petition and its undated showing. *Metal Sales Mfg.*, 310 NLRB 597 (1993).

11027.4 Age of Authorization

Although a showing of interest may be resubmitted in the same or another case, the age of the cards will sometimes be material. For example, where a union's disclaimer of interest or withdrawal request in a prior case has resulted in action with 6 months' prejudice to the filing of a new petition by the union (Sec. 11112), it must submit a current interest in support of any petition it files after the period has expired. Sec. 11118.3. Also, when certain related unfair labor practice cases are involved, the petitioner must obtain a showing of interest dated after the expiration of the posting period remedying those unfair labor practices. Sec. 11734.

11027.5 Period for Showing of Interest

In general, a petitioner must have a showing of interest as of the filing of the petition. This requirement applies not only to an employer with a steady workforce, but also to fluctuating or seasonal industries and to the construction industry, where eligibility to vote may be determined by the application of a formula of hours worked over an extended period of time. *Daniel Construction Co.,* 133 NLRB 264 (1961); *Steiny & Co.,* 308 NLRB 1323 (1992). Also see OM 01-24. In such situations, the petitioner may provide a sufficient showing of interest either among all employees eligible to vote or only among the employees working at the time the petition is filed. *Pike Co.,* 314 NLRB 691 (1994); *Hondo Drilling Co. N.S.L.,* 164 NLRB 416 (1967). Sec. 11025.

See Secs. 11008.4, 11023.1, 11025.1, and 11314.4 when strike situations are involved.

11028 Challenge to Showing of Interest

(See Sec. 11029 regarding allegations of *forgery* or fraud involving forgery in the showing of interest.)

11028.1 Allegation of Fraud, Misconduct, or Supervisory Taint

Any party alleging fraud (other than forgery), misconduct or supervisory taint in connection with the showing of interest must take early action on raising such allegations, in a timely manner relative to gaining knowledge of the alleged conduct. *General Dynamics Corp.,* 213 NLRB 851 (1974). When a party raises such allegations, it should be directed, in writing, to present its supporting evidence to the Regional Director within 7 days after raising them. *Globe Iron Foundry*, 112 NLRB 1200 (1955). If the Regional Director is presented with supporting evidence that gives reasonable cause to believe that the showing of interest may have been invalidated, the Regional Director should conduct a further administrative investigation. Sec. 11021; *Perdue Farms, Inc*., 328 NLRB 909 (1999). In the event a party attempts to present such evidence more than 7 days after raising the allegations, the Regional Director may regard the evidence as untimely filed and is not required to consider it, absent unusual circumstances.

If because of challenges the showing of interest has been or may become the subject of litigation, including in unfair labor practice proceedings, the showing of interest should not be returned at the close of the petition case. Sec. 11034.

11028.2 Finding of Merit to Challenge

In the event merit is found to allegations of fraud, misconduct, or supervisory taint, the Regional Director should take appropriate action. If no merit is found, the challenging party should be so notified.

NOTE: In the absence of an unfair labor practice charge, a petition may not be dismissed based upon only *indirect* taint of a showing of interest; where the situation involves taint sufficient to warrant dismissal of the petition (Cf. *Millsboro Nursing & Rehabilitation Center,* 327 NLRB 879 (1999)), the petition may be dismissed, in the absence of an unfair labor practice charge, only if there is *direct* involvement of a party in the taint of the showing. Examples of direct involvement include the employer's supervisors circulating the showing, or threatening individual employees with discharge if they failed to sign the showing. *Canter's Fairfax Restaurant, Inc.*, 309 NLRB 883 (1992). Supervisory solicitation of authorization cards is inherently coercive absent mitigating circumstances. *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004). See Secs. 11730.3(a) and 11733.2(a)(1) for situations in which unfair labor practice charges are also involved.

11028.3 Attempt to Challenge at Hearing

A challenge to the validity or authenticity of the showing of interest may not be litigated at a hearing. Secs. 11021 and 11184.1.

11028.4 Postelection Challenge

After an election has been held, the adequacy of the showing of interest is irrelevant. *Gaylord Bag Co.*, 313 NLRB 306 (1993). Accordingly, challenges to the adequacy of the showing of interest may not be raised after an election has been held. On the other hand, when the petition itself was tainted by unfair labor practices and thus was void ab initio, the petition should be dismissed irrespective of the conduct of an election, which is considered a nullity. *Ron Tirapelli Ford*, 304 NLRB 576 (1991).

11029 Possible and Alleged Forgery

(This Section deals exclusively with an allegation of *forgery* or fraud involving forgery in the showing of interest. Other forms of challenge to the validity of the showing of interest are treated in Sec. 11028.)

11029.1 Investigation

If it appears that signatures are in the same handwriting, or if a party furnishes evidence of forgery, an administrative investigation should be conducted and suitable action should be taken by the Regional Director, in his/her discretion, including possible

referral to other law enforcement agencies. Sec. 11021; *Perdue Farms, Inc.,* 328 NLRB 909 (1999). The parties should be appropriately notified.

If a party alleges forgery in a timely manner relative to gaining knowledge thereof, the party raising such allegations should be directed, in writing, to present its supporting evidence to the Regional Director within seven days after raising them. *Globe Iron Foundry*, 112 NLRB 1200 (1955). If the party furnishes such evidence, then the Regional Director should undertake the investigation and suitable action described above.

The investigation may include, but need not be limited to, attempts to obtain affidavits from the person or persons responsible for securing and submitting the showing, signature comparisons, preferably against the employer's records, and the questioning of persons purported to have been signatories. See also Secs. 11029.2 and 11029.3.

If the showing of interest has been or may become the subject of litigation, including in unfair labor practice proceedings, because of allegations of forgery, it should not be returned at the close of the petition case. Sec. 11034.

11029.2 Impact of Other Investigations

The Regional Director, in his/her discretion, may temporarily or permanently refrain from conducting any investigation, may dispense with any portion or portions of an investigation or may terminate any investigation previously commenced, if one or more of the following circumstances is present:

(a) the Regional Director learns that the same or a related matter has been referred to another law enforcement agency for investigation

(b) another law enforcement agency requests that the Regional Director terminate or postpone all or part of his/her investigation in order to avoid actual or potential interference with any related pending or anticipated investigation by the agency

(c) the Regional Director concludes that his/her investigation is likely to interfere with a related pending or anticipated investigation of the same or a related matter by another law enforcement agency.

11029.3 Subsequent Procedures

In the event merit is found to allegations of forgery after the Regional Director has conducted the appropriate investigation and taken suitable action, including referral to other law enforcement agencies, the following steps should be taken:

(a) If the remaining valid showing falls below the required amount (30 percent, 10 percent, etc.), the petition or intervention based on the showing should be dismissed or denied, as the case may be, in the absence of a withdrawal or disclaimer. The stated ground should be that the evidence of interest submitted "was of questionable authenticity."

(b) If the remaining valid showing satisfies the interest requirement, but if an officer or responsible agent of the petitioner was responsible for or had knowledge of and

condoned submission of the forged showing, casehandling advice should be requested of the Executive Secretary.

(c) A letter should be sent to the party involved (with a copy to its International, if the party is a local union) advising it of the question as to the forging of the showing. The letter will also set forth the provisions of Section 1001, Title 18, of the U.S. Code, which reads as follows:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(d) The questioned showing should not be returned. Sec. 11034.

(e) A memorandum reporting the results of the investigation, including the Regional Director's recommendation, should be submitted to the Division of Operations Management. If the Division of Operations Management agrees as to the merit of the allegations, the matter, including all circumstances, should be reported to the Office of the United States Attorney which has jurisdiction and full cooperation should be rendered that office. Contacts should be made or confirmed in writing and the Division of Operations Management should be kept informed of developments.

(f) The impact of other investigations should continue to be considered. Sec. 11029.2.

11029.4 Attempt to Introduce Evidence of Forgery at Hearing

An allegation of forgery in obtaining the showing of interest may not be litigated at a hearing. Secs. 11021 and 11184.1.

11029.5 Union With History of Forgery

Where a union has in a prior case submitted a showing of interest found to involve forgery, the Regional Director should investigate fully the authenticity of the showing of interest submitted by the union in support of subsequent petitions, even in the absence of a request. The investigation should include, if possible, a check against signatures on file with the employer. If such check reveals evidence of forgery, the steps described in Sec. 11029 should be followed.

11030–11035 CHECK OF SHOWING OF INTEREST

11030 Check of Showing in Petitioned for Unit

11030.1 Check of Showing

The valid evidence of interest of an individual petitioner and of each labor organization should be checked against a payroll list (Sec. 11025.1) if one is timely submitted by the employer. Sec. 11020. If the petitioner's evidence of interest is found to be less than 30 percent of the employees in the unit, following a check of the employer's payroll list, the petitioner may be given a reasonable time to cure the deficiency, where warranted by the circumstances, at the discretion of the Regional Director. However, *in no event* will the time to submit such additional evidence of interest be later than the last day on which the petition may be timely filed. Sec. 101.17, Statements of Procedure.

NOTE: As with all submissions of showings of interest, the additional showing of interest may not be submitted by facsimile transmission. Sec. 102.114, Rules and Regulations.

11030.2 Payroll List Not Timely Submitted by Employer

If no payroll list has been submitted timely by the employer, the estimate made by the affected union should be used as the number of employees involved and each signer of authorization should be considered to be employed within the unit claimed. Secs. 11009.2 (a) and 11020.

11030.3 Full Check

If the payroll list submitted by the employer contains under 300 names, an actual, full check should be made. The name of each "designator" should be checked against each name on the payroll list. In checking, the payroll list should be so marked that there will be a permanent work record of the check. (However, see Sec. 11035 concerning markings on payroll lists which are to be returned to the employer.)

11030.4 Spot Check

With larger lists, spot checks may be made. Spot checks involve checking something less than every name on the union's interest showing (e.g., every 3d, 5th, or 10th one) against the employer's list. The sample checked should be large enough to afford validity; it should involve the *actual* check of at least 300 different names on the employer's list and, in any event, of at least 1 out of every 10 on the employer's list. Also, care must be exercised to ensure that the sample is a *random* one.

11030.5 Separate Check for Each Unit Involved

A check should be made for each claimed bargaining unit involved. Thus, separate checks should be made for a petitioner-sought production and maintenance unit including truckdrivers and factory clerical employees, but excluding lead employees and

other supervisors; and for an employer-claimed production and maintenance unit including lead employees, but excluding truckdrivers, factory clerical employees, and supervisors, even though the two alleged units substantially overlap. Subsequent rechecks should be made if unit positions change. Sec. 11025.1. When such checks indicate that the showing of the petitioner or cross-petitioner is so close to the borderline (30 percent) that an adverse finding by the Regional Director or the Board, however slight, may result in the need for an additional showing of interest, the petitioner or cross-petitioner should be advised of the possibility and should be instructed to submit whatever additional authorizations it may possess.

11031 Check of Showing in Enlarged Unit

11031.1 Showing of Interest in Enlarged Unit

When the Regional Director or the Board issues a decision and direction of election in a unit larger than that requested by the petitioner, and the petitioner or an intervenor has indicated its willingness to participate in such an election, further processing of the petition is conditioned on the petitioner or an intervenor having an adequate showing of interest in the enlarged unit.

If the Regional Director determines that the petitioner's or an intervenor's showing of interest already on file is sufficient in the enlarged unit, such should be noted in the direction of election. Sec. 11312.1(c).

If a sufficient showing of interest is not on file, the direction of election should be conditioned on the petitioner or an intervenor making an adequate showing of interest in the enlarged unit. Sec. 11312.1(d). In the event a request for review is filed with respect to the Regional Director's direction of an election in an enlarged unit, the requirement to submit an additional showing of interest will be suspended until the Board rules upon the request for review.

11031.2 Additional Showing

The additional evidence of interest submitted by the petitioner or an intervenor may postdate the close of the hearing and the decision. The petitioner or an intervenor may be given a reasonable period of time to secure the additional showing of interest, normally 14 days or such further time as the Regional Director may allow.

NOTE: As with all submissions of showings of interest, the additional showing of interest may not be submitted by facsimile transmission. Sec. 102.114, Rules and Regulations.

11031.3 Check of Additional Showing

If after submitting the additional showing of interest, the petitioner or an intervenor demonstrates a showing of interest among the employees named on the *Excelsior* list of eligible voters submitted by the employer in the enlarged unit (Sec. 11312.1), then the showing of interest requirement has been satisfied.

Alternatively, the showing of interest in an enlarged unit may *also* be calculated by going through the following three steps:

(a) Note the number of authorizations validated when the showing of interest previously submitted by the petitioner or an intervenor was checked against the payroll list submitted by the employer as of a date about the time of or immediately preceding the filing of the petition. Secs. 11025 and 11030. If no list for this payroll period was submitted by the employer, note the number of authorizations previously submitted. Secs. 11020 and 11030.2.

(b) Check the additional showing of interest submitted against the *Excelsior* list of eligible voters (Sec. 11312) submitted by the employer in the enlarged unit. Care should be taken to exclude any authorizations among the additional showing that were already counted in (a) above.

(c) If the total *number* of authorizations validated in (a) and (b) above, when added together, equals 30 percent or more of the *number* of names appearing on the *Excelsior* list of eligible voters in the enlarged unit, the showing of interest requirement has been satisfied.

11032 Report on Check of Showing

Form NLRB-4069 has been devised for use in reporting the results of the investigation of interest. The blanks to be filled in are self-explanatory. Where more than one report is prepared, (e.g., where, because of changing unit contentions, the original report became obsolete), the subsequent report(s) should be labeled "Amended" (or "Second Amended," etc.) or "Revised."

11034 Ultimate Disposition of Showing of Interest

Evidence of interest in all types of petitions should be retained until the case has been closed, at which time it should be returned. Also see **NOTE** below. Upon request by the labor organization or individual petitioner involved, after photocopies have been made, the evidence of interest may be returned at an earlier point, provided that there is no foreseeable issue involving such evidence and on the condition that it will be resubmitted on request. Any document revealing the names of employees supporting the petition, including any document listing the names of employees as part of an employer's objective considerations in RM cases, should also be returned to the petitioner after the case has closed.

NOTE: Once a Freedom of Information Act (FOIA) request for the showing of interest has been received, it must be retained by the Agency until all litigation under the FOIA has been concluded. Thus, the showing may not be returned to the union at the close of the petition case if a FOIA request or court action is still pending. The necessity of retaining the showing applies both while the FOIA request is before the Board or the FOIA action is before a district court or subject to appeal from a court ruling. Questions on this matter should be addressed to the Assistant General Counsel for Special Litigation.

Similarly, if the showing has been or may become the subject of litigation because of challenges to it (Secs. 11028 and 11029), including in unfair labor practice proceedings, it should not be returned at the close of the petition case. Secs. 11028.1 and 11029.1.

11035 Ultimate Disposition of Payroll List

Payroll lists submitted in connection with investigations of the showing of interest should be retained in the file, except where an employer has agreed to submit a list only on the condition that it is returned or is destroyed when the case is closed. If the list is returned, it should be so marked that it could not be used to ascertain which employees had designated any labor organization as their bargaining agent.

NOTE: If the payroll list was used to check a showing of interest that has been or may become the subject of litigation because of challenges to it (Secs. 11028 and 11029), including in unfair labor practice proceedings, the payroll list also should not be returned at the close of the petition case.

11042 OBJECTIVE CONSIDERATIONS IN RM PETITION

11042 Generally

In petitioning the Board for an election to question the continued majority of an incumbent union, employers must demonstrate a "good-faith reasonable *uncertainty* (rather than *disbelief*) as to unions' continuing majority status." *Levitz Furniture Co. of the Pacific, Inc.*, 333 NLRB 717 (2001).

The Regional Director should process a RM petition based on a prima facie showing of objective considerations that a union has lost its majority status, provided that there have been no unfair labor practices committed that undermine the employees' support for the union.. The question of objective considerations, like the showing of interest in a RC or RD case, is a matter for the administrative determination of the Regional Director and may not be litigated. Sec. 11021. The following procedures should be applied in all RM cases involving an incumbent union, whether certified or recognized.

11042.1 Evidence Required to Satisfy the Uncertainty Standard

The RM petition must be supported by evidence, viewed in its entirety, which might establish good-faith uncertainty as to the union's continued majority status. The information submitted by the employer must be specific and detailed: for example, names of employees must be listed. The evidence must be objective and reliably indicate that a majority of the employees oppose the incumbent union, rather than mere speculation. Such evidence would include, but is not limited to, anti union petitions signed by unit employees, firsthand employee statements indicating a desire to no longer be represented by the incumbent union, employees' unverified statements regarding other employees' antiunion sentiments, and employees' statements expressing dissatisfaction with the

union's performance as bargaining representative. *Levitz*, supra at 728, 729. Also see GC 02-01 at 9, 10.

The names provided must be kept confidential, as is the case with the showing of interest in a RC or RD case. The specific extent of dissatisfaction is not to be divulged to the union. For example, if the employer submits that certain (named) employees out of "X" number in the unit have advised that they no longer wish the incumbent union to represent them, then the union may be told only that a sufficient number of employees have advised the employer, etc.

11042.2 Supporting Evidence Deficient or Not Submitted With Petition

If no supporting document accompanies the petition, the Board's *Levitz* decision should immediately be called to the employer's attention and the employer should be instructed to submit the evidence that demonstrates a good-faith reasonable uncertainty as to union's continuing majority status within 48 hours. Secs 11003.1(b) and 11024.1. Similarly if the information first submitted by the employer does not establish a good-faith reasonable uncertainty as to the union's majority status, the employer may be given 48 hours from when advised of the deficiency to present the necessary evidence. Reasonable extensions may be granted at the discretion of the Regional Director when warranted by the circumstances.

11042.3 Investigation of Validity of Objective Considerations

No investigation should be made of the validity of the employer's evidence of objective considerations demonstrating good-faith reasonable uncertainty as to the union's continuing majority status, unless, in the judgment of the Regional Director, unusual circumstances warrant a separate, administrative inquiry. If an investigation is conducted, it should be an administrative matter, in accord with the principles of Sec. 11021.

11042.4 *Levitz* Requirements Satisfied

If the Regional Director is administratively satisfied that, on its face, the objective considerations submitted by the employer establishes good-faith reasonable uncertainty as to the union's continuing majority status, the petition should be processed in accordance with normal procedures.

11042.5 *Levitz* Requirements Not Satisfied

If in the judgment of the Regional Director, the employer's evidence of objective considerations does not establish good-faith reasonable uncertainty, the petition should be administratively dismissed, absent withdrawal. Secs. 11100–11104.