11080–11124 REGIONAL DETERMINATION

11080-11082 INITIAL DETERMINATIONS

11080 Generally

Within a very few days after the receipt of the petition, a regional determination should be made as to the future course of the case. The Board agent and his/her supervisor should determine early on whether an election agreement is likely, whether a hearing will be needed or whether the petition will likely be dismissed or withdrawn.

11080.1 Reports

For most R case actions only a very brief written report is needed. While the file should be complete, the use of forms and checklists is to be encouraged.

Some matters to be considered for coverage in the case file are:

(a) jurisdictional facts1

(b) pertinent labor relations history

(c) pertinent correspondence and agreements

(d) facts with respect to the showing of interest

(e) brief discussion of the parties' unit positions

(f) in a striker eligibility situation under Section 9(c)(3), all pertinent data, including date of commencement of the strike, number of employees, etc.

(g) succinct recital of efforts to secure an election agreement

(h) potential need for foreign language witnesses at a hearing (Sec. 11221)

(i) a telephone log or file memos briefly showing the dates of all contacts with the parties, who made each such contact and the results of the contacts.

11082 Notice of Hearing

A notice of hearing should be issued at the time the petition is filed or shortly thereafter. Secs. 11008 and 11010. Issuance of the notice of hearing does not preclude the parties' entering into an election agreement. Sec. 11082.2.

11082.1 Continuing Efforts to Obtain Election Agreement Prior to Hearing

Accompanying the notice of hearing should be Form NLRB-4338 with the names and addresses of the parties appearing thereon. This form advises the parties that it is still possible to settle the matter by agreement. Throughout the Board agent's contacts with the parties, they should be made to understand that the issuance of a notice of hearing does not foreclose the possibility of an election agreement and that issuance of the notice

of hearing does not preclude the parties' entering into an election agreement. Where possible, Board agent 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. Secs. 11008 and 11012.

11082.2 Service of Notice of Hearing

The notice of hearing, to which is attached a copy of the petition, should be served by facsimile transmission and/or mail. One copy of Form NLRB-4669 Statement of Standard Procedures should also be attached to each copy of the notice of hearing served on the parties.

Service should be made on the employer(s) and union(s) involved (and the petitioner if other than the employer or union) and other interested parties. Sec. 11008.1.

The term "interested parties" as here used does not include labor organizations that, upon request, have not presented any evidence of interest.

11082.3 Selection of Hearing Date

The Regional Director should set an early date for the hearing, consistent with the Agency goals of expeditious processing. If the parties agree on a date, their desires may be taken into consideration, but are not controlling. Consultation with the parties is not required, however, and any early date may be selected.

Once the date has been selected, the parties should be advised of the Regional Director's intention to conduct the hearing on that date. In accordance with *Croft Metals, Inc.*, 337 NLRB 688 (2002), the notice of hearing should issue no less than five (5) working days prior to the hearing, absent a clear waiver from the parties. Also see OM 02-87. They should be further advised that requests for postponement of the hearing will be granted only for good cause, consistent with the requirements set forth in Form NLRB-4338, which accompanies the notice of hearing. They should also be advised that the hearing, once commenced, will be conducted on consecutive days, until completed, unless the most compelling circumstances warrant otherwise. Secs. 11008, 11009.2(g), 11143, 11207, and 11207.1.

11082.4 Place of Hearing

The place fixed for hearing will depend upon the circumstances. When possible, subject to the availability of witnesses, hearings should be set to be held in the Regional and Subregional Offices, even though the employer's facility is some distance away.

11082.5 Withdrawal of Notice of Hearing

If at any time after issuance (but prior to the close of a hearing), it appears that a notice of hearing should be withdrawn, the withdrawal should be contained in a letter or order signed by the Regional Director and served on the parties. The forms for consent and stipulated election agreements provide for withdrawal of the notice of hearing upon the Regional Director's approval of the agreement. Sec. 11094.

11084–11098 ELECTION AGREEMENT

11084 Generally

The ultimate device by the Board in resolving a valid question concerning representation is the election by secret ballot. The voluntary agreement of the parties to hold an election without a hearing is reflected in a Consent Election Agreement (Form NLRB-651) or Stipulated Election Agreement (Form NLRB-652). A third election agreement option is available which provides the parties the opportunity to voluntarily agree to have the Regional Director conduct a hearing and thereafter resolve with finality all pre-election factual and legal disputes. This option, Full Consent Election Agreement (Form NLRB-5509), waives the parties' rights to file a request for review of the Regional Director's decision to the Board. See OM 05-40 Revised.

11084.1 Difference Between Consent Election Agreement, Stipulated Election Agreement and Full Consent Election Agreement

The basic difference between the consent election agreement and the stipulated election agreement is that questions that arise after the election are decided by the Regional Director in a consent election and by the Board in a stipulated election. In either case, disputes arising prior to the issuance of the tally of ballots are resolved by the Regional Director. In a full consent election agreement, the parties voluntarily agree to have the Regional Director conduct a hearing and thereafter resolve with finality all pre-election factual and legal disputes. The parties thereby waive their rights to file a request for review of the Regional Director's decision to the Board. Likewise under the full consent election agreement procedure, all post election disputes — challenges and objections — would be decided by the Regional Director with no right of appeal to the Board.

11084.2 Obtaining Election Agreement

Efforts to dispose of a case by agreement should begin during the first contacts with the parties, and continue at all stages thereafter.

Supervisors and, if necessary, the Assistant to the Regional Director or another member of management should be kept aware of all problems encountered by the Board agent in his/her efforts to secure an election agreement and should be involved in those efforts where appropriate.

An election under terms contrary to the statute should be neither solicited nor approved. Thus, if the Board would not assert jurisdiction, there may be no election agreement; likewise the Region must not conduct an election covering a unit that would be found clearly inappropriate under the Act, notwithstanding the consent of the parties. If the parties desire an election, however, and the Board would arguably assert jurisdiction or find the unit appropriate, the Regional Director may approve the agreement.

11084.3 Details of Election Agreement and Election Arrangements

An agreement that an election will be held is usually worked out with the parties over the telephone, utilizing facsimile transmission of proposed election agreements and other documents, or in an in-person conference. All details must be agreed on. Failure of accord in such details as date, hours, or place of election will serve to send a matter to hearing, although the petitioner's refusal to agree to an early election date may result in the dismissal of the petition. Sec. 11302.1. However, the parties may leave some election details "to be designated by the Regional Director," in which case, although substantially guided by the informally ascertained desires of the parties on such matters, the Regional Director should fix the date, hours, or place.

NOTE: The Regional Director may unilaterally set the date of a rescheduled or cancelled election. *Superior of Missouri, Inc*., 327 NLRB 248 (1998); Secs. 11302.1(b) and 11314.8.

The parties should clearly set forth in full the agreed unit. Agreements resolving all eligibility questions (*Norris-Thermador Corp*., 119 NLRB 1301 (1958)) may be solicited, but the suggestion that such an agreement be entered into should not be permitted to interfere with obtaining an election agreement where it is clear that a party wishes to preserve its privilege to challenge some voters.

Where the parties agree that certain classifications of employees (not named individuals) should vote subject to challenge, the election agreement — and thereafter the notice of election — should indicate the classifications that will vote subject to challenge. The determination of disagreements over bargaining unit issues should not be left "to the Regional Director."

In determining whether to recommend approval of an election agreement where a number of challenges based on eligibility may be involved, the following factors may be considered as militating in favor of approval: the potential challenged ballots represent a class situation that could be disposed of as a single issue in a postelection proceeding; questions of eligibility will probably not be resolved in a preelection hearing because of substantial credibility issues; or a strike is in progress or there is a genuine threat of a strike that the parties wish to avoid. As a general rule, the Regional Director should decline to approve an election agreement where it is known that more than 10 percent of the voters will be challenged, but this guideline may be exceeded if the Regional Director deems it advisable to do so.

When a Board agent is obtaining an election agreement in a construction industry case and the election eligibility list is being discussed with the parties, the Board agent should discuss with the parties the eligibility formula appropriate to that case. Unless the parties enter into a separate stipulation to the contrary, the Board agent should inform the parties that the formula to be applied in preparing the election eligibility is the *Daniel/Steiny* eligibility formula. *Daniel Construction Co*., 133 NLRB 264 (1967); *Steiny & Co., Inc.*, 308 NLRB 1323 (1992).

Although the *Daniel/Steiny* formula will be applied to determine voter eligibility in construction industry elections in the absence of a waiver by the parties otherwise, it is the better practice to set forth expressly in the election agreement the election eligibility

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Although the *Daniel/Steiny* formula will be applied to determine voter eligibility in construction industry elections in the absence of a waiver by the parties otherwise, it is the better practice to set forth expressly in the election agreement the election eligibility

formula to be utilized. When the *Daniel/Steiny* formula is being utilized, it should be set forth as an attachment to paragraph 11 of the election agreement. When the *Daniel/Steiny* eligibility formula is not being utilized, a specific waiver statement to that effect should be set forth and/or attached to paragraph 11 of the election agreement. Sample language is provided below:

> The parties agree that, notwithstanding the Employer's engagement in the construction industry, the Board's standard eligibility formula shall apply, rather than the Board's construction industry (*Daniel/Steiny*) eligibility formula.

At the time of execution of the agreement, the Board agent should ascertain whether a strike exists. Election arrangements such as observers (Sec. 11310), the list of eligible voters (Sec. 11312), timely posting of the notice of election (Sec. 11314), foreign languages (Sec. 11315), equipment to be furnished (Sec. 11316), voter identification at the election (Sec. 11312.4) and release schedules for voters (Sec. 11330) should also be discussed. The Election Order Sheet (Form NLRB-700) may be used as a checklist of election arrangements.

11086 Preparation of Document

The blank spaces to be completed on the election agreement are generally self-explanatory.

11086.1 Correct and Complete Name of Labor Organization

If the petitioner is a labor organization, its correct and complete name should be inserted above the petitioner's signature line. If more than one organization is involved, their full names should be inserted in the paragraph headed "Wording on the Ballot." The full names of each labor organization should be spelled out, including the full names of all parent bodies, except that AFL–CIO may be abbreviated. If a shortened name is requested, it must be shown in addition to the full name and must be in parentheses. Sec. 11306.3.

11086.2 Commerce Facts

Sufficient commerce facts on which the Board may make a jurisdictional finding must be included in the agreement. Where gross volume of business is the test for asserting jurisdiction, commerce data regarding inflow, outflow, franchise, etc., sufficient to establish de minimis statutory jurisdiction must also be included.

11086.3 Place on Ballot; Payroll Period; Time and Place; Unit

Places on the ballot should be based on agreement, if there is agreement; on chance, if there is no agreement. In elections involving two or more labor organizations, the choice against representation should be "neither" or "none," *not* "no union." Sec. 11306.4.

The payroll period for eligibility should be designated as "the period ending," etc. Normally, it should be the last period ending before the Regional Director's approval of

the agreement. An issue as to an unusual eligibility date should be resolved. Sec. 11312.1.

The time and place of election should be inserted or should be expressly left to the Regional Director. (For an extended discussion of time (including date and hours) and place, see Secs. 11302 through 11302.3. Further related election details are discussed in Secs. 11300 through 11350, especially Secs. 11310, 11312, 11314–11316, 11318, 11330, 11332, and 11334. If a large or complex election is involved, see Sec. 11312.4 regarding the utilization of identifying information for voters.)

The unit should be accurately described. If an eligibility formula is used, the period should be made explicit, e.g., "including all employees who worked an average of "x" hours per week during the "y" weeks ending on [date]."

11088 Parties

Necessary parties to an election agreement are the employer and any union (or person acting as a bargaining representative) that has submitted evidence of an interest in accordance with Secs. 11022 and 11023. In a RD case, the petitioner is also a necessary party.

A union that has submitted evidence of less than a 10-percent interest in the unit involved may not "block" an election agreement. It may, however, be a party to the agreement and participate in the election if it wishes to do so. Sec. 11023.4. A union that has disclaimed interest (Sec. 11120) is no longer a party to the case and may neither block nor be a party to an election agreement.

11090 Variation Not Permitted

Unless there are exceptional circumstances, the language of the printed agreement constitutes the only terms under which agreed upon elections may be held.

11091 Self-Determination Election

In agreed-upon self-determination elections, whether on a craft, department, or other basis, the wording in the agreement should be made to conform to Board practices in directed elections.

11091.1 Election Involving Professional Employees

Elections involving professional employees involve a voting procedure developed to protect their voting rights. *Pratt & Whitney,* 327 NLRB 1213 (1999); *Sonotone Corp*., 90 NLRB 1236 (1950). In elections to ascertain the desires of *professional* employees as to their inclusion in a unit with nonprofessional employees, pursuant to Section 9(b)(1) of the Act, paragraph 9 of the election agreement, which describes the wording of choices on the ballot, should be altered to conform to the following:

Two questions shall appear on the ballot:

1. Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining?

To which the choice of answers will be "Yes" or "No."

2. Do you wish to be represented for purposes of collective bargaining by [union]?

To which the choice of answers will be "Yes" or "No."

OR

By which union, if any, do you wish to be represented for purposes of collective bargaining?

To which the choice of answers will be the choices on the ballot in the same form as for multi-choice single-unit elections. Sec. 11306.4.

NOTE: In question 1, it is not necessary to set out the description of the unit of nonprofessional employees.

EXCEPTION: When only a single professional employee is entitled to a self-determination election with respect to inclusion in a unit with nonprofessionals, the professional employee shall be furnished two ballots: one on inclusion and the other on representation. The ballots of the professional shall be addressed in the following manner: if, on the first ballot, the vote is for inclusion, the second ballot is to be mixed, unopened, with the regular ballots; if the vote is against inclusion, the second ballot shall be destroyed without being opened.

11091.2 Residual Election

In a partially organized plant, a group of unrepresented employees is referred to as a "fringe" or "residual" group of employees. The language to be added to agreements will vary from case to case depending on the number of unions involved and whether or not elections will be conducted in more than one voting group. Some, but not all, of the numerous possibilities are as follows:

(a) One voting group — one union: This is an election in which the incumbent representative of employees in a partially organized plant seeks to add a group of unrepresented employees to its existing unit, commonly referred to as an *Armour-Globe* election. *Armour & Co.*, 40 NLRB 1332 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937). In such event, the following language should be added to the agreement:

If a majority of valid ballots are cast for [the incumbent union], they will be taken to have indicated the employees' desire to be included in the existing [fill in description] unit currently represented by [the incumbent union]. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

(b) One voting group — two unions: This is a combination *Armour-Globe* and residual unit election. The single voting group consists of the unrepresented employees in a partially organized plant. One union, the incumbent, seeks to add the group of unrepresented employees to its existing unit and a second union seeks to represent the unrepresented group as a separate residual unit. The employees have alternative choices and the following language should therefore be added to the agreement:

> If a majority of valid ballots are cast for [the incumbent union], they will be taken to have indicated the employees' desire to be included in the existing [fill in description] unit currently represented by [the incumbent union]. If a majority of valid ballots are cast for [the union seeking to represent them separately], they will be taken to have indicated the employees' desire to be represented in a separate unit. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

(c) Two voting groups -- two unions: In a partially organized plant, where an incumbent union seeks an election only in the existing unit and where a second union seeks an overall unit consisting of employees in the existing unit plus a residual group of unrepresented employees, two voting groups should be established and the following language should be added to the agreement:

> If a majority of valid ballots in the existing unit are cast for [the incumbent union], separate units are appropriate. If a majority of the employees in the existing unit do not select [the incumbent union], then the two voting groups shall be combined in a single overall unit and their votes shall be pooled.

If the votes are pooled, they are to be tallied in the following manner (*Penn-Keystone Realty Corp*., 191 NLRB 800 (1971)): the votes for the incumbent union shall be counted as valid votes, but neither for nor against the second union that is seeking the more comprehensive unit. All other votes are to be accorded their face value, whether for representation by the second union or for no union. In the event that the results show that a majority of the valid ballots have not been cast either for the union that is seeking the more comprehensive unit or against representation, the election will be deemed to be inconclusive and a second election will be conducted among the employees in the broader unit in which they will vote as to whether or not they desire to be represented by the union seeking that unit.

11091.3 Severance Election

In an organized plant, where a union seeks to *sever* part of an established unit, the procedure will depend, to an extent, on whether, simultaneously, the existing (production/maintenance) group is also voting. *Mallinckrodt Chemical Workers*, 162 NLRB 387 (1967). If both elections are being held simultaneously, the following wording is appropriate:

> If the employees in Group B [the severance group] cast a majority of valid ballots for [name the union seeking severance], they will be taken to have indicated their desire to constitute a separate bargaining unit; if they do not cast a majority of valid ballots for [any such union], they shall remain a part of the

existing unit and their ballots shall be pooled with and counted among the employees in Group A [the existing production/maintenance unit].

Where only the severance group is being balloted, the wording of the agreement depends on whether or not the production/maintenance union appears on the ballot. If so:

If a majority cast valid ballots for [union seeking severance; if more than one, name them in the disjunctive], they will be taken to have indicated their desire to constitute a separate bargaining unit and a certification of representative will be issued with respect to such unit. If not, these employees shall remain a part of the existing unit and a certification of results of election to such effect will be issued.

In providing for choices on the ballot, only the names of the competing unions should appear. "Neither" and "none" should not appear.

If only the union or unions desiring severance are on the ballot, because the production/maintenance union does not wish a place on the ballot, the following wording is appropriate:

If a majority cast valid ballots for ["Yes," if there is only one union on the ballot; substitute names of severance-seeking unions if there are more than one], they will be taken to have indicated their desire to constitute a separate bargaining unit and a certification of representative will be issued with respect to such unit. If not, these employees shall remain a part of the existing unit and a certification of results of election to such effect will be issued.

On the ballot, the choices should be "Yes" or "No," if only one union is on the ballot. Otherwise, only the names of competing unions should appear; "neither" and "none" should not appear.

11094 Approval of Election Agreement

Approval of the election agreement should be recommended on the face of the instrument by the Board agent who secured it. An election agreement is not effective until it is approved by the Regional Director. Parties should be notified of the approval and sent a conformed copy of the agreement.

If an election eligibility list has not already been submitted by the employer, its submission should be directed in the letter approving the agreement. Sec 11312.1(a). The letter approving the election agreement should also include the following language:

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, which provides that the Employer must post the Board's official Notice of Election at least 3 full working days before the day of the election, excluding Saturdays, Sundays,

and holidays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

11095 Revocation of Election Agreement Approval

The Regional Director retains authority to revoke his/her approval of an election agreement for cause at any time before the election. For example, if after review of the *Excelsior* list of eligible voters (Sec. 11312.1), the number or nature of potential challenges raised is so extensive as to cause serious questions concerning the intent or understanding of the parties, such challenges may be the basis for revoking approval.

11097 Request to Withdraw From Election Agreement

This Section deals with a party's attempt to withdraw from an election agreement, where the petition remains on file. See Sec. 11098.1 for withdrawal from the ballot; Secs. 11110–11118 for withdrawal of the petition; and Secs. 11120–11124 for disclaimer of interest.

Until an election agreement has been approved by the Regional Director (Sec. 11094), any party may withdraw from or insist upon changes in the agreement. However, once an election agreement has been approved, a request to withdraw therefrom, absent the agreement of all parties, should be approved only upon an affirmative showing of unusual circumstances. *Sunnyvale Medical Clinic*, 241 NLRB 1156 (1979). Normally, all parties should be held to their agreement to hold an election. Should any party seek to withdraw from an election agreement, for the purpose of entering into a new agreement on different terms or going to hearing, the request should be considered in the light of the cause shown, the position of the other parties and the timeliness of the request. As a general policy, discretion should be exercised in the direction of effectuation of the approved election agreement.

11098 Request to Withdraw From Ballot After Election Agreement

In a multiple-union situation, the election agreement provides that:

> "If more than one union is to appear on the ballot, any union may have its name removed from the ballot by the approval of the Regional Director of a timely request, in writing, to that effect."

Thus, in a multiunion situation, if any of the unions wishes to withdraw from the ballot and allow the election to go forward, such a request may be freely approved if time permits. If the petitioner requests withdrawal, an intervenor must have or obtain within a reasonable period of time a petitioner's showing of interest. Sec. 11112.1(b). If time does not permit making the necessary changes in the ballot and the posting of a correct notice of election for the full three days required by Sec. 103.20 of the Rules and Regulations and the intervenor has or obtains a petitioner's showing of interest, the

election should be held as scheduled with the petitioner on the ballot. Whether or not time permits making the necessary changes, if the intervenor does not have or cannot obtain within a reasonable period of time a petitioner's showing of interest, the petitioner's request should be treated as a request to withdraw its petition. Secs. 11110 and 11112.1(a).

Should an intervening union (with or without a blocking interest – Secs. 11023.3 and 11023.4) that has entered into an election agreement thereafter seek to withdraw from the ballot, the request (which should contain a disclaimer of interest) should be granted unless time constraints make it impossible to change the ballots and notice of election.

11100-11124 DISMISSAL; WITHDRAWAL; DISCLAIMER

11100–11104 DISMISSAL

11100 Generally

Where, from the investigation, it clearly appears that an election would not be directed, a withdrawal request should be solicited from the petitioner. Thus, a case should not proceed to an election agreement or to hearing if the Board would not assert jurisdiction, if the unit involved is inappropriate, etc.

A reasonably short period should be given for requesting withdrawal, in the absence of which, at the end of the period, the petition should be dismissed.

11100.1 Basis for Dismissal

Dismissals and refusals to institute formal proceedings should be based on specific grounds.

11100.2 Notification to Parties

The petitioner should be notified in writing of the dismissal and the reason therefor. Sec 102.71, Rules and Regulations; Sec. 101.18(c), Statements of Procedure. The letter should instruct how and when a request for review of the action can be filed with the Board. Form NLRB-4916 Instructions for Filing Request for Review of Administrative Dismissal of Representation Petition may be enclosed with the dismissal letter; otherwise, the instructions should be set forth in the body of the letter.

Copies of the dismissal letter should be sent to all other interested parties.

11100.3 Regional Director Authority During Review Period

During the 14-day review filing period or after a request for review is filed, the Regional Director may revoke the dismissal.

If a withdrawal request is received after the dismissal or if the Regional Director decides to reconsider the action taken during the period in which a request for review of

the dismissal is being considered by the Board, the Regional Director may revoke the dismissal and approve the withdrawal request or treat the request for review as a motion for reconsideration. In such cases, the Regional Director should promptly advise the Executive Secretary and the Office of Representation Appeals that he/she is reconsidering the matter. The parties should also be similarly advised as soon as possible.

If the Board has granted review, the Regional Director lacks jurisdiction to vacate the dismissal. *North Jersey Newspapers Co.*, 322 NLRB 394 (1996).

11102 Pattern Dismissal Letter

Petitioner (or Designated Representative, if applicable)

Re: Case Name
Case Number

Salutation:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation, I find that further proceedings are unwarranted. The investigation disclosed that (reason for dismissal). Accordingly, I am dismissing the petition in this matter.

(Note: If a causal nexus exists between an unfair labor complaint and the petition, the reasons for dismissal of the petition should include a statement that the petition is subject to reinstatement after final disposition of the charge.)

Pursuant to the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570. A copy of such request must be served on the Regional Director and each of the other parties to the proceeding. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board in Washington, DC by close of business on [date 14 calendar days from issuance of the letter], at 5 p.m. (ET). You should be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file.

A request for review may also be submitted by electronic filing. See the attachment provided in the initial correspondence in this case or refer to OM 05-30 and OM 07-07, which are available on the Agency's website at www.nlrb.gov for a detailed explanation of requirements which must be met when electronically submitting documents to the Board and Regional Offices. Guidance can also be found under *E-Gov* on the Board's website. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, either by mail or by electronic filing. The request for extension of time should be submitted to the Executive Secretary of the Board in Washington, DC, and a copy of any such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. The request for review and any extension of time for filing must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding, and a copy must be served in the same or faster manner as that utilized in filing the request with the board. When filing with the Board is accomplished by personal service, however, the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-Filing can also be found on the National Labor Relations Board website at www.nlrb.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.

The request for review and any request for extension of time must include a statement that a copy has been served on this office and on each of the other parties to this proceeding in the same or a faster manner as that utilized in filing the request with the Board.

Very truly yours,
/s/
Regional Director

cc: Office of the Executive Secretary
Petitioner (or Designated Representative, if applicable)
All Other Parties

11104 Regional Office Action on Request for Review

Upon receipt of a copy of the request for review, the file should be forwarded promptly to the Office of Representation Appeals.

11104.1 Regional Director Transmittal Memorandum

Any points raised in connection with the request for review should be given consideration. The Regional Director's transmittal memorandum should give an appraisal of the points made—unless the file reflects that they have already been fully considered.

During the period in which the file is being reviewed, the Region should transmit to the Office of Representation Appeals any new information, developments or recommendations.

11104.2 Request for Review Sustained

A sustaining of the request for review restores the status of the case as it existed prior to the dismissal. A notice of hearing should be issued or other appropriate action taken.

11110–11118 WITHDRAWAL

11110 Generally

When a withdrawal request is submitted at the suggestion of a Board agent to whom the case is assigned (which suggestion is motivated by the fact that further proceedings are unwarranted — in other words, where absent a withdrawal, the petition will be dismissed), approval of the request should be recommended by the Board agent, with the notation that the withdrawal was solicited.

In addition to withdrawal requests that may be solicited by the Region, there may be those that the petitioner, on its own volition, may submit. The reason, if not given in the request, should be sought. The Regional Director will take such action as is appropriate; the Regional Director's general policy should favor the effectuation of a petitioner's genuine voluntary desire to terminate the proceeding, inasmuch as the Act contains adequate machinery for use by other parties if the moving party does not wish to proceed.

EXCEPTION: Should the petitioner's withdrawal request be accompanied by other action with which it is inconsistent, for example, should there be a strike or picketing for recognition by a union-petitioner, the withdrawal request should be denied, and the petition should be processed. *Waumbec Dyeing & Finishing Co.*, 101 NLRB 1069 (1952). However, a union's statement or other conduct which indicates that it might continue its organizing efforts or resume them sometime in the future is not necessarily a sufficient basis for refusing to approve a withdrawal request.

In addition, if the Regional Director believes that approval of the withdrawal request would result in a situation that would run counter to the purposes of the Act, he/she should withhold approval.

If the withdrawal request is approved, the parties should be notified. If any party raises objections to the approval of the withdrawal, such objections should be addressed by the Regional Director in the notification of approval.

11110.1 Oral Withdrawal Requests

Regional Directors are authorized to approve oral withdrawal requests from any petitioner. However, if the Regional Office has concerns about whether the oral withdrawal request should be relied upon, the Regional Office may require that the request be in writing. Absent such concerns, an oral withdrawal request should be processed in the same manner as a written request.

11111 Before Election: Before Approval of Election Agreement or Close of Hearing (Without Prejudice)

Where a request is received prior to close of a hearing or before the approval of an election agreement, the request should be granted *without prejudice* to the subsequent filing of a new petition by the petitioner.

11112 Before Election: After Approval of Election Agreement or Close of Hearing (Prejudice Possible)

A variety of circumstances may arise when a request for withdrawal of a petition is received after the close of a hearing or approval of an election agreement.

11112.1 RC Petition

11112.1(a) Petitioner Sole Union Involved

Where, after the approval of an election agreement or the close of a hearing, but before the holding of the election, the petitioning union, the sole union involved, requests timely withdrawal of its petition, the request should be approved (Sec. 11110) with 6 months prejudice (Sec. 11118) and the election should be canceled. This should be done whether or not the employer opposes the action. *Sears, Roebuck & Co*., 107 NLRB 716 (1954). The fact that the parties have expended resources, including in anticipation of a scheduled election, is not a basis for refusing to approve a withdrawal request, even very shortly before the election.

EXCEPTION: See Sec. 11110 regarding a union's request which is accompanied by inconsistent action. In situations where merit has been found or prima facia evidence submitted in support of ULP allegations related to the organizing campaign, the Region should approve a timely submitted withdrawal request without prejudice.

11112.1(b) Intervenor Desires Election

Where a petitioning union seeks to withdraw the petition after approval of an election agreement or close of hearing, and there is an intervening union that desires the election be held or an appropriate decision be issued, the latter must submit a petitioner's showing of interest in the unit involved. The 30-percent interest showing need not predate the approval of the agreement or the close of the hearing and a reasonable period for procuring and submitting the interest may be given. Upon proper submission by the intervenor, the petitioner may be dropped from the ballot (but see Sec. 11098), with prejudice applied (Sec. 11118) and the election, with the intervenor alone on the ballot, should be held in accordance with the agreement or an appropriate decision should issue.

In the event the intervenor subsequently requests to withdraw, the election should be canceled and the request should be approved with 6 months prejudice (Sec. 11118). This should be done whether or not the employer opposes the action. The fact that the parties have expended resources, including in anticipation of a scheduled election, is not a basis for refusing to approve a withdrawal request, even very shortly before the election. Sec. 11112.1(a).

EXCEPTION: See Sec. 11110 regarding a union's request which is accompanied by inconsistent action.

11112.2 RM Petition

A timely withdrawal request filed by the employer-petitioner after the approval of an election agreement or close of hearing, but prior to the election, should be approved and granted without prejudice unless any union involved (other than a certified incumbent union) opposes the withdrawal. If opposition is expressed by such a union, the election should be held as scheduled or decision issue, regardless of whether the union opposed to withdrawal has a petitioner's showing of interest. *Siemons Mailing Service*, 124 NLRB 594, 595 (1959); *International Aluminum Corp.*, 117 NLRB 1221 (1957).

11112.3 RD Petition

A timely withdrawal request filed by the RD petitioner after the approval of an election agreement or close of hearing should be approved and granted without prejudice.

If an intervenor (other than a certified or recognized incumbent union) desires an election, and has, or can obtain within a reasonable period, a petitioner's showing of interest, the election should be held as scheduled or a decision should issue.

11113 Before Election: After Direction of Election in Substantially Different Unit

A withdrawal request should generally be approved *without prejudice* if the petitioner seeks to withdraw after the Regional Director or the Board has directed an election in a unit substantially different from that sought by the petitioner. Secs. 11312.1(c) and (d). However, a withdrawal request should be approved *with prejudice* if (1) the petitioner had indicated that it wished to proceed to an election in a unit different than the petitioned-for unit, (2) it had submitted a sufficient additional showing of interest

for the different unit, and (3) it had been provided the eligibility list of voters. If one or more of these three conditions is missing, the Regional Director has the discretion to approve the withdrawal without prejudice. *Stock Building Supply*, 337 NLRB 440 (2002).

The prejudice period is discussed in Secs. 11118–11118.3.

11116 After Election

11116.1 Generally

A withdrawal request submitted subsequent to a valid election may be ruled on by the Regional Director whether the election was conducted by agreement of the parties or was directed by the Board or the Regional Director. Normally, the withdrawal request should not be approved if it appears that the intent of the withdrawal is to circumvent the intent of Section 9(c)(3). *Garden Manor Farms*, Inc., 341 NLRB 192 (2004), and *Transportation Maintenance Services, L.L.C.,* 328 NLRB 691 (1999).

11116.2 Challenges Pending

A withdrawal request may ordinarily be approved with 6 months prejudice (Sec. 11118) after an election which is inconclusive because of determinative challenged ballots. If the petition is withdrawn more than 6 months after the election, prejudice need be levied only to a date 1 year after the election. If all parties agree, a withdrawal request may be approved without prejudice.

11116.3 Objections Pending

A request to withdraw the petition, submitted while objections are pending, should normally not be approved. Sec. 11116.1. However, the Regional Director has the discretion to approve a request to withdraw the petition while objections are pending when no party objects or if the petitioner agrees, in writing, that it will not file a petition seeking an election to be held less than a year after the first election. The Regional Director should ordinarily approve a request to withdraw *objections* if, because of the passage of time, the petitioner seeks to allow the election results to become final. This action is without prejudice to the filing of a timely petition under Section 9(c)(3) based on a new showing of interest.

11116.4 Election Set Aside

A withdrawal request submitted after an election has been set aside on the basis of the petitioner's objections should, absent extraordinary circumstances, be approved by the Regional Director without prejudice.

11118 Prejudice Period; Good Cause

A withdrawal with prejudice will carry the condition that it is granted with prejudice to the filing of a new petition encompassing the same or substantially the same

unit of employees involved for a period of 6 months, unless good cause is shown why the Board should entertain a new petition filed prior to the expiration date of such period. Sec. 11118.1. Inadvertent omission of this language from the letter approving withdrawal does not stay its application.

The purpose of levying prejudice is to conserve the Agency's resources by discouraging repetitive and duplicative filings. No investigation, evaluation, or opinion as to what might constitute the good cause referred to above should be made at the time of the withdrawal. Such assessments should be made on the filing of a new petition by the affected union.

The initial determination whether there is good cause to entertain the new petition rests with the Regional Director. If the Regional Director determines that good cause does exist and further proceedings are warranted in all other respects, he/she should issue a notice of hearing and the issue may be one of those to be placed in the record at a hearing; if the Regional Director determines that it does not exist, he/she should dismiss (absent a withdrawal) and the petitioner may test the issue, if it wishes, by means of a request for review to the Board.

Prejudice runs only to the petitioner and does not preclude petitions filed by other unions, including other locals of the same International, or by a joint petitioner that includes the original organization. Intervention by the petitioner during the prejudice period is discussed in Sec. 11118.2.

11118.1 Good Cause: Application When Petition Filed Within Prejudice Period

What constitutes sufficient good cause to warrant entertaining a new petition filed prior to the expiration of the 6-month prejudice period may not be stated comprehensively; it depends on each individual case. The following circumstances illustrate what the Board considers good cause: where the original disclaimer or withdrawal was made because of contraction or expansion of the unit; or because of a pending charge on which a complaint has issued. In the latter case, concurrent petition and unfair labor practice charge principles should be applied. Secs. 11730–11734.

Another good cause for entertaining a petition is the voluntary agreement of the employer to an election in the new proceeding. The initiative in seeking and obtaining such agreement should be taken by the petitioner and not by the Regional Director. Thus, if upon the filing of the new petition the petitioner informs the Regional Director that the employer is willing to consent to an election, this should be confirmed with the employer; on confirmation, the Regional Director may approve an election agreement.

11118.2 Intervention During Prejudice Period

Even though a union may be prevented from filing a petition during a given period in the absence of good cause, it may nevertheless intervene during such period in any R case filed by another and may participate to the extent of its showing of interest (Sec. 11023). *California Furniture Shops, Ltd.*, 115 NLRB 1399 (1956).

11118.3 Showing of Interest After Prejudice Period

If a new petition is filed after the close of the prejudice period, a current showing of interest is required as evidence of interest. Sec. 11027.4.

11120–11124 DISCLAIMER

11120 Generally

As indicated earlier (Sec. 11020), a union normally achieves status as an interested party in a representation case only by affirmative action — the submission of proof of interest. In certain situations, however, affirmative action on the part of a union is necessary in order to establish that it is *not* a party in interest.

If a union with an outstanding certification or with a still effective contract covering all or some of the employees involved in a RC case seeks to *avoid* participation in the instant case (i.e., disclaims any present interest in the affected employees), it does so by filing a *disclaimer of interest*.

There is no special form for a disclaimer. In general, it should state that the disclaiming union waives and disclaims any right to represent (described) employees (or "employees involved in Case . . .").

On request, conformed copies of a disclaimer may be furnished other parties in the case.

11122 Effect Upon RC Petition

Whenever possible, the disclaimer should be procured in writing. Furthermore, a disclaimer must not be accompanied by action that is inconsistent therewith, such as simultaneously striking or picketing for recognition or seeking to process grievances.

EXCEPTION: where such grievance processing efforts involve predisclaimer matters, the efforts may not be inconsistent with a disclaimer. *Government Employees, Local 888 (Bayley-Seton Hospital),*323 NLRB 717 (1997). With respect to the existence of such inconsistent action, other parties should be contacted.

A union's statement or other conduct which indicates that it may continue its organizing efforts or resume them sometime in the future is not necessarily inconsistent with a disclaimer of any current interest in representing the employees involved.

If the disclaimer is in writing and there is no inconsistent action, the union may thereafter be disregarded as a party; if appropriate, a withdrawal may then be solicited from the petitioner. If either of these elements is missing, a notice of hearing, if a hearing is to be held, should be sent to the union; but an election agreement may be consummated without the participation or acquiescence of the disclaiming union.

If the disclaimer of interest is by a previously certified union, the dismissal or approval of withdrawal should contain a revocation of the prior certification.

11124 Dismissal of RM and RD Petitions

This Section deals with procedures for dismissing RM and RD cases, if the filing party does not withdraw the petition after a disclaimer is filed.

11124.1 RM Petition

Where the union on the basis of whose claim the petition was filed submits a disclaimer of interest, the petition should be dismissed. The ground stated for dismissal should be ". . . the union on the basis of whose claim the petition was filed has filed a disclaimer of interest in the affected employees. . . ." If the disclaimer of interest is by a previously certified union, the dismissal should contain a revocation of the prior certification.

The disclaimer must not be accompanied by action that is inconsistent therewith. Thus, if the union is simultaneously striking or picketing for recognition, the disclaimer should not serve as a basis for dismissal. A union's statement or other conduct which indicates that it might continue its organizing efforts or resume them sometime in the future is not necessarily inconsistent with a disclaimer of any current interest in representing the employees involved. The other parties should be contacted before any dismissal action is taken, with respect to the existence of such potential inconsistent action.

A disclaimer filed prior to the execution and approval of an election agreement or the opening of a hearing should result in a dismissal without prejudice to any of the parties. If a notice of hearing has issued, the dismissal and withdrawal of notice should be consolidated. If the hearing has opened and a disclaimer is filed during the hearing, the hearing officer should communicate with the Regional Director. If it is decided, on the above principles, that the case should be dismissed, the hearing should be adjourned indefinitely; the subsequent dismissal should contain a withdrawal of the notice of hearing.

If the disclaimer is filed after the execution and approval of an election agreement or the close of the hearing, the dismissal will be accompanied by the following statement:

> Any petition filed by [the disclaiming union] within 6 months from this date will not be entertained unless good cause is shown to the contrary. Moreover, in the event [the disclaiming union] makes a claim for recognition upon the employer within 6 months from this date involving the same or substantially the same unit, a motion by [the employer] requesting reinstatement of this petition will be entertained. *Campos Dairy Products, Ltd.,* 107 NLRB 715 (1954).

11124.2 RD Petition

Similarly, in a RD case, a disclaimer unaccompanied by inconsistent action should result in a dismissal. As in a RM case, the dismissal resulting from a disclaimer filed prior to approval of an election agreement or close of hearing should be unqualified. A dismissal based on a disclaimer filed after the execution and approval of an election agreement or after the close of hearing will be qualified as follows:

> Any petition filed by [the disclaiming union] within 6 months from this date will not be entertained unless good cause is shown to the contrary. Moreover, in the event the union makes a claim for recognition upon [the employer] within 6 months from this date involving the same or substantially the same unit, a motion by the petitioner herein requesting reinstatement of this petition will be entertained. *Little Rock Road Machinery Co*., 107 NLRB 715 (1954).

Where the Regional Director dismisses a RD case or approves a withdrawal request on the basis of a disclaimer by the union involved (at whatever stage), the dismissal (or the order approving withdrawal) should contain a revocation of any prior certification.

11124.3 Good Cause

No investigation of the good cause referred to in the several statements quoted above should be made at the time of the disclaimer. Such investigation, if at all, should be made on the filing of a new petition by the affected union. (For a discussion of what constitutes good cause, see Sec. 11118.1.)

11124.4 Intervenor Desires Election

If a disclaimer is filed in any situation after the close of hearing or approval of an election agreement and an intervenor wants an election held or appropriate decision issued, it must submit a petitioner's showing of interest. This showing need not predate the approval of the agreement or the close of the hearing and a reasonable period for securing and submitting the interest may be given. Upon proper submission by the intervenor, the disclaiming union may be dropped from the ballot (but see Secs. 11098 and 11122) or the proceeding and the election, with the intervenor alone on the ballot, should be held in accordance with the agreement or an appropriate decision should issue.

In the event no election is held as the result of a subsequent withdrawal on the part of the intervenor, the rule of 6 months prejudice to the filing of a new petition, unless good cause is shown, should be applied to both the disclaiming union and the intervenor.

11140-11148 PREHEARING

11140 Generally

Prior to the opening of a hearing, the Regional Director retains full authority with regard to a notice of hearing that has issued and may amend a notice of hearing, if need be, at any time prior to the opening of the hearing.

He/she may change the date, place, or hour of hearing or consolidate for hearing the instant case and another case, whether or not notice of hearing has issued in that case. The Regional Director also retains the authority to withdraw the notice of hearing and, if appropriate, to dismiss the petition. The Regional Director may act on his/her own initiative or on motion or request by a party.

11140.1 Ongoing Efforts to Obtain Election Agreement Prior to Hearing

Secs. 11012, 11082, and 11180 discuss the Board agent's ongoing efforts to obtain an election agreement. Where possible, Board agent 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.

11141 Motions

Prehearing motions should be filed with the Regional Director in writing. A copy should be served simultaneously on each of the other parties to the proceeding. Motions should briefly state the relief sought and the grounds therefor.

The Regional Director may rule on prehearing motions filed by the parties, or may refer them to the hearing officer for ruling at the hearing. Motions to dismiss petitions and similar motions involving amendment of the notice of hearing are normally ruled on by the Regional Director; other motions are normally referred to the hearing officer.

The Regional Director should advise the parties in writing of the ruling on the motion.

11142 Subpoenas

Upon application of a party, the Regional Director has the authority and the obligation to issue subpoenas returnable at a hearing. Pursuant to Section 11(1) of the Act, such issuance is automatic, upon request.

The case name and number should be filled in before the subpoena is issued. With respect to the date for the hearing, insert the scheduled date and add "or any adjourned or rescheduled date."

Regions are expected to provide subpoenas sufficiently in advance of the start of the 5-day period before the hearing, in order to provide the full time period to file a petition to revoke. Accordingly, Regions are authorized to provide requested subpoenas immediately after informing the parties of the proposed hearing date even if the formal notice of hearing has not yet issued and/or the designated place of the hearing has not been established. See OM 02-56 (Revised).

In the event a large number of subpoenas is provided to a party upon its request, the Board agent should contact the parties to ensure that:

(a) the requestor's intention to subpoena a large number of witnesses does not conflict with the need for a concise as well as complete record (Sec. 11188.1);

(b) the scheduling of necessary witnesses reasonably accommodates the need of the employer to avoid disruption of its operations.

If a party appears to be engaging in en masse subpoenaing of witnesses as a harassment device, the affected party should bring this concern to the attention of the Regional Director and request appropriate relief. *Rolligon Corp*., 254 NLRB 22 (1981).

With regard to petitions to revoke subpoenas (Secs. 11212 and 11782), the Regional Director may rule thereon or refer them to the hearing officer.

11143 Postponement Requests

The general policy of the Regional Director should be that cases set for hearing will be heard on the day set, and once commenced, will continue on consecutive days until completed, unless the most compelling circumstances warrant otherwise. Sec. 11082.3. A postponement request will not be routinely granted, but only when good cause is shown. Every effort should be made to acquaint parties in the Region and, particularly, parties in a given case of this fact and of the procedure to be followed in seeking a postponement. The correspondence sent to the parties upon the filing of the petition serves these purposes. Sec. 11008. Form NLRB-4338 (Sec. 11082.1) further communicates the Agency's policy in this regard. It accompanies each notice of hearing, and contains the names and addresses of the parties, as well as instructions for requesting postponements.

11143.1 Generally

A party seeking postponement of the opening date of a hearing must first ascertain and set forth in the request the positions of all other parties. The party must also propose a specific date for the postponement. The request to the Regional Director should be in writing, with copies served on each of the other parties. The request should contain detailed cause (i.e., not merely "prior commitments"). As set forth in Form NLRB-4338 (Secs. 11082.1 and 11082.3), except in emergency situations, the request should have been filed at least three days before the date then set for hearing.

11143.2 Ruling on Request

The Regional Director should rule on the request for postponement, taking into account the positions, if any, expressed by the other parties, and should serve a copy of the ruling on the parties. Postponements, if granted, should be to a date certain. The ruling should note that no further postponements will be granted and that the hearing, once commenced, will continue on consecutive days until completed.

11148 Review of Prehearing Determinations

Prehearing rulings by the Regional Director (other than dismissals of petitions) may not be appealed directly to the Board but may be considered by the Board in connection with a request for review of the Regional Director's decision. Sec. 102.63(b), Rules and Regulations. If appropriate exception is taken by a party to a prehearing determination, it will be considered by the Regional Director or the Board, as the case may be, when the record is reviewed. Therefore, the notice of hearing, amendments thereto, orders postponing or denying requests to postpone the hearing, motions, and rulings thereon, should become a part of the record at the hearing. Rulings on petitions to revoke subpoenas (Sec. 11140.3) will become part of the record, on request of the aggrieved party.

11180-11248 PREELECTION HEARINGS

11180-11189 ISSUES PRELIMINARY TO HEARING

11180 Final Efforts to Obtain Election Agreement Prior to Opening of Hearing and During Hearing

In advance of the date of hearing, every effort should be made to secure an election agreement. Secs. 11012, 11082.1, and 11084.1. If the parties indicate willingness to enter into a stipulated or consent election agreement, the opening of the hearing should be delayed until after the possibility has been adequately explored. If an agreement is thereafter executed, the hearing should not be opened; the subsequent approval of the agreement will serve as a withdrawal of the notice of hearing. In the event a hearing becomes necessary, fully explore the parties' willingness to enter into a full consent election agreement.

The agent, in discussing the full consent election agreement option, may discuss the following advantages that this procedure provides:

- A quicker resolution of the representation dispute with finality
- Access to secret ballot Board election using tested election procedures without delays
- Ability to litigate significant issues without delays
- Substantial savings in legal expenses for all parties since there will be no proceedings before the Board
- No uncertainties related to delayed business decisions, including desired changes in business operations, while awaiting the final disposition of the representation issue before the Board
- Expertise in determining questions that arise when a representation dispute is present, e.g., unit placement, unit scope, eligibility of employees, etc.
- The benefits of Board certification
- Regional Director decisions are reliable and are overturned by the Board on review in only a very small percentage of cases

If the parties agree to this procedure, they should execute Form NLRB-5509, Full Consent Election Agreement.

If the possibility of a stipulated, consent, or full consent election agreement arises during the hearing, the hearing should be recessed for its consideration. Should agreement be reached, the hearing should be adjourned indefinitely. It is unnecessary to insert the agreement in the record. The subsequent approval of the agreement will serve as a withdrawal of the notice of hearing.

11181 Nature and Objective of Hearing

The R case hearing is a formal proceeding the purpose of which is to adduce record evidence on the basis of which the Board may discharge its duties under Section 9 of the Act. As such, it is investigatory, intended to make a full record and nonadversarial.

11182 Formality of Hearing

As a formal proceeding, a R case hearing should be conducted at a place conducive to the maintenance of a judicial atmosphere. If it cannot be held in a Regional Office hearing room, it should be held, if possible, in a courtroom. If the space secured proves inadequate or accommodations are poor, the Board agent should take remedial action, if possible.

At the hearing, the conduct of the parties should be dignified, both on and off the record. Smoking is prohibited.

11182.1 Misconduct at Hearing

Misconduct before the hearing officer shall be ground for summary exclusion from the hearing. Sec. 102.66 (d)(1), Rules and Regulations. Misconduct of an aggravated character engaged in by an attorney or other representative of a party shall be ground for suspension or disbarment by the Board from further practice before it, after notice and hearing. Sec. 102.66 (d)(2), Rules and Regulations.

In the event such misconduct occurs, a full report thereof should be prepared by the hearing officer and submitted by the Regional Director to the Division of Operations Management.

11183 Payroll List Submitted at Hearing

If a payroll list is submitted by an employer at a hearing, the considerations discussed in Secs. 11020 and 11025 should be applied.

11184 Attempt to Litigate Showing of Interest at Hearing

The determination of the extent of interest of each union seeking participation in a representation case is a purely administrative matter, wholly within the discretion of the Agency. Sec. 11021. This should be made clear to any party at a hearing that seeks to attack the interest showing of any involved union, whether petitioner or intervenor. Argument at the hearing on the adequacy of the interest is not permitted. Although the hearing officer's rulings at the hearing on interest issues may be based on the investigation of interest previously made or on the investigation that may be made by the hearing officer during the hearing, the results of either investigation are administrative matters not subject to attack by the parties; in answer to arguments to the contrary, the hearing officer should explain this principle. Evidence of interest (or of revocation) should never be introduced or received in evidence.

11184.1 Allegation of Improper Conduct in Obtaining Showing of Interest

If a party seeks at the hearing to introduce evidence of alleged fraud, misconduct, supervisory taint, or forgery in obtaining the showing of interest, the line of questioning should not be permitted. The party desiring to present such evidence should be advised on the record to bring it administratively to the attention of the Regional Director within 7 days. Secs. 11028.1 and 11029.1. The hearing should not be interrupted.

11185 Hearing Officer

The R case hearing is conducted by a hearing officer who is normally a Board agent from the Region in which the hearing is held. The hearing officer's role is to guide, direct, and control the presentation of evidence at the hearing. Secs. 11187–11188.

The hearing officer does not make any recommendations or participate in any phase of the decisional process. He/she may or may not be the same agent who has handled earlier or who may handle later phases of the same case.

11186 Hearing Materials

Typical materials for a hearing are set forth below.

11186.1 General

A hearing kit applicable to all cases should contain the following:

(a) Board's Rules and Regulations

(b) Hearing Officer's Manual

(c) Representation Case Manual

(d) Subpoenas (Ad Testificandum and Duces Tecum)

(e) Appearance Sheet (Form NLRB-1801)

(f) Election Agreement Forms (Forms NLRB-651 and NLRB-652)

(g) Withdrawal Request (Form NLRB-601)

(h) Request to Proceed (Form NLRB-4551)

(i) Report on Investigation of Interest (Form NLRB-4069)

(j) Copies of Form NLRB-4669, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board Pursuant to Petitions Filed Under Section 9 of the National Labor Relations Act, as Amended.

11186.2 Specific

With respect to any given case, the following should be added to the hearing kit:

(a) Case file

(b) All payroll lists and the showing of interest

(c) Formal papers, ready for introduction as exhibits (Sec. 11192)

(d) Original and copy of completed appearance sheet (Form NLRB-1801)

(e) Prepared stipulations on uncontested issues (Sec. 11187.2)

(f) Close of R Case Hearing Form (NLRB-856) — two copies, with copy of petition or last amended petition attached to original.

11187 Hearing Officer Prehearing Responsibilities

11187.1 Preparation

In advance of the hearing, the hearing officer must be aware of all issues in a given case and of the types of information generally bearing on such issues, in order to prepare properly to conduct the hearing. The hearing officer should have a meeting with the appropriate Regional management and/or supervisory personnel in advance of the hearing to discuss the issues that may be raised and develop a plan for the conduct of the hearing.

11187.2 Prehearing Preparation of Stipulations

Prior to the hearing, the hearing officer should prepare a *written* stipulation, for signature by the parties at the hearing, that covers all of the generally uncontested issues for hearings, i.e., the correct names of the parties, labor organization status, commerce information, etc., as well as any other issues that are known not to be in dispute, such as contract bar, bargaining history, demand for and refusal of recognition, etc. Preparation of a written stipulation prior to the hearing can save reporting costs and provides accurate information, while avoiding typographical and other errors that the transcript may contain as to details. Such a stipulation, once signed by the parties, should become a Board exhibit, usually Board Exhibit 2, and should be entered into evidence after the introduction of the formal papers (Board Exhibit 1; Sec. 11192).

Sample Stipulation: A sample stipulation form that may be prepared by the hearing officer prior to the hearing appears on the next two pages:

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION __

Correct Name of Employer:
Case No.
Correct Name of Petitioner:
Correct Name of Intervenor:

STIPULATION

We stipulate and agree that:

1. We have been informed of the procedures at formal hearings before the National Labor Relations Board by service of the Statement of Standard Procedures with the Notice of Hearing. The Hearing Officer has offered to us additional copies of the Statement of Procedures.

2. To the extent the formal documents in this proceeding do not correctly reflect the names of the parties, the formal documents are amended to correctly reflect the names as set forth above.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act. The Intervenor is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.

4. The Petitioner claims to represent the employees in the unit described in the Petition herein and the Employer declines to recognize the Petitioner.

5. There is no collective-bargaining agreement covering any of the employees in the unit sought in the Petition herein and there is no contract bar to this proceeding.

6. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

Commerce facts:

7. The following unit is an appropriate unit within the meaning of Section 9(b) of the Act:

Included:

Excluded:

Upon receipt of this Stipulation by the Hearing Officer it may be admitted, without objection, as a Board exhibit in this proceeding.

For the Employer

For the Petitioner

For the Intervenor

RECEIVED:

Hearing Officer

Date:

Board Exhibit No.

Contents of Stipulations: Care should be taken that the contents of stipulations are not so conclusionary that the Regional Director or the Board might hesitate or be unable to adopt and follow them without "primary" foundation. For example, a stipulation that the Agency has jurisdiction over the parties is of no use without a recital of supporting commerce facts.

Joinder of Parties: All parties should join in each stipulation. If one party "has no knowledge" (e.g., if a union has no knowledge of commerce facts), it should be asked for an affirmative or negative answer to the question of whether it will join in the stipulation. In the absence of joinder of all parties, the stipulation cannot be received and competent testimony must be received, except that a participating intervenor, i.e., one which has submitted less than a 10 percent showing, may not "block" stipulations entered into by the other parties. Sec. 11023.4.

11187.3 Foreign Language Witnesses

The hearing officer should be aware of the potential need for foreign language witnesses and should ensure that appropriate arrangements are made in order to avoid unnecessary expense or delay. Sec. 11221.

11188 Hearing Officer Responsibilities During Hearing

11188.1 Complete and Concise Record

In addition to being aware of and prepared for the issues in a given case, it is the duty of the hearing officer to see that a full record is developed. It is also the duty of the hearing officer to keep the record as short as is commensurate with its being complete. This also minimizes the significant costs associated with a hearing.

In the performance of these duties, the hearing officer should discuss with the parties the nature of the evidence to be presented and the order in which it will be elicited. The hearing officer should take an active role in exploring all potential areas of agreement and narrowing the issues that remain to be litigated. The hearing officer should guide, direct, and control the hearing, excluding irrelevant and cumulative material and not allowing the record to be cluttered with evidence submitted "for what it's worth." Cf. Sec. 11217. In addition, the hearing officer should solicit stipulations and utilize offers of proof in order to achieve an uncluttered record. Secs. 11187.2, 11189(f) and 11226. The hearing officer may cross-examine and call and examine witnesses. The hearing officer may call for and introduce all appropriate documentary evidence, being limited only by the relevance of the evidence to the issues. Whenever the hearing officer's technical assistance is required by any party, it should be given.

When necessary to ensure the development of a record that is complete, concise, and cogent, it may become necessary for the hearing officer to interrupt the presentation of a party and conduct some or all of the questioning of a witness or witnesses. However, it should be recognized that the hearing officer's responsibility for the development of a complete yet concise record may on occasion lead to an appearance of undue assistance to a party that does not itself introduce evidence in support of its positions or of undue

interference with a party seeking to introduce immaterial, irrelevant, or cumulative evidence. In discharging his/her obligation to develop a full yet concise record, the hearing officer must also keep constantly in mind that to the parties he/she is the Board's representative and that the parties expect him/her to be objective and considerate in the conduct of the hearing. Thus, the hearing officer, while meeting his/her primary responsibility to develop a full yet concise record, should also exercise self-restraint, should give the parties prior opportunity to develop points, and should refrain from needlessly taking over.

11188.2 Rulings

11188.2(a) Rulings to be Made During Hearing; Review of Rulings

The hearing officer should rule on all appropriate motions, objections, and other matters after asking all parties for their positions. The hearing officer should give a justification for each ruling. The ruling should be stated orally on the record and, if requested, the basis should be given in as brief or as detailed a manner as the circumstances warrant. If an immediate ruling cannot be made, the hearing officer should make the ruling before the close of the hearing.

NOTE: The hearing officer must always rule to exclude from the hearing evidence concerning the showing of interest, unfair labor practice matters, and alleged violations of other statutes. Secs. 11184 and 11228. If a motion to disqualify the hearing officer is made, the hearing officer should make a ruling on such terms as he/she deems appropriate. Sec. 11188.2(b) below discusses rulings that should be referred to the Regional Director.

Review of Hearing Officer Rulings: The parties have an automatic exception to all unfavorable rulings made by the hearing officer. Thus, those rulings are subject to review at such time as the entire record is considered by the Regional Director or the Board, as the case may be. Sec. 102.65(c), Rules and Regulations. Sec. 11203 discusses attempts during the hearing to appeal from rulings by the hearing officer.

11188.2(b) Rulings to be Referred to Regional Director

The hearing officer should refer to the Regional Director all requests for withdrawal of the petition, motions to dismiss the petition, and to transfer the case to the Board, as well as motions for oral argument before the Regional Director or the Board. Such referrals should be made on the record.

11189 Checklist

This Section is intended to describe the outline of a typical hearing. It does not purport to cover all situations nor is the order given necessarily the best in every case. As adapted by the hearing officer in any given case, it or something like it should be used both in the preparation for and during the hearing. A more detailed discussion of many of the matters outlined in this checklist appears above in Secs. 11187–11188 and below in Secs. 11190–11248.

(a) Appearance sheets are filled in by the hearing officer or by the parties. Each person likely to speak is made known to the others, including the reporter. The hearing officer ensures that the parties are ready.

(b) The hearing is called to order. The opening statement is read, including the parties' record statements of appearance. Sec. 11190.1. Representatives who may subsequently speak should be identified on the record.

(c) Formal papers and stipulations should be identified and received (Secs. 11187.2 and 11192), as should prehearing motions and rulings/referrals, where appropriate (Sec. 11141).

(d) Motions for intervention should be called for and, if made, should be ruled on. Sec. 11194.

(e) Correct names of parties should be ascertained. Sec. 11198. Appropriate corrective motions for amendment of the petition, if made, should be ruled on. Secs. 11014 and 11204.

(f) Off the record, possibilities of stipulations not already obtained as to commerce, labor organization, question concerning representation, bargaining history, composition of the bargaining unit, contract bar, seasonality, etc., and any other issues that may not be in serious dispute should be further explored. If attained, factual agreements should be incorporated into stipulations and put on the record; it is unnecessary to receive, as exhibits, copies of correspondence or records if a factual stipulation gives all necessary information. Sec. 11187.2 discusses the care that should be taken with regard to the contents of stipulations and the joinder thereto of parties.

(g) With regard to issues on which stipulations were not obtained, a summary of the off-the-record discussion should be made on the record. This may take the form either of each party summarizing its position on each issue or of the hearing officer's doing so, with recorded acquiescence by the parties.

(h) The order of presentation should be decided off the record. Sec. 11218.

(i) The parties should be required to state their positions on the record as to the matters being heard and the record should be developed to reflect the exact positions of the parties. Sec. 11217. The record should contain facts concerning job duties of employees or employee classifications in dispute to enable the Regional Director or the Board to determine their eligibility and proper unit placement. If there is an issue as to an unusual eligibility date (Sec. 11312.1), all relevant facts and parties' positions should go into the record. The number of employees in each classification should be elicited.

(j) Evidence should be received, either in the form of sworn testimony or stipulations. Secs. 11216–11228. Opportunity for cross-examination should be accorded to the parties. Where appropriate, testimony of a given witness may be interrupted, for purposes of cross-examination, redirect, etc., into segments (e.g., the witness' knowledge as to the status of, say, leadpersons might be thoroughly explored before proceeding to the status of the next job category).

(k) Each party should be permitted to introduce any relevant testimony. Attempts to present irrelevant or cumulative testimony should be rejected. Sec. 11188.1. As appropriate, an offer of proof may be used. Sec. 11226.

(l) The hearing officer should conduct whatever necessary examination has been omitted by the parties. The hearing officer may call witnesses to fill in gaps in the evidence. Sec. 11188.1.

(m) The parties should be asked whether, in the light of the testimony received, they wish to make any changes in their respective positions on the issues.

(n) Oral argument on the record, in lieu of the filing of briefs, should be encouraged for any party desiring it. Sec. 11242.

(o) When the parties have indicated that they have nothing further, the hearing officer should read his/her closing statement and declare the hearing closed. Sec. 11246.1.

11190-11248 CONDUCT OF HEARING

11190-11209 INITIAL ISSUES AT HEARING

11190 Opening of Hearing

Prior to the opening of the hearing, the hearing officer should fill out or have the parties fill out an appearance sheet (Form NLRB-1801) and remind them of the requirement that any request for review be served on each party, as well as on counsel or representative for each party and on the Regional Director.

At this time the parties should also be shown the formal papers prepared for Board Exhibit 1 and given a copy of the index and description of the entire exhibit. Written stipulations that have been prepared in advance (Sec. 11187.2) should be shown to the parties at this time also and the signatures of the parties solicited. The hearing should open at the place, date, and hour scheduled. If there is a deviation that has not been noted by an appropriate order, the change, the reason, and the positions of the parties should be put into the record at an early opportunity.

11190.1 Hearing Officer Opening Statement

On the opening of the hearing, the hearing officer should read into the record the following statement:

> This is a formal hearing in the matter of _____, Case _____, before the National Labor Relations Board. The hearing officer appearing for the National Labor Relations Board is _____.
>
> All parties have been informed of the procedures at formal hearings before the Board by service of Form NLRB-4669 Statement of Standard Procedures with the notice of hearing. I have additional copies of this statement for distribution if

any party wishes more. Will counsel please state their appearances for the record? For the Petitioner? . . . For the Employer? . . . For the Intervenor? . . .

Are there any other appearances? Let the record show no (further) response.

Are there any other persons, parties, or organizations in the hearing room at this time who claim an interest in this proceeding? . . . Let the record show no (further) response.

During these introductory remarks, the hearing officer should also indicate on the record that a party which plans to order a transcript for purposes of preparing a brief should make arrangements with the reporting service contractor to obtain it on an expedited basis by pick up, delivery, or overnight mail. The hearing officer should also advise the parties that a party's request for an extension of time to file briefs based upon a delay in receipt or nonreceipt of a transcript will normally be denied, in the event such arrangements for expedited delivery were not made by the party.

11192 Introduction of Formal Papers

The formal papers consist of the petition and any amended petitions; the notice of hearing and any amendments thereto; any motions on which prehearing rulings have been made which bear on the issues to be resolved by the hearing (Sec. 11141); and affidavits of service pertaining to any of the above.

In advance of the hearing, the formal papers should have been placed in chronological order from the bottom upward and marked as Board Exhibit 1(a), 1(b), 1(c), etc., the top document, bearing the last number of the series, being an index and description of the formal documents. After the hearing officer has made an opening statement, he/she should say (as example):

I now propose to receive [instead of offer] the formal papers. They have been marked for identification as Board's Exhibits 1(a) through 1( ), inclusive, Exhibit 1( ) being an index and description of the entire exhibit. This exhibit has already been shown to all parties. Are there any objections?

Objections or lack thereof should be affirmatively placed in the record. Objections may be voiced, but normally they will be withdrawn upon the explanation that the papers in question constitute a routine introduction of the hearing; that admission of the documents does not irrevocably establish the truth of any allegations therein; that any relevant evidence may be introduced irrespective of such allegations; and that, in any event, the Regional Director or the Board will pass on the validity of this and any other evidence.

Written stipulations prepared in advance and obtained from the parties (Secs. 11187.2 and 11190) should next be entered into the record as Board exhibits.

11194 Motions to Intervene

At this point, the hearing officer should affirmatively raise issues involving intervention. In addition to calling attention to any prehearing motions to intervene that may have been referred to the hearing officer, he/she should ask those present whether there are any current motions to intervene. The hearing officer should make certain that the full and precise name of any intervenor is adduced on the record and that the record is clear as to whether the intervenor is the local, the International, or both. Motions to intervene, whether made prior to or at the hearing and whether written or oral, should contain the grounds relied on. Secs. 11194.1–11194.3.

Before ruling on such motions, the hearing officer should ask all other parties for their positions.

11194.1 Based on Existing or Recently Expired Contract

Where the motion is based on an existing or recently expired contract (Sec. 11022.1(b)), a copy of the contract should be put into the record. For purposes of seeking to introduce a contract into evidence, see Sec. 11224.1; the union in question may have all the rights of a party even though the motion to intervene has not yet been ruled on.

11194.2 Based on Evidence of Interest

Where the motion is based on evidence of interest earlier presented to the Regional Office or now presented to the hearing officer, that fact should be noted on the record. The evidence of interest itself *must not* be introduced or received in evidence. Argument on the interest or its adequacy is also not permitted. Secs. 11021 and 11184.

11194.3 Check of Intervenor Showing

Evidence of interest presented by the intervenor at the hearing ordinarily should, but need not always, be checked on the spot. If it appears to be sufficient on its face (Sec. 11194.4), the motion to intervene may be granted "subject to a subsequent check of the sufficiency of interest," and the check may be made at a break or between sessions. Thereafter, the hearing officer should announce a final ruling as to whether the union seeking intervention has demonstrated a showing sufficient to entitle it to intervention, as well as the degree of participation to be permitted. Secs. 11022.3(c) and (d).

The hearing officer's report (Sec. 11250) and the amended report on investigation of interest, Form NLRB-4069, should administratively advise the Regional Director or the Board of the results of the check.

11194.4 Tests for Granting or Denying Intervention

Should the union seeking intervention meet any of the tests described in Secs. 11022, et seq., the motion for intervention should be granted.

Motions to intervene made by employees or employee committees not purporting to be labor organizations should be denied. Motions to intervene made on the basis of interest in the unit by labor organizations representing employees in other parts of the plant, for example, or other plants of the employer, should be granted. Sec. 11023.5. At

some subsequent point, however, such intervenor should be asked to make clear its position as to participation in any election ordered.

A motion to intervene made by an organization that has been ordered disestablished by a final Board order should be denied. Objections to a motion to intervene based on an allegation that the union seeking intervention is illegally dominated or assisted should be rejected, in the absence of a Board order to such effect.

11194.5 Levels of Intervention Permitted

A union must present a cross-petitioner's evidence of interest, i.e., designation by at least 30 percent of the employees in the unit (Sec. 11023.2), in order to take a position or offer evidence with respect to the appropriateness of any substantially different bargaining unit from that sought by the petitioner. However, any party, including a full or a participating intervenor, may introduce evidence as to the *scope* of the unit (i.e., the inclusion or exclusion of a plant, craft, or department) sought by the petitioner, as well as the *composition* of the unit (i.e., the inclusion or exclusion of specific job classifications). Secs. 11023.3 and 11023.4. Although all parties permitted intervention may thereafter participate fully, a *participating* intervenor, i.e., one which has submitted less than a 10-percent showing, may not "block" stipulations entered into by the other parties. Sec. 11023.4.

11198 Correct and Complete Name of Labor Organization

Hearing officers are responsible for establishing on the record the correct and complete name of any labor organization appearing in a representation case hearing. The name of the labor organization should be the same as that set forth in its constitution, bylaws, or other documents; the name should be spelled out—initials are not acceptable; and any affiliation with a national, International, and/or parent federation must be clearly spelled out. The sole exception is that AFL–CIO need not be spelled out.

It is not necessary to introduce copies of constitutions, bylaws, or other documents to establish the correct name of a labor organization. The statement of the representative or of counsel for the organization involved to the effect that the name is the true and correct name should suffice. Whether more evidence is required beyond this is a matter for the hearing officer to determine.

In the event of any reluctance to cooperate on the part of a labor organization or in those cases where a labor organization's refusal to cooperate is deliberately designed to delay a proceeding such as a RM or RD case, the hearing officer should assume the burden of establishing the correct name on the record.

11198.1 Shortened Name Requested

If a request to use a shortened name is made at the hearing, the hearing officer should explain that the Board requires that the correct and complete name appear on the ballot together with any initialed or shortened name. If the request to add a shortened name might confuse the employees, the hearing officer should develop the record fully on

this point and let the Regional Director make the determination in the decision. Secs. 11272 and 11306.3 discuss similar posthearing and nonhearing requests, respectively.

11198.2 Amendment of Petition to Reflect Correct Name

When it is developed on the record that the correct and complete name of a labor organization is different from that appearing on the petition, motion(s) should be made on the record amending the petition to reflect the correct name(s). This will permit the use of the proper name in the case caption in the decision and other papers.

11198.3 Single or Joint Parties

To eliminate the possibility of confusion with respect to single versus joint parties, the hearing officer should ensure that the record clearly indicates that a petitioner or intervenor is single or joint. For example, if a local and an International are jointly appearing as a petitioner or intervenor, the name of the International would appear twice; first, identifying the affiliation of the local, and second, the name of the International appearing for itself.

11203 Attempt to Appeal During Hearing From Ruling by Hearing Officer

During a hearing, a party may not directly appeal rulings made by the hearing officer (Sec. 11188.2(a)), except by special permission of the Regional Director. Rather, the parties have an automatic exception to all unfavorable rulings, thus making them subject to review at such time as the entire record is considered by the Regional Director or the Board, as the case may be, after the close of the hearing. Sec. 102.65(c), Rules and Regulations.

If during a hearing, a party wishes to appeal a hearing officer's ruling, it must file a request for special permission to do so with the Regional Director. Such a request should be made promptly, in writing, with a copy served on the hearing officer and the other parties. The request should succinctly state the ruling, the surrounding circumstances, and the grounds urged for reversal. The hearing officer should not file an opposition to the request.

In the event a party requests an adjournment for the purpose of preparing its request for special permission to appeal a hearing officer's ruling, the hearing officer may grant the adjournment for the minimum length of time required to prepare and transmit the request. The hearing should then be resumed, pending a ruling by the Regional Director on the request. Alternatively, the hearing officer may decline to adjourn the hearing, in which event he/she should instruct the party to prepare and file the request during a break in the hearing.

11204 Amendment to Petition

During the course of the hearing, a petitioner may seek to amend its petition. This should be done by means of a request or motion to amend; a supporting statement should be made by the requestor or moving party. Sec. 11014.

The hearing officer, after soliciting the positions of the other parties and after argument, should grant or deny the request as appropriate. The usual problem is not whether or not the request should be granted: as a practical matter, the initiator of the proceedings should ordinarily be permitted to proceed in his/her direction or in none at all. *Atlantic Richfield Co*., 208 NLRB 142 (1974). The more serious problem caused by the midhearing change is that it may call for a reappraisal of the basis for the hearing and may have an impact upon the rights of the other parties to present their evidence. Although amendments to petitions do not automatically require postponements, the possible consequence may be that other parties may request additional time to prepare their cases. It may be necessary to reexamine the showings of interest as well as the appropriateness of the unit. It is the responsibility of the hearing officer to determine whether these issues are presented and, if so, to solve them by investigation and appropriate recommendations or actions. These determinations by the hearing officer should be guided by the normal considerations of expeditious processing and a full and concise record.

11207 Postponement Requests

A party may request a postponement (continuance, adjournment, or recess) at some point during the hearing. Authority to grant such a request rests with the hearing officer. However, since the parties were advised prior to the hearing that it would continue on consecutive days until completion (Secs. 11008, 11009.2(g), 11082.3, and 11143), such a request should rarely be granted and only under the most compelling circumstances. Therefore, when faced with a postponement request, the hearing officer should grant the request only on a showing of exceptional need. The hearing officer should reconcile two important policies — the prompt processing of R cases under the Act (Secs. 11000 and 11740) and the need for a complete and concise record (Sec. 11188.1). In some cases, a request for a postponement may be withdrawn after the hearing has proceeded in those aspects on which progress is possible.

11207.1 Ground—Lack of Counsel

If the ground given for postponement is the lack of counsel or the recent entry of counsel, the hearing officer should note that all parties were notified of the date of the hearing at the time that the petition was filed, precisely to allow them to make the necessary arrangements, including obtaining counsel, to be prepared for that date. Secs. 11008, 11008.6, 11009.1(a), 11009.2(g), 11082.3, and 11143. For this reason, a postponement due to lack of availability of counsel should ordinarily be unnecessary. Where warranted by extraordinary circumstances, only a minimal continuance should be granted, rarely more than a few days.

11207.2 Ground—To Submit Additional Information

If the ground given is the necessity for time to submit additional, relevant information, the hearing officer should explore every avenue by which the information may be elicited promptly (e.g., stipulation, adjournment to a more convenient place, etc.). If the information is necessary, an adjournment may be avoided by arranging for a

closing of the hearing subject to the later introduction of an exhibit, although this procedure is ordinarily to be avoided. Sec. 11224.6. Delays necessitated by such matters as requests to the Regional Director for special permission to appeal rulings by the hearing officer (Sec. 11203), subpoena enforcement proceedings (Sec. 11214), etc., should be kept to the minimum necessary. If a hearing is adjourned because additional necessary evidence is not immediately available, the hearing officer should make clear to the parties what information is desired for introduction at the resumed hearing.

11208 Adjournment

An adjournment of the hearing should be to a date certain, with provision for the hearing to continue thereafter on consecutive days until completed. With respect to indefinite adjournments in connection with an election agreement, a withdrawal request and subpoena enforcement, see Secs. 11180, 11208, and 11214, respectively.

11209 Withdrawal Request

A withdrawal request submitted to the hearing officer should be referred to the Regional Director (Sec. 11188.2(b)), who will consider it in light of the principles discussed in detail in Sec. 11110.

If it appears that the request will be granted, the hearing should not be opened; if the hearing has already been opened, the request should be made part of the record and the hearing should be adjourned indefinitely, pending the Regional Director's approval. The eventual approval should contain a withdrawal of notice of hearing. The Regional Director retains authority to withdraw a notice of hearing until the close of the hearing. Sec. 11140.

11210–11214 SUBPOENAS

11210 Issuance

The hearing officer should have available a supply of subpoenas, both ad testificandum and duces tecum. Sec. 11186.1(d).

Upon application for subpoena by a party, the hearing officer should enter the case name and number, as well as the date of the hearing and the phrase "or any adjourned or rescheduled date," on the subpoena and deliver the subpoena to the requesting party. Sec. 11(1) of the Act. In the event a large number of subpoenas is provided to a party upon its request, the hearing officer should ensure that:

(a) the requesting party's intention to subpoena a large number of witnesses does not conflict with the need for a concise as well as complete record (Secs. 11181 and 11188.1); and

(b) the scheduling of witnesses necessary to the hearing reasonably accommodates the need of the employer to avoid disruption of its operations.

If a party appears to be engaging in en masse subpoenaing of witnesses as a harassment device, the hearing officer, in addition to considering the factors in (a) and (b) above, should bring this concern to the attention of the Regional Director for provision of appropriate relief. *Rolligon Corp*., 254 NLRB 22 (1981). Sec. 11142.

A subpoena application must be in writing; it need not name the person whose testimony is sought or describe the documents whose production is sought; it may be made during a recess period off the record.

The hearing officer should not *serve* subpoenas on behalf of parties. The hearing officer may, in the interest of making a full record, subpoena witnesses himself/herself. In such cases, the hearing officer should issue and serve subpoenas.

For more extensive discussion of issuance and service of hearing subpoenas, see Secs. 11770–11780.

11212 Petition to Revoke

The hearing officer should rule on a petition to revoke subpoenas that is referred to him/her (Sec. 11142) or that is filed directly with him/her.

For extended discussion of form, service, and validity of a petition to revoke, see Sec. 11782.

With respect to a subpoena ad testificandum, the 5-day period discussed in Sec. 11782 is a maximum, not a minimum. A problem may arise during a hearing when a subpoena duces tecum is returnable less than 5 days from date of service, and thus less than the five 5 allowed for filing a petition to revoke. Sec. 11782.4. Should a continuance for the remainder of the 5-day period be requested, the better procedure, if it is possible, is to discuss the entire matter off the record — the nature of the evidence sought, possible substitutes, the possibilities of stipulation, the grounds for the anticipated petition to revoke, and the prejudice, if any, that would result should the postponement request be denied. Frequently, the situation can be resolved by turning to other matters temporarily, returning to the disputed subpoena afterwards. Usually, the matter can be "worked out" without the necessity for passing on the postponement request. If not, the hearing officer's granting or denial of the request should depend on the prejudice, if any, that would result to any party as a result of that decision.

The subpoenas, petitions to revoke, and rulings are not part of the record, except by specific request of the aggrieved party.

11214 Delay for Enforcement

If the hearing officer is faced with a request for adjournment in order to serve a subpoena or to enforce a subpoena not complied with, he/she must reconcile, as best as possible, the concepts that speed is of the essence in resolving representation questions

and that the Regional Director or the Board should be fully apprised of the facts. The hearing officer should ask the party seeking the delay (and himself/herself, in the event a witness who he/she has called or documents he/she has sought is involved) what the testimony of the witness or production of the documents would add, whether it is necessary and whether there are any satisfactory substitutes. If, after consideration, the hearing officer concludes that the testimony sought is relevant and necessary, he/she should adjourn the hearing.

For a discussion of subpoena enforcement, see Secs. 11790–11806; for a discussion of postponements generally, see Secs. 11143 and 11207.

11216–11228 PRESENTATION OF EVIDENCE

11216 Generally

Information is introduced into the record as it is in C case hearings, but, unlike those hearings, the rules of evidence prevailing in courts of law and equity are not controlling. However, they should be followed whenever possible. The overwhelming considerations are relevance, completeness, and brevity. Specific items are treated below.

11216.1 Introduction of Material Contained in Regional Office File

Permission and consent under Sec. 102.118, Rules and Regulations are hereby given to Agency personnel by the General Counsel with respect to documents under his/her supervision or control for the use, in R case hearings, of disclosable file material for the purpose of developing a full and complete record, including, where necessary, display of the materials to all parties and their introduction into evidence. Where use of materials is sought by parties other than Board personnel or by anyone in a matter other than a Board hearing, express consent must be sought in accordance with the above-mentioned Sec. 102.118 of the Rules and Regulations.

With respect to subpoenas directed to Board personnel in any proceeding, see Secs. 11820–11828.

11217 Statement of Parties' Positions on Record

Prior to the presentation of evidence or witnesses, parties to the hearing should succinctly state on the record their positions as to the issues to be heard. If a party refuses to state its position on an issue and no controversy exists, the party should be advised that it may be foreclosed from presenting evidence on that issue. *Mariah, Inc*., 322 NLRB 586 (1996); *Bennett Industries*, 313 NLRB 1363 (1994). Further, if the unit sought by petitioner is presumptively appropriate, then only limited evidence may be allowed where a party *takes a position* as to alternative units and such evidence may be

precluded in certain circumstances. *Laurel Associates, Inc.*, 325 NLRB 603 (1998). The party should be offered an opportunity to make an offer of proof. Sec. 11226.

After all such testimony and evidence has been received into the record, the party should state its position again.

11218 Order of Presentation

There is no set order of presentation applicable to all R cases. In most cases, the employer should proceed first, inasmuch as it can provide an overview of its operations that may be helpful to the parties and the hearing officer. This is usually the most efficient way to develop the record. If the parties are unable to agree on the order of presentation, the hearing officer should direct the order of testimony. If necessary, he/she should call and examine witnesses. Sec. 11188.1. Subject to considerations of materiality and cumulativeness, parties should be permitted to reopen their cases to present additional facts. The completeness of the record should not be sacrificed solely to comply with technicalities.

11220 Witnesses

Prior to testifying, each person called as a witness should be sworn in by the hearing officer. The hearing officer should receive from the witness, who is standing with right hand upraised, an affirmative answer to the question: "Do you solemnly swear that the testimony you are about to give shall be the truth, the whole truth and nothing but the truth, so help you God?" (Affirmation may be used where requested.)

Each witness is subject to cross-examination by the other parties. On recall in the course of a case, a witness need not be resworn, but should be asked to signify, on the record, that the witness understands that he/she is still under oath.

The hearing officer should rule on objections to questions, including objections to his/her own questions, as they are raised. Sec. 11188.2. The refusal of a witness at a hearing to answer any question that has been ruled to be proper shall, in the hearing officer's discretion, be ground for striking all testimony previously given by the witness on related matters. All motions to strike, whether on the grounds just stated or on other grounds, must be ruled on by the hearing officer.

11221 Foreign Language Witnesses

In the event foreign language witnesses are required, the Regional Office will secure and pay for interpreter services. Unnecessary expense and delay in this regard should be avoided. *Solar International Shipping Agency,* 327 NLRB 369 (1999). To assist Board agents in their role as hearing officer involving interpreters, please refer to the Guide for Hearing Officers, Foreign Language Witnesses, Section II, D, page 26; OM 06-49, Interpreters at Hearings (Guidelines for Interpreters); and OM 06-75, Non-English Speaking Witnesses in Representation Cases. Specifically, a hearing officer should be

familiar with and provide the interpreter a copy of the Guidelines for Interpreters, addressed in OM 06-49.

11222 Stipulations During Hearing

In addition to the prehearing and early hearing stipulations discussed in Secs. 11187.2 and 11189(c) and (f), the hearing officer should endeavor during the hearing to secure stipulations, wherever possible, in order to narrow the issues and to shorten the record. Sec. 11187.2 discusses the care that should be taken with regard to the contents of stipulations and the joinder thereto of parties.

11222.1 Off the Record Efforts at Stipulations

A suggested method of securing, constructing, and receiving stipulations follows: whenever it appears to the hearing officer that a stipulation could or should be secured, he/she may go off the record to explore the possibilities and assist in fashioning and recording the stipulation. Finally, on the record, the hearing officer should recite the stipulation and receive the verbal acquiescence of all parties.

11224 Exhibits

Documents and records, if relevant, are received in evidence as exhibits. Unlike in a C case hearing, they need not be submitted in duplicate, although such should be encouraged.

11224.1 Identification and Authentication; Voir Dire

A document intended to be introduced into evidence should be marked for identification; for example, Board's Exhibit 2, Petitioner's Exhibits 4(a) and (b), Employer's Exhibit 3, etc. The original should then be handed to the witness through whom it is being offered and, through questions and answers by the party offering the exhibit, should be identified, authenticated, and "connected." It is then offered into evidence. At this point, an objection being made, the authenticity and relevance of the exhibit may be argued.

Voir Dire: If necessary, the parties should be given the opportunity to clarify their positions on the admissibility of an exhibit by asking *voir dire* questions bearing on its admissibility.

11224.2 Relevant Portion Specified

A primary aim of the hearing is to develop a record that is complete and concise. Sec. 11188.1. Exhibits are not admissible unless relevant and material, even though no party objects to their receipt. The burden of making lengthy examinations and analyses of voluminous and unexplained exhibits should not be shifted to the Regional Director. Parties are expected to perform these tasks in preparation for the hearing. Lengthy documents should not be admitted into evidence unless a full description is given and pertinent portions are cited. Before ruling on admissibility, the hearing officer should

request parties to analyze, preferably on the record, any payrolls, cards, statistics, and correspondence offered; often, thereafter, there is no need to admit the documents. With respect to those documents that are admitted, the hearing officer should require parties to specify what they believe to be relevant portions, unless the relevance is obvious.

11224.3 Withdrawal of Original Copy

On motion, the hearing officer may grant leave to an offering party to withdraw its original exhibit and substitute a copy.

11224.4 Rejected

If an exhibit has been refused admission, the offering party may, on request, have it included in the Rejected Exhibits File that becomes part of the record.

11224.5 Custody

On receipt into evidence, the reporter should take custody of exhibits and hold the exhibits during sessions, recesses, and adjournments to a specified date. During periods of indefinite adjournments, the reporter forwards the exhibits to the Regional Office. When/if the hearing is resumed, the exhibits will be returned to the reporter. After the hearing is closed the exhibits are delivered to the Regional Office.

11224.6 Exhibits Outstanding; Provision for Receipt

Having exhibits outstanding at the close of hearing should be avoided to the maximum extent possible, because of the inherent delay involved. Where it advances and is useful to the processing of the case and is unavoidable, the hearing may be adjourned for a minimal period, of no more than 2 to 3 days, which should also be the firm deadline for the submission of the exhibit.

Provision for the exhibit's receipt should be made, by either stipulation or hearing officer's ruling. An exhibit number should be reserved, with adequate provision for inspection and (written) comment by the other parties. Thereafter, the hearing officer should issue an order closing the hearing and setting a due date for briefs. Alternatively, the hearing may be closed, contingent upon receipt of the exhibit, and a date set for submission of briefs.

11225 Motion Made at Hearing

A motion made at the hearing may be either in writing or stated orally on the record. If in writing, an original and two copies should be filed and a copy served on each party. A motion should briefly state the order or relief sought and the grounds for the motion. With regard to hearing officer rulings thereon, see Secs. 11188.2(a) and (b) in general and particularly regarding motions to disqualify the hearing officer, to dismiss, to transfer the case to the Board or for oral argument before the Regional Director or the Board.

11226 Offer of Proof

When the hearing officer rejects proffered testimony or refuses to allow a line of testimony, it may be appropriate to suggest that the party adversely affected make an offer of proof. If after reviewing the offer of proof, the hearing officer continues to reject the testimony or line of inquiry, a brief record of the rejected material is present in the record for later review.

The offer, in essence, is a statement that, if the named witness were permitted to testify on the matters excluded, he/she would testify to specified facts. The facts should be set forth in detail; an offer in summary form or consisting of conclusions is insufficient.

An offer of proof may take the form of an oral statement on the record, a written statement to be included in the record (copies and service as with motions, Sec. 11225) or in the unusual situation, with permission of the hearing officer, specific questions of and answers by the witness. The latter often lengthens the record unnecessarily and should be avoided.

(For extended discussion of offers of proof, see Sec. 10396.)

11228 Special Admissibility Problems (Jurisdiction; Unfair Labor Practices; Alleged Violations of Other Statutes by Labor Organizations; Election Arrangements; Limitations on Intervenors' Participation in the Hearing)

In addition to the normal considerations bearing on admissibility of evidence — relevance, form, etc. — there are a number of admissibility problems unique to the representation hearing.

Jurisdiction: Jurisdiction is an area where departure from the rules of evidence may be required. In the absence of cooperation from the employer, subpoenas or written requests for information should be issued for the necessary information and ingenuity should be exercised by the hearing officer. *Tropicana Products*, 122 NLRB 121 (1959).

Employee witnesses, or suppliers', or customers' representatives may testify. Since the employer possesses the best evidence, any objections by the employer should be considered in this light. If letters from suppliers and customers are available (but not their representatives who can authenticate them), such letters should be introduced. In such cases, it is well to receive, as "foundation" material, the Region's inquiries to which the letters respond.

Unfair Labor Practices: Evidence of unfair labor practices, as such, is not admissible in a representation hearing. However, evidence may be taken as to the supervisory status of, for example, a RD petitioner or an individual whose eligibility is in issue but who may also be otherwise involved in an unfair labor practice case.

Alleged Violations of Other Statutes by Labor Organizations: Evidence relating to alleged violations of statutes other than the National Labor Relations Act is inadmissible.

Election Arrangements: There is no requirement that parties be permitted to litigate the election arrangements, including election or eligibility dates or whether to provide manual or mail balloting, in a hearing. *Halliburton Services*, 265 NLRB 1154 (1982); *Manchester Knitted Fashions,* 108 NLRB 1366 (1954). If an election is to be conducted, arrangements as to the type of election may be resolved administratively and the parties will be so notified by letter separate from the decision and direction of election. Secs. 11301.4 and .5.

Limitations on Intervenors' Participation in the Hearing: Secs. 11023.4 and 11194.5 discuss the limitations on the participation of different kinds of intervenors in the hearing, including restrictions upon the unit positions they may take and the evidence they may submit.

11240–11248 CLOSE OF HEARING

11240 Generally

The hearing should be closed only after all parties have been asked if they desire to add anything further and the hearing officer is satisfied that the record contains all available information bearing on the issues. Without regard for who last came forward with testimony and whose turn it now is, all parties should be asked, on the record, whether they have anything further to add. If exhibits are outstanding, provision for their receipt should be made. Sec. 11224.6

The hearing officer should inquire of the reporter as to the estimated length of the transcript.

11242 Oral Argument at Hearing

Before the close of the hearing, the hearing officer should encourage the parties to argue orally on the record rather than to file briefs. If oral argument is chosen, there is no specific procedure to be applied. If the parties are unable to agree on the order of presentation of argument, the hearing officer should suggest that the petitioner proceed first, then the other parties; but any party should be allowed to supplement its original presentation. There should be no formal time limits, but the hearing officer should not feel constrained from interrupting if the argument wanders.

11244 Briefs

11244.1 Filing of Briefs

Instructions regarding the time for filing briefs, place for filing, number of copies, etc., are contained in Form NLRB-4669 Statement of Standard Procedures, copies of which were previously provided to the parties with the notice of hearing and which the

hearing officer also offered to the parties in his/her opening remarks. Secs. 11082.2, 11186.1(j) and 11190.1.

11244.2 Request for Extension of Time to File Brief

(This Section relates to requests for extensions directed to the hearing officer prior to the close of the hearing.)

Sec. 102.67 (a) of the Rules and Regulations, provides that parties automatically have 7 days within which to file briefs. In addition, the hearing officer, in his/her discretion, may grant an extension of time not to exceed 14 days, which, added to the automatic 7 days, makes a total of 21 days from close of the hearing.

A request for an extension of time should not be invited by the hearing officer. If requests are made, extensions should ordinarily not be granted, in view of the need for expeditious processing of representation matters. Rather, a request should be granted only for good cause, and should be considered in light of various factors, including:

(a) the reasons offered by the requesting party

(b) the length of the transcript

(c) the complexity of the issues

(d) the date for delivery of the transcript

(e) the length of time the parties have had to prepare since the initiation of the proceeding

(f) previous delays or postponements, if any, granted to the requesting party.

The authority to grant extensions of time to file briefs is discretionary with the hearing officer. If the parties do not show cause, the request should be denied. It is imperative that the hearing officer exercise his/her own judgment, subject only to the above limitations as to the maximum permissible extension. All parties should understand that rulings on requests for extensions made at the hearing are solely within the discretion of the hearing officer.

If the parties object to the hearing officer's ruling, they may still request a further extension from the Regional Director after the hearing.

The ruling and reasons for the extension should be stated in the hearing officer's report for the Regional Director's information in the event of a posthearing request for extension of time.

11246 Closing Statement

11246.1 Hearing Completed

When the hearing has been completed, the hearing officer should state:

If there is nothing further, the hearing will be closed. (This is the time for requests for extensions of time to file briefs not already made. Sec. 11244.2.)

THE HEARING IS NOW CLOSED.

Where the hearing is being closed except for the subsequent receipt of any exhibit — Sec. 11224.6 — the "closing" statement should be appropriately revised.

11246.2 Hearing Adjourned

If the hearing has not been completed but is being adjourned, the hearing officer should state:

If there is nothing further, the hearing will be adjourned (to _____).

11246.3 AC, UC, and UD Petitions

When use of Form NLRB-4669 is appropriate in AC, UC, and UD cases, the hearing officer should follow its procedures. Secs. 11186.1(j), 11190.1, and 11244.1.

11248 Closing Checklist

(a) Be certain reporter has all exhibits.

(b) Get estimate of number of pages of transcript from reporter and complete obligation document; mail or deliver to Regional Office.

(c) Make sure appearance sheet (Form NLRB-1801) is correct and legible.

(d) Fill out Close of R Case Hearing Form NLRB-856 in duplicate and forward the original to Washington with copy of petition or last amended petition attached.

(e) Unless there have been prior arrangements to the contrary, make sure that furniture is rearranged to its original state, windows are closed, lights are out, and doors are locked. Where possible, notify the custodian of the premises that the hearing has closed and convey or have conveyed an appropriate expression of appreciation.

11250-11284 POSTHEARING

11250-11272 PREDECISION MATTERS

11250-11252 HEARING OFFICER REPORT

11250 Generally

As soon as possible after the close of a hearing, the hearing officer should prepare the hearing officer report (Sec. 11252) and submit the required number of copies to the Regional Director. This report should be submitted not later than 48 hours after close of hearing. This report is not served on the parties (or counsel/representatives of record) Sec. 102.66(f), Rules and Regulations.

The report should be prepared from notes taken at the hearing. The purpose of the report is to give a brief description of the issues presented and of all unusual or important procedural questions. No recommendations may be included. Sec. 101.21(b), Statements of Procedure. A copy of the report on investigation of interest Form NLRB-4069 and any amendment or revision thereof should be attached to the hearing officer's report.

If a RM case presents the *Levitz* issue (Sec. 11042), the document(s) setting forth the employer's objective considerations should be attached to the original hearing officer's report.

Reference to requests to proceed (Sec. 11731.1) should be made in the report and copies of these documents need not be attached.

11252 Format of Hearing Officer Report

The format and contents of the hearing officer's report is within the discretion of the Regional Director. He/she may use a checklist form, a fuller report, or no report at all; except that in cases transferred to the Board (Sec. 11273) a fuller report should be utilized.

Examples of a full report and of a checklist report are included below; the Regional Director should prescribe the Regional Office format, while ensuring that no recommendations are made therein by the hearing officer.

11252.1 Full Report

An example of an outline of a fuller type hearing officer report, such as that used in cases transferred to the Board (Sec. 11273), is as follows:

(a) Pleadings:

1. Petition filed on _____ (date)

2. Hearing on _____ (date) at _____ (place)

3. Parties:

Employer:

Petitioner:

Intervenor:

(b) Issues: If there are no issues state "None." If the issue is jurisdiction, contract bar, schism, expanding unit, etc., the insertion of the word "Jurisdiction," "Contract Bar," "Schism," etc., normally will suffice, since the summary of facts under the appropriate heading will permit ready determination of the issue for purposes of assignment. If, however, the unit is in issue, it does not suffice to merely indicate that the issue is "appropriateness of unit." The unit issue should be stated more informatively such as "severance of electricians from an existing P and M unit," "carving out single-plant unit from multiple unit," "disagreement over inclusion of following categories in P and M unit," "supervisory status of six group leaders," etc. In short, the wording of the unit issue should briefly indicate the nature of the unit problem. This is not the place to state the contentions of the parties respecting the issues; this should be discussed under the appropriate subject heading.

Whenever an issue is raised with respect to any one of the subject headings, give the positions of the parties and a brief summary of the facts as developed at the hearing.

(c) *Procedure*: Were any rulings made as to which the hearing officer is in doubt?

Yes _____ No _____

(If "Yes," describe briefly below.)

List only those rulings on important or unusual questions as to which the hearing officer is in doubt, such as rejections of offers of proof, revocations of subpoenas duces tecum, motions to intervene where showing of interest was not made, etc. It is not usually necessary to list rulings on simple motions to correct names, places, minor amendments of petition, denials of motions to dismiss on grounds of insufficient evidence of interest, or procedural matters clearly governed by Board precedent.

(d) *Labor organizations*: Was status contested?

Yes _____ No _____

(If "Yes," state facts briefly.)

If the parties stipulate or there is uncontested testimony in the record that the unions involved are labor organizations within the meaning of the Act, merely check "No." If such status is contested, however, check "Yes" and briefly state facts including positions of the parties.

(e) *Jurisdiction*: Contested?

Yes _____ No _____

(Briefly state jurisdictional facts.)

If jurisdiction is stipulated, conceded, or not contested, check "No." However, whether or not jurisdiction is stipulated, conceded, or contested, it is necessary to briefly

state or summarize the jurisdictional facts. Where gross volume of business is the sole test for asserting jurisdiction, include commerce data on inflow, outflow, etc., sufficient to establish de minimis statutory jurisdiction.

(f) Questions concerning representation: In issue?

Yes _____ No _____

(If "Yes," state facts.)

If the question concerning representation is not in issue, merely check "No." If the employer merely refused to recognize petitioner until certified by the Board, this does not make the QCR an issue in the sense of this report, so it is not necessary to recite that the petitioner on a given date by letter or telephone claimed recognition and the employer by mail or phone declined or made no reply. Nor is it necessary to recite that no claim was made on the employer prior to the filing of the petition if no real issue is involved. For all cases of this kind, a check of "No" will suffice.

If, however, the QCR is in issue by reason of an alleged contract bar, expanding or contracting unit, schism, etc., give the position of the parties and a brief summary of the facts.

(g) *Appropriate unit*: Is unit stipulated?

Yes _____ No _____

If the unit is fully stipulated, check "Yes" and set forth the unit as stipulated. Where the unit is substantially stipulated but certain classifications or fringe categories are in issue, recite the stipulated unit in the report and give the positions of the parties and a summary of the facts concerning the classifications in dispute. Likewise, if the unit is in issue, give the positions of the parties and a summary of the facts. Always describe the bargaining history, if any.

(h) Other issues or problems:

Yes _____ No _____

(If "Yes," state facts.)

Briefly summarize the facts of other issues or problems, if any, not appropriately covered under the above paragraphs, such as eligibility questions, petitions pending in other Regions, etc.

(i) Name union desires to be designated as: (Secs. 11198 and 11198.1)

(j) Briefs:

1. Will briefs be filed?

2. Was extension of time requested? By whom? Ruling and reason therefor.

3. Briefs due date _____.

(k) Reporter's estimate of transcript pages: (_____ pages)

11252.2 Checklist

An example of a checklist hearing officer's report is on the following pages:

HEARING OFFICER'S REPORT

CASE NAME _____ CASE NO. _____

PETITION FILED _____ HEARING _____ LOCATION _____

PETITIONER _____

INTERVENOR #1 _____

INTERVENOR #2 _____

ISSUES: _____ No _____ Yes

JURISDICTION: _____ No Issue _____ In Issue

PROCEDURAL PROBLEMS:

_____ None _____ Continuance _____ Motions _____ Subpoenas

_____ Service _____ Stipulations _____ Other (Specify) _____

_____

List Motions Referred to RD for Ruling: _____

_____

LABOR ORGANIZATION:

Petitioner: _____ No Issue _____ In Issue

Intervenor #1: _____ No Issue _____ In Issue

Intervenor #2: _____ No Issue _____ In Issue

REPRESENTATION SHOWING: _____ No Issue _____ Issue Raised

QUESTION CONCERNING REPRESENTATION:

_____ No Issue _____ Election Year Bar _____ Certification Year Bar

_____ Expanding/ Contracting Unit _____ Contract Bar

_____ Extent of Organization _____ (Coverage

_____ Accretion to Existing Unit _____ Timeliness

_____ Defunctness _____ Unlawful Clause)

_____ Other (Specify) _____

_____

UNIT SCOPE:

_____ No Issue _____ Single Plant _____ Multi Plant

_____ Multi-Employer _____ Area (District, Regional, National, etc.)

_____ Other (Specify) _____

UNIT SOUGHT

_____ Craft*	_____ Multi-Craft*	_____ Residual
_____ Departmental*	_____ Office Clerical	_____ Technical
_____ Guard	_____ Plant Clerical	_____ Truck Driver
_____ Lithographic	_____ P & M	_____ Warehouse
_____ Maintenance	_____ Professional	_____ Other (Specify)

Alternate Unit Positions Taken: _____ Yes _____ No

*If Severance Involved, Check Here _____

CLASSIFICATIONS AND EMPLOYEES IN ISSUE:

_____ Agricultural Laborers	_____ Leadmen (Working Foremen)	_____ Quality Control Inspectors
_____ Apprentices	_____ Laboratory	_____ Relatives of Management
_____ Cafeteria	_____ Managerial	_____ Salesmen (Inside, Outside, Route)
_____ City Pickup and Delivery Drivers	_____ Office Clericals	_____ Supervisors
_____ Confidential	_____ Over-the-Road Truck Drivers	_____ Technicals
_____ Dispatchers	_____ Plant Clericals	_____ Timekeepers
_____ Employees Allied With Management (Stock-Holders, etc.)	_____ Part-Time or Temporary Super-Visory employees	_____ Trainees
_____ Employees on Leave of Absence	_____ Plant Protection	_____ Warehouse
_____ Independent Contractors	_____ Professionals	_____ Workers Perform-ing Dual Functions

_____ Other (Specify) _____

ELIGIBILITY:

_____ Casual Employees	_____ Replaced Economic Strikers	_____ Students
_____ Probationary Employees	_____ Replacements for Economic Strikers	_____ Temporary Employees
_____ Regular Part-time Employees	_____ Seasonal Employees	_____ Temporarily Laid-Off Employees

_____ Other (Specify) _____

BRIEFS DUE _____ EXTENSIONS REQUESTED BY _____

RULING AND REASON THEREFOR _____

_____

ESTIMATED TRANSCRIPT PAGES _____ DELIVERY _____ DAYS _____

CONCURRENT C CASE _____ Yes _____ No REQUEST TO PROCEED: _____ Yes _____ No

_____ _____

Date Hearing Officer

Attachment: Form NLRB-4069

11258-11272 OTHER PREDECISION MATTERS

11258 Correcting Transcript

Any necessary corrections in the transcript should be made by stipulation or by motion (this is the order of preference) inserted in the record if the hearing is still in session or submitted to the Regional Director if the hearing has closed.

The purpose of correcting the transcript, however, is not to correct mistakes made at the hearing, but to ensure that the testimony of witnesses and the statements of the parties and the hearing officer are accurately reflected in all material respects.

11262 Motion

A motion filed after the close of the hearing by any party should be filed directly with the Regional Director and should briefly state the order of relief sought and the grounds therefor. A copy of each motion should be served immediately on each of the other parties.

11264 Answers to Motions

Any party may file a response or opposition to a motion. These answers should be promptly filed, the form and service being the same as those applicable to motions.

11268 Withdrawal Request

See Sec. 11112 for the procedure to be followed if a withdrawal request is filed after the close of hearing.

11272 Request for Use of Shortened Name

If a labor organization makes a posthearing request to use a shortened name on the ballot, in addition to its full and correct name and that request occurs in a factual situation that might confuse the employees, the labor organization should be advised to make its request to the Regional Director in the form of a regular motion (Sec. 11262). Secs. 11198.1 and 11306.3 discusses similar hearing and non-hearing requests, respectively.

The Regional Director will then decide whether to grant the motion, remand the case for additional evidence or take other action.

11273-11284 DECISION

11273-11275 REGIONAL DIRECTOR DECISION

11273 Generally

The Regional Director may transfer a case to the Board for decision pursuant to Sec. 102.67(h) of the Rules and Regulations. Ordinarily, however, the Regional Director should decide a case, rather than transfer it to the Board, even in cases of first impression or involving novel issues. A Regional Director's decision in such a case provides the Board with the benefit of the Regional Director's analysis of the questions raised. Further, when the Regional Director issues a decision, the parties will be better informed as to the questions presented by the matter. As a result, the issues that remain in dispute for the parties' requests for review may be reduced and the remaining issues may be presented more clearly to the Board.

If a Regional Director concludes that a case may be suitable for transfer to the Board for decision, he/she should consult with the Executive Secretary before doing so.

11273.1 Contents of Regional Directors Decision

All Regional Director's decisions should include the following:

(a) a brief description of the nature of the employer's business

(b) the number of employees in the appropriate unit or units involved

(c) the approximate number of employees in any disputed categories

(d) if an election is directed, the requirement that the employer must post an official notice of election for 3 full working days prior to the date of the election (Sec. 11314.7(a); Sec. 103.20, Rules and Regulations)

(e) if an election is directed, the eligibility list requirement (Sec. 11312)

(f) the date by which a request for review must be received by the Board in Washington, D.C.

11273.2 Direction of Election

If the decision contains a direction of election, efforts to arrange election details should be initiated immediately. Secs. 11300–11350. If an enlarged unit is found, these arrangements are contingent upon an adequate showing of interest. Sec. 11031. Election arrangements should be made, if feasible, by telephone or correspondence, i.e., without an in-person joint conference. If an in-person joint conference is to be held, it should take place in the Regional Office. In a directed election, as contrasted with an election by agreement, there is a degree of discretion reposed with the Regional Director, which serves to eliminate the need for a face-to-face resolution of each detail. Sec. 11300. Telephone contacts, followed by a confirming letter comprehensively setting forth

arrangements, should serve to finalize arrangements. The Election Order Sheet Form NLRB-700 may be used as a checklist of election arrangements.

11274 Request for Review of Regional Director Decision

If the parties to a case have previously voluntarily agreed to the full consent election agreement procedure through execution of Form NLRB-5509, they have waived their rights to file a request for review of the Regional Director's decision to the Board.

The filing of a request for review shall not, unless otherwise ordered by the Board, operate as a stay of any action taken or directed by the Regional Director, including the direction or conduct of an election, except that the Regional Director, in the absence of a waiver, may not open and count any ballots that may be challenged until the Board has ruled on any request for review that may be filed. Nor will the granting of review stay the Regional Director's decision or the directed election unless ordered by the Board.

NOTE: At the election, it may be necessary to challenge and/or to segregate and impound the ballots of certain voters if the Board has not ruled upon or has granted a request for review. Secs. 11280.3, 11302.1(a), 11338.1, 11338.2(b), and 11338.8; Sec. 102.67(b), Rules and Regulations.

When a request for review has been filed with the Board, the Office of Representation Appeals should be advised by electronic mail of the date of the election (Sec. 11302.1) as soon as it has been set.

The Regional Director may decide to treat a request for review filed with the Board as a motion for reconsideration of his/her decision. Sec. 102.65(e)(1), Rules and Regulations. In such cases the Regional Director should promptly advise the Office of Representation Appeals and the Executive Secretary that he/she is reconsidering the matter and may reopen the record or issue a second decision. The parties should also be similarly advised as soon as possible.

If the Board has granted review, the Regional Director lacks jurisdiction to reopen the record or to vacate the decision. *North Jersey Newspapers Co.,* 322 NLRB 394 (1996).

Whenever the validity of a showing of interest (or the sufficiency of the objective considerations in a RM case) is raised in a request for review of a Regional Director's decision, the Office of Representation Appeals should be advised of all the circumstances.

11275 Transmission of Regional Director Decision to Washington

The decision should be forwarded to Washington by electronic submission pursuant to Memoranda OM 99-7, OM 04-39 and 06-69. All Regional Director decisions and direction of election, decisions and orders, or postelection R case decisions should be posted to the D&DE Mailbox in Word copy (.doc), Adobe copy (.pdf) and Web copy (.html).

11280–11284 BOARD DECISION

11280 Generally

On issuance of a Decision by the Board, responsibility for action, if any, reverts to the Region without further notice.

11280.1 Dismissal

If the petition is dismissed, only the clerical steps involved in closing the case records need be performed. Regional Office notification to the parties is not necessary.

11280.2 Remand

On remand by the Board, an appropriate notice of hearing on remand should be issued. The hearing on remand should be conducted within the bounds set by the order of remand; otherwise, it should be conducted in the same fashion as original representation hearings.

11280.3 Direction of Election

If the decision contains a direction of election, efforts to arrange election details should be initiated immediately. Secs. 11300–11350. If at the election it will be necessary to challenge and/or to segregate and impound the ballots of certain voters because the Board has not ruled upon or has granted a request for review (Secs. 11302.1(a), 11338.1, 11338.2(b), and 11338.8; Sec. 102.67(b), Rules and Regulations), arrangements should be made to distinguish such voters on the eligibility list used at the election.

Election arrangements should be made, if feasible, by telephone or correspondence, i.e., without an in-person joint conference. If an in-person joint conference is to be held, it should take place in the Regional Office. In a directed election, as contrasted with an election by agreement, there is a degree of discretion reposed with the Regional Director, which serves to eliminate the need for a face-to-face resolution of each detail. Sec. 11300. Telephone contacts, followed by a confirming letter comprehensively setting forth arrangements, should serve to finalize arrangements. The Election Order Sheet Form NLRB-700 may be used as a checklist of election arrangements.

11282 Motion for Reconsideration of Board Decision

Neither the filing of a motion for reconsideration of a Board Decision and Direction of Election nor the announced intention of filing such a motion should cause a delay in making election arrangements. The Office of Representation Appeals should be advised by electronic mail of the date of election as soon as it has been set if a motion for reconsideration has been or is to be filed with the Board regarding its Decision.

11284 Extension of Time for Holding Election

Although it is anticipated that a Board-directed election will be held within the time provided in the direction, there are situations when additional time may be necessary. Examples of reasons would include: unusual delay from close of hearing to direction of election; concurrent charges filed (Secs. 11730–11734); employer's slack or closedown period; necessity for prolonged election, etc.

The Regional Director should decide whether it is necessary to provide additional time, after considering the positions of the parties.