

SHOWING OF INTEREST, VALIDITY AND STATUS CHALLENGES
CHM 18 and 19

- 18. SHOWING OF INTEREST:** *CHM 18* concerns petitions and requests for interventions that are supported by **numerical evidence** described in §§ 2422.3(c) and (d) and 2422.8(c)(1). [CHM 18.6](#) provides a complete definition of a showing of interest, but this section is limited to “numerical” showing of interest.
- 18.1 When a showing of interest is required:** The Statute requires that a showing of interest be submitted with certain petitions that seek elections or a determination of eligibility for dues allotment [5 U.S.C. 7111(b)(1), 7112(d) and 7115(c)]. If a labor organization submits an amended petition that seeks an election in a unit that differs from the original petition, the amended petition must be accompanied by a showing of interest. *U.S. Department of the Interior, National Park Service, Washington, DC, 55 FLRA 311, 315 (1999)*. See also [CHM 13.11](#) and [18.13.6](#).
- 18.1.1** Petitions that request: (1)(i) an election to determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, and/or (ii) a determination of eligibility for dues allotment in an appropriate unit without an exclusive representative; or (2) an election to determine if employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative must be accompanied by an appropriate showing of interest. [§ 2422.1(a)]
- 18.1.2** A showing of interest is also required if employees in units in an agency and for which a labor organization is the exclusive representative seek an election on the issue of a proposed consolidation. 5 U.S.C. 7112(d) provides that two or more units in an agency and for which a labor organization is the exclusive representative may be consolidated **with or without** an election. Therefore, although a labor organization, agency or both parties jointly may file a petition to consolidate existing units for which the labor organization has exclusive recognition, the employees may submit a 30 percent showing of interest in the proposed consolidated unit and require an election on the issue of consolidation. Providing employees with an opportunity to gather and submit a showing of interest, while not required by the Statute, is consistent with the intent of the Statute to ensure secret ballot elections under all circumstances prior to imposing a bargaining obligation on any agency. ([CHM 23.8.3](#) and [28.17](#)).

- 18.2 Why a showing of interest is required:** The requirement that a showing of interest be made “serves an administrative purpose in helping to avoid unnecessary expenditure of time and funds where there is no reasonable assurance that a genuine representation question exists and prevents the parties from abusing the Authority’s processes.” *North Carolina Army National Guard, Raleigh, North Carolina (North Carolina Army National Guard)*, 34 FLRA 377, 383 (1990). The question of union support is conclusively decided by the actual secret ballot election. *Coast Guard*, 34 FLRA at 949 *citing NLRB v. Metro-Truck Body, Inc.*, 613 F.2d 746, 750 (9th Cir. 1979).
- 18.3 Definition of “adequacy of showing of interest”:** Section 2422.9(a) states that adequacy of a showing of interest refers to the percentage of employees in the unit involved as required by §§ 2422.3(c) and (d) and 2422.8(c)(1).
- 18.3.1** The Regional Director’s determination that a showing of interest is adequate is administrative in nature and not subject to collateral attack at a unit or representation hearing or appeal to the Authority (see also [HOG 33.1](#)). The Regional Director’s determination that a showing of interest is inadequate may be appealed by the petitioner or intervenor if the petitioner/intervenor refuses to withdraw the petition/intervention request and the Regional Director issues a Decision and Order dismissing the petition/intervention request. A challenge to the adequacy of a showing of interest is authorized only under limited circumstances. See § 2422.9(b) and *North Carolina Army National Guard*, 34 FLRA 377 and *Coast Guard*, 34 FLRA 946, 949.
- 18.4 Basis of adequacy determinations:** 5 U.S.C. 7111(f)(2) provides in relevant part that exclusive recognition shall not be accorded to a labor organization “if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition[.]” (emphasis added). See also *Office of Hearings and Appeals, Social Security Administration (OHA)*, 16 FLRA 1175 (1984). Thus, a determination of the adequacy of the showing of interest is based on the number of employees in Item #3 on the petition form. Examples include:
- a. A petitioner is required to submit a showing of interest for thirty (30) percent of the entire unit petitioned-for. Thus, in a mixed unit of professional and nonprofessional employees, the petitioner is not required to submit a showing of interest consisting of thirty (30) percent of the professional employees and thirty (30)

percent of the nonprofessional employees. The showing consists of thirty (30) percent of the entire unit.

- b. In cases where an activity's staffing fluctuates due to the seasonal nature of the work or where a unit is expanding, a showing of interest is required only among those employees employed at the time the petition is filed. *Coast Guard*, 34 FLRA at 950.

NOTE: In the latter case of an expanding unit, this rule does not resolve whether the petition is premature and can be processed as the proposed unit must meet the substantial and representative complement test. (See RCL 2 and Coast Guard, 34 FLRA at 954)

- c. When a petitioner seeks to sever a group of employees from an existing unit, the petition must be accompanied by a thirty (30) percent showing of interest among the employees in the unit sought in the petition. *OHA*, 16 FLRA 1175.

18.5 What constitutes an adequate showing:

18.5.1 Petitioner's interest in a request for a representation election: A petition seeking an election to determine the exclusive representation of employees in an appropriate unit must be accompanied by a showing of interest of not less than thirty (30) percent of the employees in the unit claimed to be appropriate. The petitioner is also required to submit an alphabetical list of names constituting the showing of interest with the petition.

18.5.2 Petitioner's interest in a request for a decertification election: A petition seeking an election to determine whether employees in an existing unit no longer wish to be represented by an exclusive representative must be accompanied by a showing of interest of not less than thirty (30) percent of the employees in the existing unit. The showing of interest must reflect that the employees no longer desire to be represented for purposes of exclusive recognition by the currently recognized or certified labor organization. The petitioner is also required to submit an alphabetical list of names constituting the showing of interest with the petition.

18.5.3 Petitioner's interest in requests for a determination of eligibility for dues allotment: A petition requesting a determination of eligibility for dues allotment must be accompanied by **evidence of membership** of not less

than ten (10) percent of the employees in the unit claimed to be appropriate. The petitioner is required to submit an alphabetical list of names constituting the evidence of membership with the petition.

- 18.5.4 Cross-petitioner's interest in a request for a representation election:** A petitioner seeking an election in a different unit from that claimed appropriate by another petitioner must be supported by a showing of interest of not less than thirty (30) percent of the employees in the unit claimed to be appropriate in the cross-petition. The petitioner is required to submit with the petition an alphabetical list of names constituting such showing of interest.
- 18.5.5 Labor organization seeking to intervene based on a numerical showing of interest:** A labor organization seeking to intervene on the basis of a showing of interest must submit a showing of interest of ten (10) percent or more of the employees in the unit covered by a petition seeking an election, with an alphabetized list of the names of the employees constituting the showing of interest [see 5 U.S.C. 7111(c) and § 2422.8(c)(1)].
- 18.5.6 Labor organization that seeks to intervene based on other than a numerical showing of interest:** Some intervention requests are supported by evidence of interest other than a numerical "showing of interest" as discussed herein. Section 2422.8(c) provides that in addition to a numerical showing of interest, other acceptable evidence includes:
- a. a current or recently expired collective bargaining agreement covering any of the employees in the unit affected by issues raised by the petition; or
 - b. evidence that a labor organization is or was, prior to a reorganization, the recognized or certified exclusive representative of any of the affected employees.

See also [CHM 17.7](#).

- 18.5.7 Employee request for an election on the issue of a proposed consolidation:** A request by employees (in units in an agency) for which a labor organization is the exclusive representative for an election on the issue of a proposed consolidation must be accompanied by a showing of interest of thirty (30) percent or more of the employees in the proposed consolidated unit ([CHM 20.1.6](#) discusses processing petitions to consolidate units).

18.6 Definition of a showing of interest: *CHM 18* concerns petitions and intervention requests that are supported by numerical evidence described in §§ 2422.3(c) and (d) and 2422.8(c)(1); however, § 2421.16 provides a general definition of showing of interest.

18.6.1 Types of evidence: Types of evidence of interest described § 2421.16 include:

- a. Evidence of membership in a labor organization;
- b. Employees* signed and dated authorization cards or petitions authorizing a labor-organization to represent them for purposes of exclusive recognition;
- c. Allotment of dues forms executed by the employee and the labor organization*s authorized official;
- d. Current dues records;
- e. An existing or recently expired agreement;
- f. Current exclusive recognition or certification;
- g. Employees* signed and dated petitions or cards indicating that they no longer desire to be represented for the purposes of exclusive recognition by the currently recognized or certified labor organization;
- h. Employees signed and dated petitions or cards indicating a desire that an election be held on a proposed consolidation of units; or
- i. Other evidence approved by the Authority.

18.6.2 Photocopies: The Regional Director may accept photocopies of evidence of interest in place of originals. If necessary, the Regional Director may require the original showing of interest when: (1) there are a significant number of unsigned or undated authorization cards and the region is required to mark “unsigned” or “undated” on the original card ([CHM 18.7.5c](#)); or (2) anytime there is a challenge to the validity of the showing of interest alleging fraudulent or forged signatures ([CHM 18.19](#)).

18.7 Requirements for acceptable evidence of interest:

- 18.7.1 Membership in a labor organization:** Evidence of membership in a labor organization is required to support a dues allotment petition. It is also submitted to support petitions seeking an election for exclusive representation or intervention requests. Evidence of membership consists of a list of current members signed by an authorized representative or official of the particular labor organization that bears a certification that the named individuals are members in good standing. If the region or a party questions the validity of the certified list, the region may require the labor organization to bring the original membership records to the Regional Office for examination.
- 18.7.2 Authorization cards:** An authorization card must be signed and dated by the employee. A card may not be counted as part of the interest showing if it contains only the printed name of the employee.
- 18.7.3 Authorization petitions:** Authorization petitions must contain a heading or preamble setting forth the purpose of the petition; i.e., that the employees signing the petition authorize the named labor organization to represent them for the purposes of exclusive representation. The absence of a statement authorizing the named labor organization to represent the employees signing the petition does not, however, necessarily constitute a basis for finding a showing of interest inadequate. The Authority has found that a showing of interest that petitioned only for an election to be adequate. In its Decision on Request for Review in *Veterans Administration, Veterans Administration Medical Center, Coatesville, Pennsylvania*, Case No. 2-RO-19 (1980), the Authority stated:

In view of the fact that the sole purpose of "showing of interest" under the Federal Service Labor Management Relations Statute is to obtain a representational election, the Authority finds an interpretation of "showing of interest" which permits the use of cards executed solely for the purpose of an election would effectuate the purposes and intent of the Statute.

The technique of obtaining signatures on dual purpose documents is inherently confusing and the resultant procedures are, therefore, unreliable and unacceptable as evidence of interest. See *Sacramento Army Depot, Sacramento, California*, 49 FLRA 1648 (1994) adopting *U.S. Army*

Electronics Command, Ft. Monmouth, New Jersey, Case No. 32-2565(RO), 1 Rulings on Requests for Review 233 (1972), and Report on Ruling Number 52, 2 A/SLMR 641 (1972). Dual purpose forms are authorization petitions forms that bear two or more unrelated headings such as: (1) acknowledging receipt of a publication and (2) authorizing a labor organization to represent employees for purposes of exclusive representation.

18.7.4 Decertification showing: Petitions or cards requesting a decertification election must contain a statement that the signatory employee(s) no longer wishes to be represented for the purpose of collective bargaining by the currently recognized or certified labor organization.

18.7.5 Validity of designations: The showing of interest is checked against the list of employees furnished by the agency/activity in each proposed appropriate unit to see whether the requirements in § 2422.9 are met. Although authorization cards are examined on their face (to check, for example, against signatures in the same handwriting), their validity is presumed unless challenged by the presentation of objective considerations. See [CHM 18.9](#) for procedures for checking the showing of interest. **This subsection highlights some, but not all, of the basic requirements for acceptable evidence of interest:**

- a. The authorization must run to the party submitting it in support of its interest. This requirement is construed liberally. For example, authorizations designating the "AFL" are accepted as being on behalf of the "AFL-CIO." Similarly, authorizations running to a parent or international organization are accepted as evidence of interest in support of a petition filed by a local of that organization, and vice versa. Designations in blank are not acceptable. The card is not counted if the petitioning labor organization has changed its affiliation from that shown on the authorization card. In addition, petitions filed by a council or by joint-petitioners may be supported by authorization cards signed on behalf of any of the affiliates of the council or on behalf of either joint-petitioner.
- b. Dating the authorizations: Each employee must sign his/her name and insert the date at the time of signing the petition. Generally, the date is placed opposite each name. No independent proof of the date of signing is solicited or accepted. A petition-sheet containing a list of signatories and bearing a single date purporting to be the date on which the entire sheet was signed, however, may be accepted by the Regional Director.

- c. Undated or unsigned authorization cards may be returned only upon written request by the party that originally submitted the cards as part of its showing of interest. Such cards are not valid if subsequently dated and/or signed and resubmitted. During the initial examination of a party's showing of interest, the Regional Office marks or stamps "undated" or "unsigned" on any authorization card that does not bear either a date or a signature in the space designated or across the face of the card. Such action precludes an undated or unsigned card from being counted in the event that it is resubmitted. See [CHM 18.6.2](#).
- d. Current vs. stale interest: The date on authorization cards, petitions and interest showing support of election petitions must be current. Evidence of interest is considered current if it bears a date that is not more than one year prior to the date of filing of an election petition involving a unit of not more than 10,000 employees. If the unit involved is in excess of 10,000 employees, the showing of interest covering a period of not more than two years prior to the filing of the election petition is normally considered current. Thus, any showing of interest bearing a date in excess of such 12-month or 24-month period, as appropriate, is stale and is not counted.
- e. Refiling after prejudice period: Where a petition has been withdrawn with prejudice in accordance with § 2422.14, and the same petitioner seeks to refile for the same unit or any subdivision of the unit, the petitioner must support such petition with a current showing of interest. The region contacts the Office of the General Counsel if the petitioner attempts to use the same showing that was submitted with the original petition.
- f. Dual signatures: It is not uncommon for the same employee to sign authorization cards or petitions on behalf of different labor organizations in the same election proceeding. Similarly, an employee may sign evidence of interest in support of a decertification petition while continuing to maintain membership in the currently recognized or certified labor organization that is involved in the decertification petition. While the employee has executed seemingly conflicting evidence of interest on behalf of parties to the same or consolidated representation proceeding(s), the particular authorization or other evidence of interest is counted towards the various parties* respective showing of interest

requirements if otherwise valid.

- g. Revocation of authorization: An employee attempting to revoke his/her signature on an authorization card or petition does not serve to negate the original designation of a showing of interest since the effective test for ascertaining the real intent of the signer lies in the election process.
- h. Effect of supervisory involvement: If the Regional Director finds that agency management participated in the solicitation of interest, the Regional Director determines an appropriate course of action. See *United States Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas (Fort Bliss)*, 55 FLRA 940 (1999) and *U.S. Department of Health and Human Services, Public Health Service, Indian Health Service, Gallup Indian Medical Center, Gallup, New Mexico (Gallup)*, 46 FLRA 1421 (1993), where the Regional Director dismissed a petition on the basis of agency management's involvement in the solicitation of the showing of interest. Compare, *Veterans Administration Hospital, Brecksville, Ohio*, 1 FLRC 302 (1971) in which the Federal Labor Relations Council found that a showing of interest may be selectively invalidated where supervisory involvement is isolated, minimal or mitigated. ([CHM 18.19](#) discusses investigating challenges to the validity of the showing of interest).

18.8 Timeliness of submission of a showing of interest:

- 18.8.1 **Petitioner's interest:** A showing of interest must be submitted by the petitioner no later than the last day a petition might timely be filed. Thus, if a showing of interest is not submitted with the petition, or if a prima facie showing of interest is inadequate, the petitioner must be notified immediately.

Application of this rule was discussed in *North Carolina Army National Guard*, 34 FLRA 377 (1990). In that case, the Authority affirmed that a petition for certification of representative must be received by the appropriate Regional Director during the open period of a contract. The Authority also found that the petitioner must submit with the petition evidence of a prima facie showing of interest based on the approximate number of employees in the unit claimed to be appropriate. However, the Authority found that in the circumstances of that case, where the petitioner miscalculated the number of employees in the claimed unit, the Regional Director allows the petitioner

a reasonable period of time after notice of the deficiency to submit any additional showing of interest it has in its possession. The Authority noted that the showing of interest must be dated and signed before the expiration of the open period, but could be submitted after the contract expired.

Exception: If a cross-petitioner fails to submit an adequate showing of interest filed immediately prior to the opening of a hearing, the cross-petitioner is not permitted to participate in the hearing and the petition is processed separately ([CHM 17.9.1](#) and [HOG 23](#)).

- 18.8.2 Intervenor's interest:** The showing of interest must be submitted by the intervenor no later than the last day the intervention might timely be filed. The procedures in [CHM 18.8.1](#) are applied in assessing the timeliness of an intervenor's showing of interest. Thus, if a request for intervention is filed timely, but without a showing of interest, the intervenor may be given sufficient time to submit the showing, as long as the showing is otherwise timely filed. If the intervention request is supported by a showing of interest that is based on the intervenor's estimate of the number of employees in the claimed unit and the showing is later found to be inadequate, the region allows the intervenor a reasonable period of time after notice of the deficiency to submit any additional showing of interest as long as the showing is otherwise timely filed. An **exception** is when the request to intervene is filed immediately prior to the opening of the hearing or at the election agreement meeting. A request to intervene petition that is submitted immediately prior to the opening of a hearing must be accompanied by an adequate showing of interest. A request to intervene that is filed at an election agreement meeting must be accompanied by a showing of interest or the requestor is not permitted to participate in the meeting. See [CHM 17.9](#) and [18.9](#) for procedures for processing an intervenor's showing of interest and [HOG 17.4](#) for processing intervention requests that are received too late for the region to process prior to the opening of the hearing.
- 18.9 General procedures:** This section discusses procedures for notifying the petitioner or intervenor concerning the adequacy of the showing of interest. See [CHM 18.10](#) and [18.11](#) for requirements for checking the prima facie showing of interest and [CHM 18.12](#) for requirements for checking the final showing of interest.
- 18.9.1 Failure to submit alphabetized list with petitioner's or intervenor's showing of interest:** As discussed in [CHM 12](#), a petition is defective if it is not accompanied by an alphabetized list constituting the showing of interest. The failure to submit an alphabetized list does not prevent the petition from

being opened or an intervention request from being investigated (see [CHM 12.4](#)). It does not, more significantly, prevent completion of the prima facie check. A letter as set forth in [Figure 12.4](#) is sent without delay if the petitioner fails to submit the alphabetized list. Failure to furnish the material in response to a written request by the Regional Director prevents the Director from taking action pursuant to § 2422.30 and may result in dismissal of the petition.

18.9.2 Failure to submit adequate showing of interest:

18.9.2.1 By petitioner: If no showing of interest is submitted, the petitioner is notified immediately (See [CHM 12.3](#)) that the petition is defective and cannot be opened ([CHM 18.9.5](#)). As noted in [CHM 18.8](#), the petitioner is notified promptly since any showing of interest in support of the thirty percent (30%) requirement must be received by the regional office not later than the last day on which any petition may be filed timely.

If the prima facie showing of interest is inadequate, the petitioner is also notified immediately. Any additional showing of interest must also be received not later than the last day on which any petition may be filed timely, except in the circumstances cited in *North Carolina Army National Guard*, 34 FLRA 377 (1990) and [CHM 18.8](#). See [CHM 18.9.3](#) for notification procedures.

18.9.2.2 By intervenor: If the written request for intervention is not accompanied by a showing of interest, the intervenor is notified immediately ([CHM 17.8](#)). The procedure discussed in [CHM 18.9.3](#) is followed: the initial contact is made by telephone, if possible, and is confirmed by fax or telegram. Any additional showing of interest must also be received not later than the last day on which any intervention may be filed timely.

Note the exceptions to granting additional time to submit a showing of interest discussed in [CHM 18.8](#).

18.9.3 Procedures in notifying petitioner and intervenor when showing is inadequate: If possible, the agent contacts the petitioner/intervenor by telephone to advise the party that the showing of interest is insufficient. Except in those instances in which there are less than three (3) days in which to make a timely submission, the agent informs the petitioner/intervenor that the showing of interest must be received not later than three (3) **working** days from the date of the telephone conversation. The agent also states that absent such receipt, the Regional Director will

issue a Decision and Order dismissing the petition or denying the intervention. The agent confirms the conversation by fax immediately (or telegram, if a fax is not available) as shown in [Figure 18.9A](#). (See also [CHM 17.9](#) for intervention.)

If circumstances preclude notifying the petitioner/intervenor by telephone, the Regional Director sends the fax or telegram set forth in [Figure 18.9B](#). The Regional Office confirms receipt of the fax or telegram.

When discussing the submission of additional showing of interest with petitioner*s/intervenor*s representative, the agent is not authorized to grant more than the three (3) day period.

The region does not send copies of the fax's or telegrams set forth in Figures 18.9A or B to any of the other parties or advise any party regarding the status of the petitioner*s/intervenor*s showing of interest. Other parties receive appropriate notification of the adequacy of the showing of interest at such time as dismissal may be warranted due to insufficient showing of interest (see [CHM 27](#) and [53](#) regarding dismissal of petition).

18.9.4 Request for extension of time: Other than the initial three days discussed in [CHM 18.9.3](#), no extensions of time are granted to a petitioner or intervenor to submit a showing of interest or any additional showing of interest. [Figure 18.9C](#) is a sample fax denying a request for additional time.

18.9.5 Deferring the petition:

18.9.5.1 Failure to submit showing of interest: If the showing of interest is not submitted with the petition, the region cannot open an election petition or a dues allotment petition. A thirty (30) percent showing of interest is a prerequisite to proceeding with a representation or decertification petition and a ten (10) percent showing of interest (evidence of membership) is a prerequisite to proceeding with a dues allotment petition. Thus, a petition is defective and is not opened prior to receipt of an amended petition and the appropriate showing of interest (see [CHM 18.8](#) for timeliness requirements). Accordingly, the Regional Director does not send the opening/notification letters discussed in [CHM 15](#) (see also [CHM 12.3](#) which discusses defective petitions which delay opening the case).

Upon receipt of the evidence of interest, further processing of the petition, if any, depends upon whether a prima facie showing of interest is made.

NOTE: Generally, an intervenor's failure to provide an adequate showing of interest does not delay processing the case.

18.9.5.2 Failure to estimate the number of employees in the proposed unit: If the petitioner omits the estimated number of employees from Item #3 on the petition form, the petition is defective. The region cannot open an election petition or a dues allotment petition. The prima facie showing of interest cannot be determined if there is no estimate of the number of employees upon which to base a thirty percent (30%) or ten percent (10% - dues allotment petitions) computation (see [CHM 12.3-defective petitions](#) and [13.8-amending a petition](#)). An amended petition is served on the other parties (see [CHM 7](#) and [13.5](#)). See also [CHM 18.8](#) for timeliness requirements.

If the petitioner miscalculates the number of employees in the claimed unit, the petition is not defective, but the showing of interest may be inadequate. In such cases, the Regional Director follows the procedures discussed in CHM 18.9.3. See also *North Carolina National Guard*, 34 FLRA 377 (1990).

18.9.6 Notification when evidence of interest is adequate: The Regional Director is not required to send a separate letter to notify the petitioner or intervenor when the region determines that the petitioner or intervenor's showing of interest is sufficient. The letter shown in [Figure 15.9](#) that is sent to the employing agency/activity and the incumbent is sufficient notification as copies of that letter are served on the petitioner.

18.10 Prima facie check of interest:

18.10.1 General: A prima facie showing of interest is checked promptly for the following reasons:

- a. To determine whether a genuine representation question exists ([CHM 18.2](#));
- b. To avoid any delay in processing the case that could prejudice the petitioner; see *North Carolina Army National Guard*; and
- c. To determine whether the petitioning union acquires equivalent status for the purposes of 5 U.S.C. 7116(a)(3) and to protect the rights of the incumbent union by assuring that a petitioning union does not have access to an agency's facilities and services for campaign purposes based on a facially invalid petition or showing

of interest. See *U.S. Department of Defense Dependents School, Panama Region*, 44 FLRA 419 (1992) and [CHM 15.9](#).

18.10.2 Petitioner's prima facie showing of interest in election cases:

- 18.10.2.1 Requirement:** A petitioner must submit with the petition evidence of a prima facie showing of interest based on the approximate number of employees in the unit claimed to be appropriate. *North Carolina Army National Guard*.
- 18.10.2.2 Preliminary determination:** Upon the filing of an election petition, the Regional Office makes a preliminary determination of the sufficiency of the showing of interest. The determination of a prima facie showing of interest is made without regard to any payroll list since the prima facie check is made before the opening letter is sent to the activity.
- 18.10.2.3 Basis for making determination:** When checking the evidence of interest for prima facie sufficiency, the estimated number of employees shown in Item #3, FLRA Form 21, is used as the total number comprising the unit. Similarly, each signer of the authorization material is considered to be employed within the unit involved. **All authorization material is checked completely to determine the existence of a prima facie showing of interest. Neither a random sample nor a spot check is used in making the count.**
- 18.10.2.4 Counting acceptable evidence:** In examining the evidence of interest, the region exercises particular care and counts only those authorization cards and petitions that are signed and dated. Other types of acceptable evidence of interest are listed in [CHM 18.6](#) and [18.7](#).
- 18.10.2.5 How to mark the prima facie showing of interest:** The showing of interest and the alphabetized list are marked so that, between them there is a permanent record of the check. Normally the actual showing is not "marked" unless the card is undated or unsigned (see [CHM 18.7.5c](#)). A check mark is placed next to each name on the alphabetized list as the name is found on the showing of interest. This mark is usually made with a pen with a distinctive color. If no alphabetized list is submitted at the time the prima facie showing is checked, a visual count of the actual showing is

recorded on FLRA Form 52.

- 18.10.2.6** **Completing [FLRA Form 52](#):** Upon completion of the check of the petitioner's evidence of interest for prima facie sufficiency, Part I of FLRA Form 52, Report of Investigation of Showing of Interest, is prepared and retained as part of the case file.
- NOTE:** *When a final determination of the showing of interest is made, based upon a check against a payroll list submitted by the activity, Part II of FLRA Form 52 is completed.*
- 18.10.2.7** **Notifying petitioner of insufficient showing of interest:** If the examination results in a finding that the showing of interest is less than the required thirty percent (30%) [or ten percent (10%) in dues allotment petitions] of the estimated number of employees in the unit specified on the petition, the petitioner is notified promptly. Follow the procedures in [CHM 18.9.3](#).
- 18.10.2.8** **Additional showing of interest:** The fax or telegraphic notification initially establishes a due date for the submission of any showing of interest that the petitioner has in its possession at that time. Any additional showing of interest that is submitted to make up the deficiency is acceptable if received by the due date, provided that in cases where an agreement exists, the showing is signed and dated before the expiration of the open period. See *North Carolina Army National Guard*, 34 FLRA at 382.
- 18.11** **Intervenor's prima facie showing of interest:** When a request for intervention is supported by evidence of interest among the employees in the unit; i.e., signed authorization cards, etc., the initial determination of the showing of interest is based upon a prima facie sufficiency of ten (10) percent or more of the employees. The procedures for determining the intervenor's prima facie showing of interest are the same as for determining the prima facie showing of interest for a petitioner. A FLRA Form 52 is completed for each intervention request in the same manner as the form is completed for the petitioner's showing of interest.
- 18.12** **Petitioner's showing of interest in petitions requesting a determination of eligibility for dues allotment:** A petitioner must submit evidence of membership with a petition requesting a determination for eligibility for dues allotment. The requirements for evidence of membership are set forth in [CHM 18.5.3](#) and [18.7.1](#). The procedures for determining the petitioner's

prima facie showing of interest are the same as for determining the petitioner's prima facie showing of interest in election cases.

- 18.13 Final determination:** The procedures for making the final determination of the adequacy of any petitioner's or intervenor's showing of interest are the same.
- 18.13.1 Request for payroll list:** A final determination of a petitioner's or intervenor's showing of interest is made on the basis of a current list of employees in the unit sought (as of the payroll period immediately preceding the date the petition was filed). The list is requested pursuant to § 2422.15(b) by the Regional Director in his/her initial letter to the activity (see [CHM 15.9](#) and [Figure 15.9](#)).
- 18.13.2 Delay in submission of list:** If the activity does not submit the payroll list by the date requested in the letter, the agent contacts the activity. If necessary, the agent advises the activity if the list is unduly delayed or not submitted at all, the final determination of the showing of interest is based upon the petitioner's estimate of the number of employees in the unit; i.e., the test for prima facie showing of interest.
- 18.13.3 Complete check vs. random sample:** If the number of names on the payroll submitted by the activity is less than one thousand (1000), the region makes a complete check of the showing of interest. If the payroll list contains more than 1000 names, the region has the option of conducting a random sample (spot check). This involves checking less than every name submitted by the labor organization; e.g., every 3rd, 5th or 10th name, against the list. However, the sample is large enough to ensure validity. At least thirty percent (30%) of the names on the showing of interest are checked against the payroll list and in no event shall the ratio of the random sample be less than 1 out of 10 among the evidence of interest. A complete check is conducted in "raid" petitions.
- 18.13.4 How to make a record of the final check:** The payroll list and the alphabetized list of the showing of interest submitted by the petitioner/intervenor are marked so that, between them, there is a permanent record of the check. A mark is placed against each name on the payroll list as the name is found on the alphabetized list. If the alphabetized list was used to check the prima facie showing, it is used and checked against the payroll list. In this situation, the alphabetized list submitted by the labor organization is also marked to reflect the names found on the payroll list. **(NOTE: if the alphabetized list was not submitted when the prima facie**

showing of interest was checked, the payroll list is checked against the actual showing of interest. The alphabetized list is used only if it was checked by the agent against the actual showing.) A pen having a different color than the pen used to make the prima facie marking is used to mark the payroll list and the alphabetized list.

The final count is determined by the number of checks that appear on the payroll list. The total number of "checks" is equal to or greater than thirty (30) percent of the total names on the payroll list. If the showing of interest is inadequate based on the payroll list, before contacting the petitioner, the agent reviews [CHM 18.14](#) for a discussion concerning disputed size of unit.

No marking is made on the actual evidence of interest to denote whether the particular name was found on the payroll list. This restriction does not apply to marking or stamping "undated," where necessary, or "no signature" on the signature line, as appropriate on any authorization card, etc. which is defective for not being dated or signed.

18.13.5 Separate checks for each unit involved: A check is made for each claimed bargaining unit involved. Subsequent rechecks are made if unit positions or the parties' positions change or if the petition is amended.

18.13.6 Amending the unit at a hearing: A Hearing Officer rules on a motion to amend the unit at a hearing, like any other motion, after the other parties are asked whether they have any objections to the motion. Before granting a motion to amend the unit, the Hearing Officer takes the following actions (see also [HOG 18.6](#)):

- a. goes off the record and assesses whether the amendment has substantially affected the identity of the unit. Changes in terminology are distinguishable from changes affecting the identity and content of the unit (see [CHM 13.9](#), [13.10](#), and [13.11](#)).
- b. checks the showing of interest to determine if it is sufficient to support the proposed amendment. In any instance where additional showing of interest is required, it must be submitted with the amendment. **NOTE: as discussed in [CHM 13](#), the petitioner may amend its petition at any time; however, in election cases, it must be accompanied by the appropriate showing of interest at the time the amendment is filed.** See *U.S. Department of the Interior, National Park Service*, 55 FLRA 311, 315 (1999) and [CHM 18.1](#).

- c. determines whether there are timeliness issues (only in unusual circumstances) (*RCL 12*).
- d. calls the Regional Director if it appears that the amendment has changed the identity of the unit. If the Regional Director concludes that the amendment has a substantial effect upon the unit and identifies additional parties that may be affected by issues raised, the Hearing Officer goes back on the record and states: "Upon authorization by the Regional Director, the hearing is adjourned indefinitely pending a review of the amended petition and notification, if necessary of other potential interested parties." (see *HOG script 35.4*) Where the Regional Director concludes that the amendment does not substantially effect the unit, the Hearing Officer continues the hearing.
 - i. **Considerations when reviewing a showing of interest accompanying requests to intervene or a cross-petition received too late for the region to process prior to the opening of the hearing:**
 - a. The showing of interest must accompany any intervention request or cross-petition that is filed immediately prior to the opening of the hearing. If no evidence is proffered, the intervening party or cross-petitioner can not participate and the hearing is not delayed ([CHM 18.8](#)).
 - b. Where a request to intervene or cross-petition is based on evidence of interest received too late for the region to process prior to the opening of the hearing, the showing of interest is not examined by any other party to the proceeding and is not introduced or received into the record. Argument on the adequacy of interest is inappropriate and the Regional Director's eventual ruling on the request is based on the investigation of interest made by the Hearing Officer. The parties are reminded that adequacy of a showing of interest is an administrative matter made by the Regional Director and is not subject to collateral attack by the parties [see § 2422.9(b)].
 - c. Where requests to intervene or cross-petition are received immediately prior to the opening of a hearing, any accompanying showing of interest is checked on the spot unless the showing is voluminous and the Hearing Officer decides that it would unduly delay the hearing (see [CHM 18.13.6](#)). If it appears sufficient on its

face, the Regional Director instructs the Hearing Officer to grant the motion to intervene, “subject to a subsequent check of the sufficiency of interest” (see [HOG 17.4.4 - guidelines relating to granting “conditional intervention”](#)). The check is normally made between sessions using the activity/agency list furnished in response to the opening letter. The Hearing Officer is authorized to announce the Regional Director’s ruling on the intervention/cross-petition. If the hearing record closes before the Hearing Officer has an opportunity to check the showing of interest, the Hearing Officer [see [HOG 34.4\(c\)](#)] reports the results in the Hearing Officer’s Report and an amended showing of interest report, [FLRA Form 52](#) (see [CHM 18.15](#)).

- d. If the Hearing Officer’s check of the showing of interest reflects that the showing is inadequate and the scope and size of the unit is not an issue in the proceeding, the Hearing Officer refers the request to intervene or cross-petition to the Regional Director. The party attempting to intervene or cross-petition is not given additional time to obtain sufficient showing of interest. The hearing is not delayed and the party requesting status as an intervenor or cross-petitioner does not participate in the hearing.
- e. If the identity or size of the unit is an issue at the hearing and the decision could affect the intervenor’s or cross-petitioner’s request, the Regional Director may decide to allow the intervenor or cross-petitioner to “conditionally intervene” and participate in the proceedings. See [HOG 17.4.4](#). **NOTE: As discussed in [CHM 18.14](#), if the intervenor’s showing of interest is later found to be inadequate based on the Regional Director’s Decision, the intervenor is not given time to submit additional showing of interest.**

See also [HOG 23](#) for a discussion of cross-petitions made immediately prior to the opening of the hearing.

- ii. **Interventions, cross-petitions and challenges filed at the election agreement meeting or prior to the Regional Director’s approval of the Agreement or Direction of Election:** These are threshold issues that are resolved by the Regional Director before s/he approving the Election Agreement or issue a Direction of Election. See [CHM 28.34](#).

18.14 Disputed size of unit:

18.14.1 Procedures: A final check of the showing of interest is always conducted notwithstanding a dispute in the size of the unit. Where the number of employees on the payroll list exceeds the estimated number of employees in the unit shown in Item #3 of the petition, the region decides the adequacy of the petitioner's submission. If the check reveals less than a thirty (30) percent showing for the larger number, the petitioner is contacted for its position regarding the payroll list--a copy of which it received from the activity.

- 18.14.1.1** If the petitioner **agrees** that the showing of interest is less than thirty (30) percent of the unit, the region gives the petitioner an opportunity to submit additional showing of interest, providing such additional interest would be considered timely (See [CHM 18.9.3](#)).
- 18.14.1.2** If the petitioner **disagrees** that the payroll list conforms to the unit petitioned-for on the basis of eligibility or appropriate unit issues, the region follows procedures outlined below:
- a. The region asks the petitioner to identify specific employees on the list whom it contends are ineligible for the unit as submitted by the activity and to provide its position regarding the activity's proposed unit description;
 - b. The region contacts the activity for its position regarding the eligibility or unit issues;
 - c. If the status of the disputed employees cannot be readily resolved by the parties, the determination of the showing of interest is based on the total number of employees whom the **petitioner** asserts comprise the unit:
- < If the dispute concerns only eligibility issues, the region subtracts those employees whose eligibility the petitioner disputes from the payroll list. If the showing of interest is still insufficient, the region notifies the petitioner of the inadequacy (see [CHM 18.9.3](#)). The petitioner is given the opportunity to submit the necessary additional showing of interest providing such additional interest would be considered timely. If the subsequent submissions still results in an insufficient showing, the petition is dismissed, absent withdrawal.

- < If the showing of interest is contingent on resolution of eligibility or unit issues, the region notifies the petitioner of:
- (i) the inadequacy;
 - (ii) the reasons for the inadequacy;
 - (iii) the advisability of supplementing its showing of interest;
 - (iv) the possibility of a hearing to resolve the eligibility or unit issues; and
 - (v) the effect of potential findings on the showing of interest and the petition.

18.14.2 Effect of a determination by the Regional Director that a hearing is necessary: When the region informs the petitioner that a hearing may be necessary to resolve the eligibility or unit issues, the region also advises the petitioner of the consequences of the Regional Director's or Authority's findings. If it is determined that the unit is different than proposed or estimated by the petitioner, the petition could be dismissed following a reevaluation of the showing of interest.

Note that these procedures apply to "composition issues" (eligibility of certain inclusions or exclusions) and to "unit appropriateness" issues (scope of unit). These procedures apply to intervenors as well as petitioners.

If, during the hearing, the petitioner seeks to amend the petition to conform to a larger unit, the petitioner or intervenor must submit additional evidence of interest to support alternative eligibility or unit positions. See [HOG 25](#) for a discussion on processing an amended petition that changes the identity of the unit.

18.14.3 Effect of finding an enlarged unit appropriate: When the Regional Director or the Authority directs an election in a unit larger or different in scope than that requested by the petitioner, the direction of election is often conditioned on a reevaluation of the petitioner's/intervenor's showing of interest. This evaluation is based on the showing of interest that was submitted prior to the close of the hearing. If the petitioner/intervenor's showing of interest is insufficient, the petition is dismissed or the request for intervention denied, absent withdrawal. **The petitioner/intervenor is not given additional time to procure additional interest.** The following three examples illustrate how an eligibility or unit determination by the Regional Director or the Authority might affect a showing of interest:

- < Inclusion of a category sought to be excluded by the petitioner: Assume that the petitioner seeks a unit of one hundred (100) nonprofessional employees and submits a showing of interest of thirty-three (33) cards. The activity contends that twenty (20) analysts are eligible for inclusion in the unit, while the petitioner maintains that they are ineligible because they are professional employees. The Authority finds that all employees in this category are nonprofessional employees and includes them in the nonprofessional unit found to be appropriate. The unit now totals one hundred twenty (120) employees, requiring a showing of interest of thirty-six (36) employees, whereas petitioner has a showing of interest of thirty-three (33). The petition is dismissed.
- < Exclusion of category sought to be included by the petitioner: Assume that the petitioner seeks a unit of one hundred twenty (120) Wage Board employees, of whom twenty (20) are casual employees. The activity contends that this group of employees do not have a community of interest with the remaining employees involved. Petitioner*s showing of interest, totaling forty (40) authorization cards, includes twelve (12) cards signed by casual employees. The Authority excludes the casual employees, resulting in the unit being reduced to one hundred (100) employees. The petitioner*s showing of interest also is reduced by 12 cards to a total of twenty-eight (28) cards. Inasmuch as a minimum showing of interest of thirty (30) employees is required, the petition is dismissed.
- < Activity contends that the petitioned for unit is not appropriate: Assume a labor organization filed a petition seeking an election at a small field activity and the Agency proposes that the unit include all field activities nationwide. A hearing is held and the Regional Director determines that the small field unit is inappropriate. The Regional Director does not rule on the appropriateness of the larger unit since the petitioner stated it was not willing to proceed to an election in the larger unit. The petition is dismissed.

See Department of Transportation, National Highway Traffic Safety Administration, 2 A/SLMR 433 (1972) and Federal Aviation Administration and Federal Aviation Administration Eastern Region, 5 A/SLMR 777 (1975).

18.15 Report on investigation of showing of interest: A separate FLRA Form 52 is completed for every election or dues allotment petition. Where two or more petitions are filed involving the same activity, whether for the same or different units, a separate FLRA Form 52 is prepared stating the appropriate case number of the petition involved. The showing of interest of any intervenor(s) in a unit covered by a petition is also entered on an appropriate FLRA Form 52.

When more than one report is prepared [such as one reporting the results of the investigation or hearing regarding the impact of eligibility and/or unit disputes on the showing of interest made by the petitioner and any intervenor(s)], the subsequent reports are labeled “amended” or “second amended” as appropriate.

In every instance in which a hearing is held and completed involving a dispute as to the eligibility of any job categories and/or the appropriateness of the unit(s), **a copy of both the original and a supplemental FLRA Form 52 are forwarded to the Authority.**

18.15.1 Preparing [FLRA Form 52](#) after final check of agency’s list: The following items are noted:

- a. Name of agency/activity involved, case number and petitioner or intervenor is provided. Note that a different FLRA Form 52 is completed whenever the petitioner amends the petition and changes the identity of the unit. If more than one intervenor is involved, additional forms are completed.
- b. Part I: This section provides information about the prima facie showing of interest. The abbreviated designation of the petitioner is entered in this space.
- c. Part II: Designation and payroll information: The procedure used in checking the names on the payroll list is reflected by underlining either “complete” or “spot” (random) where requested. If no payroll list has been submitted, the entry in the blank space following the words, “for the period ending” reads, “No payroll list submitted”.
- d. Part II also provides information about the final determination of the adequacy of the showing of interest based on the agency’s/activity’s payroll list.

e. Part III provides information about the intervenor's showing of interest.

- 18.16 Regional determination on showing of interest:** The Regional Director's ultimate determination that a petitioner's showing of interest does not support the unit claimed or found to be appropriate results in dismissal of the petition or denial of intervention, absent withdrawal. Decisions and Orders dismissing petitioner for insufficient showing of interest or denying requests for intervention are discussed at [CHM 53](#).
- 18.17 Ultimate disposition of evidence of interest:** All evidence of interest which is submitted in support of a petition or request for intervention is retained in the case file until the case has been closed. During the processing of the case the only evidence of interest which may be returned to the submitting party are those cards that are undated and/or unsigned and have been marked or stamped as such before being returned. A request by a party for the return, of any portion of its evidence of interest is denied irrespective of the reasons offered. However, a party is permitted to examine its own evidence of interest at the Regional Office for the purpose of copying names and addresses. Upon closing of the case, at the party's request, the evidence of interest may be returned to the appropriate party by certified mail. If a party prefers to pick up the material at the Regional Office, regional personnel obtain a receipt before releasing the evidence of interest.
- 18.18 Challenge to the adequacy of a showing of interest:** As discussed at [CHM 18.3](#), no challenge to the adequacy of showing of interest is permitted under § 2422.9(b).
- 18.18.1 Limitation on application of review:** An application for review may be filed with the Authority only when the determination of adequacy by the Regional Director results in issuance of a Decision and Order dismissing a petition or denying intervention. Hence, a determination that an adequate showing of interest has been submitted in support of a petition or request for intervention is not subject to the filing of an application for review with the Authority.
- 18.18.2 Collateral attack:** No collateral attack of a determination that the showing of interest is adequate can be raised at a representation hearing.

18.19 Challenge to the validity of a showing of interest:

- 18.19.1 What is a challenge to the validity of a showing of interest:** Section 2422.10(a) states that validity questions are raised by challenges to a showing of interest on grounds other than adequacy. The showing of interest of either a petitioner or an intervenor can be challenged.
- 18.19.2 Who may file a challenge to the validity of a showing of interest:** The Regional Director or any party may challenge the validity of a showing of interest (validity challenges).
- 18.18.3 When and where validity challenges may be filed:** Challenges to the validity of a showing of interest must be in writing and submitted to the Regional Director or the Hearing Officer before the hearing opens, unless good cause is shown for granting an extension. If no hearing is held, challenges to the validity of a showing of interest must be filed prior to action being taken pursuant to § 2422.30.
- 18.09.4 Filing validity challenges received too late in the region to process prior to the opening of the hearing:** Challenges to the validity of the showing of interest **are never referred** to the Hearing Officer, but are handled administratively. Challenges to the validity of the showing of interest that are filed with the Hearing Officer are referred to the Regional Director (see [CHM 26.1g](#) and [HOG 17.3, 24, 33.2](#)).
- 18.19.5 Attempt to litigate validity of the showing of interest at a hearing:** If a party attempts to raise an issue regarding the validity of the showing of interest by the petitioner or intervenor at a hearing, the Hearing Officer denies the challenge or forwards it to the Regional Director for consideration ([HOG 33.2](#)).
- 18.19.5 Filing validity challenges at the election agreement meeting or prior to the Regional Director's approval of the Election Agreement or Direction of Election:** Validity challenges raise a threshold issue that are investigated and decided before the Regional Director can approve the Election Agreement or issue a Direction of Election. If the challenge is made during the election agreement meeting, the meeting is adjourned so that the challenge can be investigated and decided. All evidence must be submitted at the time the challenge is filed.

OVERVIEW

- 18.19.6 Contents of validity challenges:** Section 2422.10(d) requires that challenges to the validity of a showing of interest must be supported with evidence.
- 18.19.7 Evidence supporting validity challenges:** Evidence in support of a challenge to the validity of a showing of interest is an absolute requirement before any investigation is undertaken. Evidence must be submitted with the challenge. Such evidence consists of signed statements of employees or other written evidence. If no evidence is filed, the challenge is denied administratively (see [CHM 18.19.15](#)). Of course, the challenger may always refile the validity challenge with supporting evidence if the challenge is otherwise timely filed.
- 18.19.8 Service of validity challenges:** A copy of a validity challenge is served upon all parties. However, evidence supporting challenges to the validity of the showing of interest **is not** served on any party (§ 2422.4).
- 18.19.9 Basis of validity challenges:** A validity challenge is concerned with the authenticity of the signatures and/or the circumstances under which the authorization cards were obtained; i.e., fraud, forgery or supervisory involvement. Thus, the fact that an authorization card is not dated or contains the printed name of the employee rather than his/her signature does not involve a question of authenticity of the card. In such circumstances, the authorization card is not counted because of the omission of a date or signature rather than the commission of an act of fraud or forgery.
- 18.19.10 Investigating validity challenges:** Investigation of a validity challenge is undertaken promptly. Processing of the petition is held in abeyance until the investigation is completed unless the challenge is filed immediately prior to the hearing. See [HOG 24.2](#) and [33.2](#) for guidance in handling challenges filed immediately prior to or during the hearing.
- 18.19.11 Report of investigation:** Upon completion of the investigation of a validity challenge and, generally, before the challenged union is contacted, a written final investigative report (FIR) is submitted to the Regional Director.
- 18.19.12 Form and content of final investigative report:** A FIR is clear, concise and comprehensive. It is marked as an intra-agency and confidential document. The facts as set forth in the FIR is supported by evidence in the case file that is specifically identified in the FIR. The FIR is a self-contained document to

Showing of Interest and Challenges to Adequacy and Validity

the extent that it is not necessary to refer to file documents for a thorough understanding of the facts and issues in the case. Opinions or conclusions of the parties are not facts and are not reported as such in the FIR. Conflicting statements and disputed facts are noted.

A FIR includes, but is not necessarily limited to:

- a. a statement setting forth the challenge(s) to validity and the evidence submitted in support of the allegation(s);
- b. the identification of individuals interviewed and of the major characters involved;
- c. a statement of the issues raised by the challenges;
- d. a discussion of all facts relevant to each challenge;
- e. an analysis of each allegation or issue, including discussion of supporting case law or legal theories and, where applicable, a discussion of defenses raised;
- f. recommendations as to the disposition of each allegation; and if appropriate, a recommendation regarding enlarging the scope of the investigation.

18.19.13 Investigating unfair labor practice charges and challenges to the validity of the showing of interest simultaneously: If an unfair labor practice charge is filed alleging improper assistance by the agency or improper conduct by the labor organization involving the same conduct that gave rise to the challenge, the ULP and the challenge are investigated simultaneously. Disposition on the merits of the ULP charge also resolves the challenge filed in the REP case to the extent described below:

- a. if the investigation results in a finding of no merit, the Regional Director dismisses the ULP charge, absent withdrawal and issues a letter to the party filing the challenge denying the challenge (see CHM 18.19.15);
- b. if the parties settle the ULP, the settlement includes a request to withdraw the challenge to the validity of the showing of interest;
- c. if the Regional Director decides the ULP has merit, the Regional

Director issues a complaint and further processing of the representation case is blocked.
[CHM 60](#).

SCOPE, STANDARDS AND INVESTIGATIVE TECHNIQUES

18.19.14 Scope of “challenge” investigation: Initially, the investigation is limited to specific evidence of interest alleged to be invalid. The investigation is based on the evidence submitted and how the evidence was obtained. See [CHM 23.4](#) and [23.5](#) for a discussion on investigative techniques. For example, assume that the challenging party has alleged that 30 of the 100 cards submitted by the petitioner are invalid because of forgery and presents written statements from each of the thirty (30) employees involved. In such instance, the investigation is limited to the thirty (30) authorization cards involved.

If the allegations are substantiated by the investigation, the Regional Director refers the question of whether the investigation is expanded to the Office of the General Counsel. In this example, this issue is whether to expand the investigation to include the remaining seventy (70) cards.

The investigation includes, but is not limited to:

- a. attempts to obtain affidavits from the individual(s) responsible for procuring and submitting the signatures (more than one individual could be involved).
- b. making a signature comparison on the authorization cards against reliable records, such as W4 forms held by the agency or activity. The identity of the employees is not be revealed to the agency.
- c. questioning the individuals whose names appear on the authorization cards as signatories and taking affidavits, if possible, concerning the authenticity of their signatures.

18.19.15 Standard to be applied in determining the effect of improper agency conduct on an election petition: In *United States Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas (Fort Bliss)*, 55 FLRA 940 (1999) the Authority stated that a showing of interest should be disallowed only where necessary to prevent abuse of the election process and to protect the fundamental right of employees to choose their own representative [citing 5 U.S.C. 7102(2)]. Further, the Authority concluded “that a determination to

dismiss a petition because of agency misconduct must be based on specific findings concerning both the particular conduct at issue and the effect of that misconduct on the particular petition.”

The Authority summarized the standard by stating that:

In sum, in order to dismiss a representation petition supported by a showing of interest, we will require that any improper conduct on the part of the agency actually have affected the validity of the petition. ... if after disallowing the signatures gathered as a result of the Agency's improper grant of access to the organizer, the showing of interest is valid, the petition should not be dismissed. *Fort Bliss* at 943.

- 18.19.15.1** **Investigating allegations of improper agency conduct:** *Fort Bliss*, 55 FLRA 940, requires the region to focus the investigation not only on the actions of the agency, but also on the resulting effect on employees and the petition. As a result of the investigation, there may be circumstances where the misconduct involves such active involvement or support of the union by agency officials that the misconduct pervades the signature collection process, leading to the conclusion that the petition is dismissed. Where agency misconduct is limited or other reasons mitigate its significance, only those aspects of the petition directly affected by the violation may be invalid. *Fort Bliss*, 55 FLRA 940 and *Veterans Administration Hospital, Brecksville, Ohio*, 1 FLRC 302 (1971).

The Authority did not set forth specific evidence that may be relevant to determining whether an agency's improper grant of access to a rival union affected the free choice of its employees within the meaning of 5 U.S.C. 7102. However, listed below is the type of evidence that the region obtains when investigating these challenges.

- a. Whether the activity has knowledge of an outside organizer soliciting a showing of interest on its premises.
 1. If the activity is not aware of such conduct, the inquiry ends since there is no basis for concluding that any cards were tainted based on improper conduct by the activity. An activity

Showing of Interest and Challenges to Adequacy and Validity

cannot be held accountable for controlling an outside organizer's conduct when there is no evidence the activity was, or should have been, aware of the outside organizer's presence.

2. If the investigation discloses that the activity was, or should have been, aware of the improper conduct, the inquiry continues and the second step applies.
- b. If the activity was aware of such conduct, the extent of the activity's participation or appearance of participation in the union's organizational activities is assessed. A number of factors are evaluated to determine whether the entire showing of interest or a portion of the showing is tainted. These include:
1. The existence of any legitimate reason for the outside organizer to be present on the activity's premises;
 2. The presence of another labor organization as the certified representative of the employees being solicited or as a rival labor organization;
 3. The extent of any policing by the activity on the outside organizers and any restrictions placed by management on the outside organizers;
 4. The period of time outside organizers were on the activity's premises and involved in soliciting or collecting employee signatures;
 5. The number of authorization cards solicited *during* the period of time the outside organizers were on the activity's premises in relation to the size of the bargaining unit; and
 6. When and where the authorization cards were solicited (work area or non-work area, work-time or breaks), and/or the presence of any supervisors or managers during the period of

solicitation.

- c. Once the evidence has been obtained, it is analyzed to determine the impact of the activity's improper conduct on the right of employees to be "free to choose or reject union representation without coercion and while agency management maintains a posture of neutrality." *Gallup*, 46 FLRA 1421, 1424. If the activity's conduct is sufficiently pervasive it may reasonably be inferred, as was the case in *Gallup*, that the entire showing of interest was tainted. On the other hand, if mitigating circumstances exist, consistent with the approach adopted in *Fort Bliss*, 55 FLRA 940, the facts may warrant the conclusion that either none or only a portion of the petitioning union's showing of interest was tainted.

18.19.15.2 Submitting the case for advice: Following the region's investigation and analysis, any case that:

- a. involves supervisory conduct and
 - b. the Regional Director believes may be meritorious,
- is submitted for advice. [CHM 58.3.15](#)

18.19.16 Guidelines when contacting the petitioner or intervenor whose showing of interest is being challenged on the basis that the signatures were fraudulent or were obtained coercively: The challenged party is not contacted until after the Regional Director makes a preliminary decision on the merits of the challenge. If the Regional Director determines the challenge has no merit, there is no need to contact the challenged party ([CHM 18.19.17](#)). If the Regional Director determines that the challenge appears meritorious, the Director contacts the challenged party in accordance with the guidelines set forth in [CHM 18.19.18](#). This is both a sensible and fair approach, balancing the challenged union's right to respond to the evidence and the need to protect the employee witnesses' privacy.

ACTION

18.19.17 Action when there is no valid issue: When the Regional Director decides that no valid issue has been raised by the challenge to the validity of the showing of interest, the Regional Director sends a letter, as set forth in Figure

Showing of Interest and Challenges to Adequacy and Validity

18.19A, to the party filing the challenge, absent an unsolicited withdrawal by the party of the challenge. A copy is served on all other parties. A withdrawal request is not solicited in such instances. The Regional Director's denial of the challenge to validity is final and not subject to review [§ 2422.10(e)]. Upon issuance of the letter to the challenging party, the region resumes processing the petition.

18.19.18 Action when a valid issue is raised: If the investigation establishes that reasonable grounds exist for believing that any part of the showing is fraudulent or was obtained coercively, the Regional Director contacts the challenged party and provides that party with an opportunity to discuss and respond to the evidence.

In situations involving the authenticity of signatures, the region initially sends a letter to the challenged union (with a copy to the international, if the petitioner is a local): 1) advising it of the question as to the authenticity of the authorization cards (without specifics); 2) offering the challenged union an opportunity to meet and review the results of the investigation; and 3) setting forth the provisions of section 1001, Title 18 of the U.S. Code. (see [Figure 18.19B](#)).

If the challenged union requests a meeting, the region will meet with the union and verbally provide the challenged union with a general outline of the evidence submitted and the results of the investigation. It is not permissible to provide the challenged union with copies of the affidavits secured from the signatories who provided evidence in support of the challenge. However, if necessary, the Regional Office may make a copy of the petitioner/intervenor's alphabetized list and sanitize it to delete the invalid names. The union is permitted to respond to the challenge.

If the Regional Director determines that a valid issue has been raised by the challenge, s/he has discretion to determine what action to take.

- a. The Regional Director may strike from the showing of interest the names of the individuals whose signatures are invalid. If the remaining valid showing falls below the required amount (30% or 10%), the petition or intervention based on the showing is dismissed or denied, absent withdrawal. The stated ground is that the evidence of interest submitted "was of questionable authenticity." See, *Fort Bliss*, 55 FLRA 940 (1999) and *VA, Brecksville, Ohio*, 1 FLRC 302 (1971) (a showing of interest may be selectively invalidated where supervisory involvement is isolated,

minimal or mitigated. [CHM 18.19.15](#).

- b. If the remaining valid showing satisfies the interest requirement, but an officer or agent of the union was responsible for or had knowledge of and condoned submission of the fraudulent cards, the region requests clearance concerning the appropriate disposition of the petition or request for intervention. [CHM 58.4.3](#).
- c. If, in the Regional Director's view, the entire showing of interest is tainted because of the extent of the fraud or the method of solicitation, the Director may dismiss the petition or deny the request for intervention, absent withdrawal. Advice is obtained from the Office of the General Counsel (See [CHM 58.3.15](#) and [CHM 18.7.5h](#)).
- d. If a labor organization has not submitted a withdrawal request within the time limit set by the Regional Director, the Director issues a Decision and Order dismissing the petition and/or denying the request for intervention. The Decision and Order specifies the general grounds for such dismissal or denial without providing specific details of the results of the investigation; i.e., that the showing of interest is of questionable authenticity or that certain of the evidence of interest is of questionable authenticity, the remaining showing of interest being insufficient to meet the requirements of the regulations (See [Figure 53.B](#) and [CHM 53](#) which discusses Decisions and Orders).

If the Regional Director determines that further action may be warranted by a law enforcement agency, s/he contacts the Office of the General Counsel for clearance before forwarding the case to the appropriate authorities.

18.19.19 Limitation on right of review: The only action by the Regional Director to which an application for review may be filed is issuance of a Decision and Order dismissing a petition or denying a request for intervention [§ 2422.10(e)]. The grounds for such dismissal or denial as discussed in [CHM 18.19.18](#) are set forth in a Decision and Order and served on all parties.

18.19.20 Record keeping: Where a union has submitted evidence of interest of questionable authenticity in prior cases, the agent assigned to the case shall investigate fully the authenticity of the evidence of interest submitted in

Showing of Interest and Challenges to Adequacy and Validity

support on the petition or request for intervention. Such investigation consists of making a comparison check of the signatures against the records of the activity. If it appears on the basis of the examination, that questionable cards or other evidence of interest may be involved, the procedure set forth in this subsection is followed.

18.19.21 Duration of listing: The labor organization's name is retained on the list until such time as the Regional Director is satisfied that the organization has not submitted any invalid showing of interest in at least three (3) consecutive proceedings.