

23 **Filing a cross-petition:** Section 2422.8(a) of the regulations defines a cross-petition as a petition which involves any employees in a unit covered by a pending representation petition. Cross-petitions are filed in accordance with § 2422.8 on a form prescribed by the Authority. Cross-petitions, accompanied by any necessary supporting evidence or showing of interest, are filed and/or submitted to the Regional Director or the Hearing Officer before the hearing opens, unless good cause is shown for granting an extension.

23.1 **Filing requirements:** A cross-petition is filed on a FLRA Form 21 and in accordance with the requirements set forth in *CHM 4 through 10*, concerning procedures for filing. A cross-petition is docketed as a new case and is subject to the same standards for review and sufficiency as any petition. In all respects, a cross-petition is treated as any other petition and is processed in the same manner. However, a cross-petition is distinguished from other petitions because it concerns employees in a unit covered by a pending representation petition and is filed according to the timeliness requirements for filing requests to intervene (see *CHM 17.6*).

23.2 **Processing cross-petitions received too late for the region to process prior to the opening of the hearing:** The Regional Director may refer a cross-petition to the Hearing Officer that has been received too late for the region to process prior to the opening of the hearing. A cross-petition may also be filed directly with the Hearing Officer before the hearing opens.

23.2.1 **Handling cross-petitions received too late for the region to process prior to the opening of the hearing:**

- a) Immediately upon receipt of the cross-petition, the Hearing Officer contacts the Regional Director, informs the latter of the filing, and procures a docket number. Copies of the newly filed petition are forwarded via fax to the Regional Director as soon as possible. The Hearing Officer inserts as the date of filing, the date of receipt of the petition (see *CHM 63* for docketing procedures).
- b) The Hearing Officer is responsible for reviewing the cross-petition to ensure compliance with filing requirements. A cross-petition seeking an election must be accompanied by an appropriate showing of interest which is checked for prima facie adequacy (see *HOG 17.4.2* and *CHM 18.8*).
- c) If the cross-petition appears to meet the filing requirements, the

Hearing Officer obtains approval from the Regional Director to name the party as a cross-petitioner and consolidate the petitions prior to opening the record (see *CHM 17*). Once on the record, the Hearing Officer then proceeds in accordance with *HOG 23.2.2 through 23.2.4 and script 35.5(B)(2)*. If the cross-petition request appears more complicated, the merits of the cross-petition may be considered as an issue in the hearing. Under exceptional circumstances, the Regional Director may grant the petitioner "conditional" approval to participate in the hearing. The considerations for granting a cross-petitioner permission to participate in the hearing on a "conditional basis" are the same as the factors considered in intervention requests. See *HOG 17.4.4*. That way the hearing is not delayed and the cross-petitioner is given an opportunity to participate in the proceedings conditioned on the party satisfactorily complying with the filing requirements for cross-petitions. The Regional Director ultimately decides the issue in the Decision and Order.

- d) If the Hearing Officer believes that it is appropriate to conduct the hearing on the merits of the cross-petition simultaneously with the hearing on the pending petition(s), s/he obtains the parties' positions on consolidating the petitions and the need for a continuance, if any [see *HOG script 35.5(B)(1)*].
- e) If the other parties object to handling a cross-petition in this manner, the Hearing Officer includes the party's objections in the record.

23.2.2 *Ruling on cross-petitions that are received too late for the region to process prior to the opening of the hearing:* Upon resuming the hearing, if the Regional Director decides to consolidate the cross-petition with the pending petition(s), the Hearing Officer:

- a) announces the Regional Director's decision.
- b) introduces the new petition into the record as an Authority exhibit.
- c) If the hearing is held in the Regional Office, the Hearing Officer prepares and introduces Regional Director's Amended Notice of Hearing and Order Consolidating Cases into the record as Authority exhibits.

If the hearing is held outside of the Regional Office, the Hearing Officer states on the record the Regional Director's rulings and reserves Authority

exhibit numbers for later introduction of the Amended Notice of Hearing and Order. Once the petitions are consolidated for hearing, each petitioner becomes a cross-petitioner.

23.2.3 Evidence of interest: If the cross-petition is based on an existing or recently expired agreement or other document, a copy of the agreement or document is placed into the record at the time the motion is made. If the cross-petition is based on evidence of interest presented to the Regional Office or presented to the Hearing Officer, the fact is noted on the record, but any showing of interest is not introduced or received into evidence. Argument on the adequacy of the showing of interest is not allowed (see *HOG 17.4.2* for a detailed discussion of handling showing of interest at a hearing).

23.2.4 Ensuring the record is clear: The Hearing Officer makes certain that:

- a) the full and precise name of any cross-petitioner is placed on the record.
- b) the record is clear regarding whether the cross-petitioner is the local, the parent labor organization or both.
- c) the full name of an agency or activity cross-petitioner are also ascertained.
- d) if there is any question regarding the appropriateness of consolidating the cross-petition with the original petition, the parties are given the opportunity to state their positions on the record.

The issue of the cross-petition becomes an issue in the hearing that is decided by the Regional Director in the Decision and Order.

23.3 Cross-petitions filed after the hearing opens: If a cross-petition is filed after the hearing opens, the Hearing Officer:

- a) asks the party filing the cross-petition to explain why the petition should be accepted as a timely filed cross-petition,
- b) obtains the other parties' positions, and
- c) then goes off the record to contact the Regional Director. The cross-petition is usually referred to the Regional Director for action (*HOG script 35.5*).

Unlike intervention requests, cross-petitions are not subject to immediate dismissal if they are otherwise filed timely (see *CHM 17.6.2*). The factors for determining whether a petitioner has shown good cause for granting an extension for filing a cross-petition are the same as those for considering intervention requests (see *CHM 17.3.1*) with the exception of petitions filed pursuant to 5 U.S.C. 7111(f)(1). See *HOG 23.5*.

- a) Like intervention requests, if the Regional Director decides that the petitioner has shown good cause for establishing that its cross-petition is timely, the cross-petitioner is permitted to participate in the hearing on a “conditional” basis [*HOG 17.4, 17.4.4 and 23.2* (for docketing and processing procedures)]. The Hearing Officer takes evidence on the timeliness of the cross-petition during the hearing and the Regional Director considers the merits of the cross-petitioner’s argument that good cause has been shown for granting an extension in his/her Decision and Order.
- b) If the Regional Director decides that the petitioner has not established good cause for granting the extension, the petition is forwarded to the region for processing as a separate petition (*CHM 17.6.3*).

23.4 *If the Regional Director does not permit participation by the cross-petitioner:* If the Regional Director decides not to consolidate the petitions or allow conditional participation, the Hearing Officer states on the record that a cross-petition was filed and that the cross-petition is being referred to the Regional Director for processing.

23.5 *Cross-petitions filed immediately prior to the opening of the hearing or after the hearing opens that challenge the status of a petitioning or intervening labor organization on the basis that it is subject to corrupt or anti-democratic influences pursuant to 5 U.S.C. 7111(f)(1):* These cross-petitions do not appear to be subject to the timeliness provisions of the regulations and raise threshold issues that are considered prior to taking evidence on the remaining issues at a hearing. If the cross-petition is filed immediately prior to the opening of the hearing or during the hearing, the Hearing Officer follows the outline in *CHM 23.9.3*.

The Hearing Officer ensures the moving party has supported the challenge or petition by asking the same questions on the record that would have been asked in an *Order to Show Cause* (*CHM 23.9.3*). Ultimately, the Regional Director decides these issues and the issues defined in the Notice of Hearing in one Decision and Order. See also *HOG 24.3* for a discussion of challenges to the status of a labor organization made at a hearing. See also *RCL 12* for substantive issues and *HOG 48* for hearing questions.