

24 Challenges to the validity of the showing of interest and challenges to the status of a labor organization:

24.1 When to file: The regulations provide at §§ 2422.10 and 2422.11 that challenges to the validity of the showing of interest (i.e., procurement of the evidence of interest by fraud, forgery, supervisory involvement in the collection of the showing, etc.), and challenges to the status of a labor organization [i.e., compliance with 5 U.S.C. 7103(a)(4) or claims made pursuant to 5 U.S.C. 7111(f)(1)], respectively, may be submitted to the Regional Director or to 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 or the status of a labor organization should be filed prior to action being taken pursuant to § 2422.30. (Exception: a petition or challenge claiming the petitioning labor organization, intervenor or incumbent is subject to corrupt or undemocratic principles may be filed at any time.)

HOG 24 concerns processing challenges to the validity of the showing of interest and challenges to the status of a labor organization that are received too late for the region to process prior to the opening of the hearing.

24.2 Challenges to the validity of the showing of interest: Any challenges to the validity of the showing of interest submitted to the Hearing Officer prior to the opening of the hearing or after the hearing opens, must be accompanied by all supporting evidence. The Hearing Officer forwards the challenge and supporting evidence to the Regional Director as soon as possible. Evidence related to these challenges is not introduced or litigated at the hearing. A challenge to the validity of a showing of interest is a threshold issue that is investigated and decided before the Regional Director issues his/her Decision and Order on the hearing matters. The hearing is not delayed by the filing of such challenges. See *HOG 33.2* and *CHM 18.19.4 and 18.19.5* for processing procedures.

24.3 Challenges to the status of a labor organization:

24.3.1 Any challenges submitted to the Hearing Officer prior to the opening of the hearing must be accompanied by all supporting evidence. Challenges to the status of a labor organization are treated as a threshold issue that are considered before proceeding with the hearing. If the challenge is filed too late to investigate and decide prior to the opening of the hearing, the Regional Director refers the challenge to the Hearing Officer. Status challenges may also be filed directly with the Hearing Officer prior to the

opening of the hearing. The Hearing Officer treats challenges to the status of a labor organization as a threshold issue to consider before proceeding with the remainder of the hearing.

After a status challenge is referred to the Hearing Officer, s/he discusses the issues and procedures for handling the status challenge with the Regional Director prior to opening the hearing. The Hearing Officer takes evidence on the status challenge before proceeding with the other issues (see *HOG 23.5* for specific procedures for handling and *HOG 33.3*). The Hearing Officer does not generally make a recommendation on the record regarding a status challenge. The Regional Director decides the status issue as part of his/her Decision and Order. If, however, the Regional Director finds merit in a status challenge, the Director does not normally rule on the remaining issues (*CHM 53*).

24.3.2 Status challenges that are filed after the hearing opens are:

24.3.2.1 Untimely if they challenge the labor organization on the basis of 5 U.S.C. 7103(a)(4) unless good cause is shown for granting an extension. All supporting evidence is required to be submitted with the challenge or the challenge is not considered. To consider the challenge, the challenger must show that good cause exists for being granted an extension. If the challenge alleges that the labor organization does not comply with 5 U.S.C. 7103(a)(4), the challenging party must support the challenge with evidence as outlined in *RCL 10A and HOG 46A*.

24.3.2.2 Timely if the challenge raises claims pursuant to 5 U.S.C. 7111(f)(1). The challenging party must support the challenge with evidence as outlined in *RCL 10B and HOG 46B*. The Hearing Officer follows the procedures set forth in *HOG 23.4* as summarized below.

The factors for deciding whether the challenging party has shown good cause for being granted an extension to file the challenge are contained in *CHM 23.9.3*. The procedures for processing untimely filed status challenges are as follows:

- a) the Hearing Officer asks the challenger to state the grounds for the status challenge and the reasons for the delay in filing,
- b) the Hearing Officer contacts the Regional Director (or acting RD) to discuss the reasons for the party's delay in filing,
- c) the Hearing Officer asks the moving party to respond to questions

outlined in *CHM 23.9.3.2* that would have otherwise been issued as part of an *Order to Show Cause*.

24.3.3 The Regional Director ultimately decides the status issue as part of his/her Decision and Order. If it does not appear that the party has not shown good cause for extending the time limitations, the Regional Director instructs the Hearing Officer to refer the challenge to the Regional Director for action.

See *CHM 19* and *CHM 23.9.3* for more information about processing status challenges, *RCL 10* for substantive information and *HOG 33.3 and 46* for handling such challenges at the hearing.

