

**26**      **Stipulations:** A stipulation is an important evidentiary device by which the parties agree upon a particular fact or set of facts which may be accepted by the Regional Director as evidence without the necessity for extensive development of the record through witnesses or exhibits. Stipulations serve to narrow the issues and shorten the record. Stipulations may be oral or in writing.

For a discussion of stipulations in lieu of hearings see *HOG 9*.

**26.1**      **Requirements.** The Authority considers a stipulation as evidence when:

- a)        All parties join in the stipulation;
- b)        It includes a statement of facts in support of an issue which is a subject of the hearing;
- c)        The stipulation is expressly received in evidence by the Hearing Officer like any other offer of evidence. See *HOG 26.4*.

The parties are not required to agree on the outcome of the issue, i.e., agree that the unit is appropriate, a position is confidential, etc., just secure an agreement on the facts. The parties have opportunity to argue their position on the issue in their briefs.

**26.2**      **Preparing a stipulation:** A stipulation may be proposed by any party or by the Hearing Officer regarding any matter in issue. The discussion between the Hearing Officer and the parties in formulating the content of the stipulation are not material to the record and therefore, in most instances, such discussions are conducted off the record.

The Hearing Officer takes an active role in the discussions and offers suggested language to reflect as clearly and fully as possible the intent of the parties. The Hearing Officer apprizes the parties, where appropriate, of applicable policies and decisions of the Authority. When the language of the stipulation is agreed upon by all parties, the Hearing Officer is permitted to draft it and read it back for their concurrence as to its accuracy. The Hearing Officer goes back on the record for the purpose of receiving the stipulation in evidence.

**26.3** **Receiving stipulation in evidence:** In receiving the stipulation in evidence, the Hearing Officer states on the record as follows:

ON THE BASIS OF AN OFF-THE-RECORD DISCUSSION,  
THE FOLLOWING STIPULATION IS PROPOSED:

IT IS STIPULATED BY THE PARTIES THAT (read entire stipulation unless it is entered in writing as a joint exhibit) . . . .

IS IT SO STIPULATED BY THE ACTIVITY?

BY THE PETITIONER?

BY THE INTERVENOR?

THE STIPULATION IS RECEIVED.

Each party, in responding to the question put by the Hearing Officer, states its agreement aloud. If a party responds by nodding in assent, the Hearing Officer requests that the response be stated for the record.

**26.4** **Content of stipulations:** A stipulation which states only a conclusion without a supporting foundation of fact is not acceptable and may not be received in evidence (see *HOG script 35.9* for a sample stipulation).

An example of a stipulation of facts which the parties submitted to the Assistant Secretary for Labor-Management Services and which was later transferred to the Authority for decision is attached to *USA DARCOM Materiel Readiness Support Activity (MRSA), Lexington, Kentucky, 1 FLRA 430 (1979)*. An example of a case involving an insufficient stipulation of facts which the Authority remanded for more evidence is *Department of Justice, Washington, DC, 50 FLRA 439, at 442 (1995)*.

**26.5** **Stipulations obviating the need to continue the hearing:** If the parties are willing to enter into a stipulation that would eliminate the need to continue the hearing, the Hearing Officer recesses the hearing to allow the parties to draft the stipulation.

For example: the parties are willing to stipulate regarding unit appropriateness and agree to enter into an election agreement (*HOG 31.3*). The Hearing Officer goes off the record to draft the stipulation and obtain an election agreement. Once the Regional Director signs the agreement, the

hearing is resumed for the limited purpose of the Hearing Officer stating on the record that the parties have entered into an Election Agreement. Thereafter, the hearing is adjourned indefinitely. A copy of the agreement for election is not introduced in evidence. If the Regional Director does not approve the stipulation or the Election Agreement, the Hearing Officer resumes the hearing.

**26.6 Special circumstances that may arise during a hearing:**

**26.6.1 Attempt to withdraw from a stipulation already received in evidence:**

A Hearing Officer may properly refuse to allow a party to amend or withdraw from a stipulation once the parties have agreed to it, and it has been received into evidence. In such situations, the Hearing Officer allows the party(ies) wishing to withdraw from or amend the stipulation to proffer documents and testimony to support their revised position. *Environmental Protection Agency, Region VIII, Denver, Colorado*, 15 FLRA 184 (1984).

**26.6.2 Stipulations involving determinative challenged ballots:**

During a hearing involving determinative challenged ballots, the parties may express a willingness to enter into a stipulation(s) regarding the bargaining unit eligibility of certain employees who have cast determinative challenged ballots. The Hearing Officer recesses the hearing and contacts the Regional Director to discuss potential stipulations and seek permission to entertain them. Acceptance of the stipulation is a discretionary matter with the Regional Director. *Veterans Administration Medical Center, Fayetteville, North Carolina*, 8 FLRA 651 (1982). See also *CHM 47.18* for post tally party resolution of determinative challenged ballots. When the parties are unable to resolve any or all of their challenges pursuant to *CHM 47.18*, the Regional Director investigates and decides proceeds determinative challenged ballots pursuant to *CHM 49*. The parties cannot withdraw challenges at this point; the Regional Director decides all remaining determinative challenged ballots.

