

SAMPLE SCRIPT
HOG 35

35 **Script:** The following is a basic outline for a hearing. It can be modified as necessary to fit particular circumstances (see Figure 35 at n:\figures\H35.wpd).

35.1 **Appearances and opening statement:**

ON THE RECORD. THE HEARING WILL BE IN ORDER.

THIS IS A FORMAL HEARING IN THE MATTER OF....., CASE NUMBER.....BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY.

Read the entire caption of the case from the notice of hearing.

THE HEARING OFFICER APPEARING FOR THE FEDERAL LABOR RELATIONS AUTHORITY IS

WILL REPRESENTATIVES FOR EACH OF THE PARTIES PLEASE STATE THEIR APPEARANCE FOR THE RECORD, INCLUDING TITLE, ADDRESS AND ZIP CODE?

FOR THE (ACTIVITY) (AGENCY)?

FOR THE PETITIONER?

FOR THE INTERVENOR(S)?

If appearance is by an attorney, obtain full name of law firm.

Appearance by a labor organization representative reflects the national with whom affiliated.

I WISH TO INFORM ALL PARTIES THAT THE OFFICIAL REPORTER MAKES THE ONLY OFFICIAL TRANSCRIPT OF THESE PROCEEDINGS AND ALL CITATIONS IN BRIEFS OR ARGUMENTS MUST REFER TO THE OFFICIAL RECORD. AFTER THE CLOSE OF THE HEARING ONE OR MORE OF THE PARTIES MAY WISH TO HAVE CORRECTIONS MADE IN THE RECORD. ALL SUCH PROPOSED CORRECTIONS, EITHER BY AN AGREED STATEMENT, STIPULATION, OR MOTION SHALL BE MADE IN

WRITING TO THE REGIONAL DIRECTOR.

I WISH TO STRESS THE FACT THAT ALL MATTERS SPOKEN IN THE HEARING ROOM ARE RECORDED BY THE OFFICIAL REPORTER WHILE THE HEARING IS IN SESSION. IN THE EVENT THAT ANY OF THE PARTIES WISHES TO MAKE OFF-THE-RECORD REMARKS, REQUESTS TO MAKE SUCH REMARKS ARE DIRECTED TO THE HEARING OFFICER AND NOT TO THE OFFICIAL REPORTER. STATEMENTS OF REASONS IN SUPPORT OF MOTIONS AND OBJECTIONS ARE AS CONCISE AS POSSIBLE. OBJECTIONS AND EXCEPTIONS MAY, UPON APPROPRIATE REQUEST, BE PERMITTED TO STAND TO AN ENTIRE LINE OF QUESTIONING. AUTOMATIC EXCEPTIONS ARE ALLOWED TO ALL ADVERSE RULINGS.

THE SOLE OBJECTIVE OF THE HEARING IS TO ASCERTAIN AND INQUIRE INTO THE RESPECTIVE POSITIONS OF THE PARTIES AND TO OBTAIN A COMPLETE AND FULL FACTUAL RECORD UPON WHICH A DECISION MAY BE BASED. IT MAY BECOME NECESSARY FOR THE HEARING OFFICER TO ASK QUESTIONS, AND TO EXAMINE WITNESSES, WITH RESPECT TO MATTERS NOT RAISED OR PARTIALLY RAISED BY THE PARTIES. THE SERVICES OF THE HEARING OFFICER ARE EQUALLY AVAILABLE TO ALL PARTIES TO THIS PROCEEDING.

AFTER THE CLOSE OF THE HEARING, THE REGIONAL DIRECTOR WILL ISSUE A DECISION AND ORDER.

35.2 Receiving formal papers in evidence: (see HOG 4.1, 10.2.2 and 32.4)

I NOW PROPOSE TO RECEIVE THE FORMAL PAPERS INTO THE RECORD.

THE PARTIES WERE AFFORDED THE OPPORTUNITY TO EXAMINE THE FORMAL PAPERS PRIOR TO THE OPENING OF THIS HEARING.

ARE THERE ANY OBJECTIONS TO RECEIVING IN EVIDENCE THE FORMAL PAPERS AS AUTHORITY EXHIBITS MARKED 1a THROUGH 1... FOR IDENTIFICATION?

HEARING NO OBJECTION, THEY ARE RECEIVED INTO THE RECORD.

A party is allowed to state its objections, in full, on the record. If the objection is raised as to the admissibility of an exhibit, the Hearing Officer explains

that:

- a) the formal papers are necessary to the Authority's jurisdiction in the matter,
- b) receipt of the exhibits in evidence does not establish the truth of the matters contained therein,
- c) any relevant evidence may be introduced irrespective of the contents of the exhibits, and
- d) in any event, the Regional Director passes on the admissibility of such exhibits and any other evidence.

If the other party does not withdraw its objection after this explanation, the objection is overruled.

If a party seeks to raise an issue or makes a motion on any matter unrelated to the formal papers (e.g., intervention, showing of interest, etc.) before all papers are received in evidence, ruling by the Hearing Officer on that motion is deferred until disposition of the Authority exhibits is completed.

If an issue is raised regarding:

- a) the adequacy of the showing of interest, see *HOG 33.1*;
- b) the validity of the showing of interest, see *HOG 33.2*;
- c) the status of a labor organization, see *HOG 33.3*; or
- d) or motion to dismiss petition, see *HOG 18.3*.

35.3 *Ascertaining correct names of parties:* (see *HOG 3 and 32.5*)

MR./MS. ..., IS THE NAME OF THE ACTIVITY AND THE AGENCY APPEARING ON THE PETITION NAMELY, CORRECT?

MR./MS. ..., IS THE NAME OF THE PETITIONER APPEARING ON THE PETITION, NAMELY ... CORRECT?

MR./MS., IS THE NAME OF THE INTERVENOR APPEARING ON THE PETITION/NOTICE OF HEARING, NAMELY, ... CORRECT?

If a party states that its name is not correct, the correct name is provided for the record, after which the Hearing Officer reads the following statement into the record:

ARE THERE ANY OBJECTIONS TO HAVING THE PETITION AND THE OTHER FORMAL PAPERS AMENDED SO THAT THE NAME OF THE (ACTIVITY, AGENCY, PETITIONER, INTERVENOR) WILL APPEAR CORRECTLY IN THE CAPTION AS?

The affiliation, if any, with national, international, and/or parent federation, is included in full. No abbreviation in the name of a labor organization is permitted, except in the single instance of AFL-CIO.

The correct name of a labor organization, as provided by its representative, need not be supported by documentary evidence or testimony.

35.4 Other motions to amend the petition: If the Hearing Officer knows in advance (as a result of prehearing discussions) that the petition will be amended, it is amended at this time (see *HOG 18.7 and 32.6* for instructions on handling amendments to petitions).

35.5 Intervention and cross-petition: Motions to intervene and cross-petitions that were filed immediately prior to the opening of the hearing are reviewed and, if necessary, ruled on (see *HOG 17.4, 23, 32.7 and 33*).

(A)(1) When the motion to intervene is being granted:

MR./MS.,YOUR MOTION TO INTERVENE, ON BEHALF OF, IS GRANTED.

(2) If the Hearing Officer has any doubt as to the propriety of permitting intervention, s/he states the following:

MR./MS.,YOUR MOTION TO INTERVENE, ON BEHALF OF, IS GRANTED, CONDITIONALLY (if necessary, AND SUBJECT TO A SUBSEQUENT CHECK OF THE SUFFICIENCY OF THE SHOWING OF INTEREST). A FINAL DECISION IS BEING RESERVED FOR THE REGIONAL DIRECTOR IN THE DECISION AND ORDER.

(B)(1) With respect to cross-petitions:

WITH RESPECT TO THE CROSS-PETITION, WHAT ARE THE POSITIONS OF THE PARTIES ON CONSOLIDATING THE CROSS-PETITION WITH

THE PETITION PRESENTLY BEFORE THE HEARING OFFICER?

ON THE BASIS OF A DISCUSSION WITH THE REGIONAL DIRECTOR, THE REGIONAL DIRECTOR HAS DECIDED TO CONSOLIDATE / NOT TO CONSOLIDATE THE CROSS-PETITION WITH THE PETITION PENDING BEFORE THIS HEARING OFFICER.

If the Regional Director grants the cross-petitioner status on a "conditional basis", the Hearing Officer adds:

MR./MS., YOUR REQUEST TO CROSS-PETITION IS GRANTED, CONDITIONALLY. A FINAL DECISION IS BEING RESERVED FOR THE REGIONAL DIRECTOR IN THE DECISION AND ORDER.

(2) If the petitions are consolidated:

I WILL NOW INTRODUCE THE CROSS-PETITION AS AUTHORITY EXHIBIT #...

ARE THERE ANY OBJECTIONS TO RECEIVING INTO EVIDENCE AUTHORITY EXHIBIT #?

HEARING NO OBJECTION, AUTHORITY EXHIBIT # IS RECEIVED.

(3) If the intervention or cross-petition is filed during the hearing: the Hearing Officer asks the party to state the grounds for the request and the reasons for the delay in filing. The Hearing Officer then contacts the Regional Director (or acting RD) to discuss the reasons for the party's delay in filing. If it appears that the party requesting intervention has shown good cause for granting an extension to the timeliness requirements, the Regional Director may allow the Hearing Officer to grant "conditional" intervention and the script in "(2)" is read into the record. If it does not appear that the party's untimely intervention warrants further consideration, the Regional Director instructs the Hearing Officer to refer the intervention request to the Regional Director for action (*HOG 17.4, and 18.4 and 23* for cross-petitions).

35.6 Other prehearing motions presented by the parties upon opening the hearing: Other motions are handled similarly to those discussed above (see *HOG 18, 24, 32.8 and 33*).

Other parties that were notified of the petition and did not respond are listed

in the record at this time. See *HOG 32.5*.

35.7 ***Outlining the issues presented by the petition:*** The following are examples of scripts which concern issues that are commonly raised in petitions (see *HOG 32.9, 2 and 3.7*).

35.7.1 ***Appropriate unit:*** (see *HOG 37* for information required for the record and *RCL 1* for substantive discussions of the issues)

This sample involves a consolidated hearing for two election petitions:

THE UNIT SOUGHT BY THE PETITIONER IN CASE NO., IS DESCRIBED AS FOLLOWS IN THE AMENDED PETITION:

(describe proposed unit)

THE UNIT SOUGHT BY THE SAME PETITIONER IN CASE NO., IS DESCRIBED AS FOLLOWS IN THE AMENDED PETITION:

(describe proposed unit)

MR./MS., WHAT IS THE POSITION OF THE PETITIONER REGARDING THE APPROPRIATENESS OF THE PETITIONED-FOR UNITS?

MR./MS., WHAT IS THE POSITION OF THE ACTIVITIES REGARDING THE APPROPRIATENESS OF THE PETITIONED-FOR UNITS?

ALTERNATIVE UNIT(S) (optional, see *HOG script 35.8*).

AT THIS TIME, WILL THE PETITIONER STATE FOR THE RECORD ITS POSITION AS TO WHAT UNIT(S), IF ANY, IT WOULD BE WILLING TO PROCEED TO AN ELECTION IN AS AN ALTERNATIVE TO THE UNITS SOUGHT BY THE AMENDED PETITIONS?

WHAT IS THE POSITION OF THE ACTIVITIES REGARDING ANY SUCH ALTERNATIVE UNIT(S)?

35.7.2 ***Eligibility:*** (see *HOG Employee Category 51 through 64* for information required for the record and *RCL 15 through 28* for substantive discussions of the issues)

This sample involves a request to clarify multiple bargaining positions.

IN THIS CASE, THE PETITIONER SEEKS TO CLARIFY THE BARGAINING UNIT DESCRIBED BELOW WHICH WAS CERTIFIED ON IN CASE NO.:

(Describe the recognized or certified unit directly from the recognition or certification; if neither document is available, the Hearing Officer relies on the unit description in the contract. If there are any discrepancies between the names of the parties to the case as opposed to the names of the parties on these documents, this is clarified on the record, either through a stipulation or testimony.)

THROUGH THIS PETITION, THE PETITIONER,, PROPOSES THAT THE ABOVE-DESCRIBED UNIT BE CLARIFIED BY INCLUDING THE FOLLOWING EMPLOYEE(S):

<u>TITLE</u>	<u>GRADE</u>	<u>SERIES</u>	<u>INCUMBENT</u>
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Note: When clarifying units, the petitioner is required to specify the positions held by specific individuals that it seeks to clarify. For example, a petition may seek to clarify only certain Program Analysts, GS-9. The record tracks the petition and reflects the names of the individuals who encumber the positions affected by the petition. The record in this example includes an explanation why the petitioner seeks to clarify the status of certain individuals and not others.

When a petition seeks to clarify the status of an entire classification of employees, e.g., all Program Analysts, GS-345-9, the parties prepare an exhibit that identifies the names and organizational location of the incumbents. This is a joint exhibit absent a stipulation that the petition seeks to clarify the status of all employees who encumber the specific position at issue. This example is also appropriate for selecting one individual to provide representative testimony. HOG 32.15.2.4.

MR./MS., HAVE I CORRECTLY STATED THE PURPOSE OF THE'S PETITION TO CLARIFY THE UNIT?

MR./MS., IS THIS(other party)'S UNDERSTANDING OF THE PURPOSE OF THE PETITIONER'S CLARIFICATION OF UNIT PETITION?

WILL EACH OF THE PARTIES STATE ITS POSITION WITH RESPECT TO THE INCLUSION OR EXCLUSION OF (EACH OF) THE CLASSIFICATION(S) IN ISSUE, NAMELY.....?

MR./MS., FOR THE PETITIONER?

MR./MS., FOR THE (ACTIVITY) (AGENCY)?

MR./MS., FOR THE INTERVENOR?

35.7.3 Matters relating to representation (e.g., reorganization, accretion, successorship, Montrose): (see HOG 37 through 50 for questions and RCL 1 through 14 for substantive discussions of the issues)

IN THIS CASE, THE PETITIONER SEEKS TO CLARIFY THE BARGAINING UNIT DESCRIBED BELOW WHICH WAS CERTIFIED ON IN CASE NO.:

In this sample, there is only one unit being clarified as a result of a substantial change in the character and scope of the unit. The existing unit description is read into the record. On the other hand, a large reorganization may affect many units. Rather than read all of the units into the record, the parties prepare a joint exhibit setting forth descriptions of the units and the dates of recognition or certification with copies of appropriate recognitions and certifications.

THROUGH THIS PETITION, THE PETITIONER(S) SEEKS TO CLARIFY THE CERTIFIED UNIT(S) BY: [Provide a clear and concise statement of the issues raised by the petition and the results the petitioner(s) seeks.]

MR./MS., HAVE I CORRECTLY STATED THE PURPOSES OF THE PETITIONER'S PETITION?

MR./MS., IS THIS THE (other party)'S UNDERSTANDING OF THE PURPOSES OF THE PETITIONER'S PETITION?

The Hearing Officer confirms that all parties understand the purpose of the petition.

35.7.4 Unit consolidations: (see HOG 39 for information required for the record and RCL 13 for substantive discussions of the issues)

This example is a request to consolidate two separate bargaining units.

THROUGH THIS PETITION, THE PETITIONER,, SEEKS TO CONSOLIDATE (cite number of units) TWO SEPARATE EXISTING BARGAINING UNITS WHICH IT CURRENTLY REPRESENTS. ONE OF

THE UNITS IS A UNIT OF EMPLOYEES OF(name of Activity/Agency), WHICH AS MOST RECENTLY CERTIFIED ON (cite date) IN CASE NO. IS DESCRIBED AS FOLLOWS:

(describe current unit "A" directly from the recognition or certification; if neither document is available, the parties may stipulate that the unit described in the negotiated agreement is representative of the recognition. Any discrepancies between the names of the parties to the case as opposed to the names of the parties on the certifications or recognitions are clarified on the record, either through a stipulation or testimony, and if necessary, a designation of representative.)

THE SECOND OF THESE UNITS CURRENTLY REPRESENTED BY (union) IS A UNIT OF EMPLOYEES OF..... (name of activity/agency), WHICH AS MOST RECENTLY CERTIFIED ON.....(date) IN CASE NO. IS DESCRIBED AS FOLLOWS:

(describe current unit "B" directly from the recognition or certification; if neither document is available, per the parties' stipulation, the Hearing Officer may rely on the unit description in the contract. Any discrepancies between the names of the parties to the case as opposed to the names of the parties on the certifications or recognitions are clarified on the record, either through a stipulation or testimony, and if necessary, a designation of representative.)

THE DESCRIPTION OF THE UNIT SOUGHT BY THE PETITIONER TO CONSOLIDATE THE ABOVE DESCRIBED EXISTING BARGAINING UNITS IS AS FOLLOWS:

(describe proposed consolidated unit - see *CHM 28.13* that discusses conforming units to Statutory exclusions)

If there are a significant number of units to consolidate, the Hearing Officer requires the parties to prepare a joint exhibit describing each of the units sought in the consolidation, showing the date of recognition or certification and attaching copies of the recognitions and certifications, if available.

Questions when the petition is not jointly filed (tailor if petition is jointly filed):

MR./MS., DOES THE ABOVE ACCURATELY DESCRIBE THE EXISTING BARGAINING UNITS WHICH ARE THE SUBJECTS OF THIS PETITION AND THE ACTIVITIES/AGENCIES' UNDERSTANDING OF THE CONSOLIDATED BARGAINING UNIT SOUGHT BY THE PETITIONER?

MR./MS., DOES THE ABOVE ACCURATELY DESCRIBE THE EXISTING BARGAINING UNITS WHICH ARE THE SUBJECTS OF THIS PETITION AND THE PETITIONER'S UNDERSTANDING OF THE CONSOLIDATED BARGAINING UNIT SOUGHT BY THE PETITIONER?

35.7.5 Determinative challenged ballots: (see CHM 49)

This sample involves determinative challenged ballots.

THE SOLE PURPOSE OF THIS HEARING IS TO DETERMINE THE BARGAINING UNIT ELIGIBILITY STATUS OF (... number of employees of -name activity/agency- and whose challenged ballots are determinative) EMPLOYEES IN ORDER TO RESOLVE THEIR DETERMINATIVE CHALLENGED BALLOTS.

OF THESE DETERMINATIVE CHALLENGED BALLOTS, THOSE OF THE FOLLOWING EMPLOYEES WERE CHALLENGED BY THE (identify challenging party) BASED ON ITS CONTENTION THAT THESE EMPLOYEES ARE (e.g., supervisors, managers, etc.) WITHIN THE MEANING OF (cite applicable section of Statute):

<u>NAME</u>	<u>POSITION DESCRIPTION TITLE</u>
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MR./MS., HAVE I ACCURATELY IDENTIFIED THE EMPLOYEES WHOSE BALLOTS WERE CHALLENGED AND THE REASON FOR THOSE CHALLENGES

MR./MS., DOES THIS ACCURATELY REFLECT THE (name of party)'S UNDERSTANDING REGARDING WHICH EMPLOYEES' BALLOTS THE ... CHALLENGED AND THE REASON FOR THOSE CHALLENGES?

THE REMAINING DETERMINATIVE CHALLENGED BALLOTS, AS CAST BY(name of employees), WERE CHALLENGED BY THE AS FOLLOWS:

<u>NAME</u>	<u>POSITION DESCRIPTION TITLE</u>	<u>REASON FOR CHALLENGE</u>
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MR./MS., HAVE I ACCURATELY IDENTIFIED THE EMPLOYEES WHOSE BALLOTS WERE CHALLENGED AND THE REASONS FOR THOSE CHALLENGES BY THE

MR./MS., DOES THIS ACCURATELY REFLECT THE'S

UNDERSTANDING REGARDING WHICH EMPLOYEES' BALLOTS THE ...
CHALLENGED AND THE REASONS FOR THOSE CHALLENGES?

IF THE REGIONAL DIRECTOR, OR ULTIMATELY, AS APPLICABLE, THE
AUTHORITY, DETERMINES THAT FOR PURPOSES OF THE FEDERAL
SERVICE LABOR- MANAGEMENT RELATIONS STATUTE, ANY OF THE
EMPLOYEES WHO CAST DETERMINATIVE CHALLENGED BALLOTS
ARE, IN FACT, ELIGIBLE TO VOTE IN THE ELECTION HELD IN THIS
CASE, THOSE ELIGIBLE EMPLOYEES' BALLOTS WILL BE OPENED AND
COUNTED TOGETHER WITH THE OTHER ELIGIBLE EMPLOYEES WHO
CAST BALLOTS IN THE ELECTION. A REVISED TALLY OF BALLOTS
WILL THEN BE PREPARED, REFLECTING THEIR DESIRE ON THE
QUESTION OF REPRESENTATION.

MR./MS., DOES MY DESCRIPTION OF THE PURPOSE OF THIS
HEARING ACCURATELY REFLECT THE ACTIVITY'S UNDERSTANDING
OF THE MATTERS AT ISSUE IN THIS PROCEEDING?

MR./MS., DOES MY DESCRIPTION OF THE PURPOSE OF THIS
HEARING ACCURATELY REFLECT THE UNION'S UNDERSTANDING OF
THE MATTERS AT ISSUE IN THIS PROCEEDING?

35.7.6 Timeliness issues: This issue is always addressed in a hearing involving
a petition that seeks an election. Even if timeliness is not an issue in dispute,
the following questions are asked so that the issue is resolved and cannot be
raised later (see *HOG 32.10 and 48, RCL 12*).

DOES ANY PARTY CONTEND THAT THERE IS A BAR TO AN ELECTION
IN EITHER OF THE PETITIONED-FOR UNITS IN THESE CASES BASED
ON AN AGREEMENT, PRIOR ELECTION, OR CERTIFICATION?

MR./MS., WHAT IS THE POSITION OF THE LABOR
ORGANIZATION YOU REPRESENT ON THIS ISSUE?

MR./MS., WHAT IS THE POSITION OF THE ACTIVITIES ON
THIS ISSUE?

If timeliness is not an issue, it may be stipulated as a nonissue:

IT IS HEREBY STIPULATED BY ALL PARTIES THAT THERE IS NO BAR
TO AN ELECTION IN THIS CASE BASED UPON AN AGREEMENT, PRIOR
ELECTION OR CERTIFICATION.

If timeliness is an issue, the Hearing Officer frames the issue in the form of a stipulation of an issue to explore at the hearing (see *HOG 32.13*). The following is an example of a stipulation reached at a hearing where timeliness is the sole issue:

THE SOLE ISSUE RAISED BY THE SUBJECT PETITION FOR PURPOSES OF THIS HEARING IS WHETHER AN ELECTION IN THE PROPOSED UNIT IS BARRED BY A COLLECTIVE BARGAINING AGREEMENT. THERE ARE NO OTHER ISSUES WHICH WOULD PRECLUDE AN ELECTION BEING HELD IN THIS CASE.

- 35.8** **Alternative unit(s):** If appropriate to the issues, the Hearing Officer asks the petitioner if there are any alternative units for which the petitioner is willing to seek representation through an election. As noted in *HOG 32.11*, the Hearing Officer reminds the petitioner, that any alternative unit must be supported by the showing of interest that has already been submitted. If the petitioner seeks to amend the petition, additional showing of interest is submitted with the amendment and the petitioner must be specific as to the scope of the unit. *U.S. Department of the Interior, National Park Service, Washington, DC, 55 FLRA 311 (1999). HOG 18.7.6.*

The Hearing Officer asks the parties for their positions on alternative units at both the beginning and the end of the hearing. The point is to make sure the record contains sufficient evidence for the Regional Director to make a decision on the appropriateness of the alternative unit.

- 35.9** **Receiving stipulations:** (see *HOG 10.2.4, 26, and 32.12*)

The following is an example of a stipulation for a non-issue:

IN AN OFF-THE-RECORD DISCUSSION, THE PARTIES AGREED TO THE FOLLOWING STIPULATION:

THE PARTIES HEREBY STIPULATE THAT NO INDIVIDUAL UNIT ELIGIBILITY MATTERS ARE AT ISSUE FOR PURPOSES OF THIS HEARING AND THAT NO INDIVIDUAL ELIGIBILITY DISPUTES STAND IN THE WAY OF PROCEEDING TO AN ELECTION SHOULD THE PETITIONED FOR UNITS SOUGHT BY THE PETITIONER IN THESE CASES, AS DESCRIBED ABOVE, BE FOUND APPROPRIATE FOR EXCLUSIVE RECOGNITION BY THE FEDERAL LABOR RELATIONS AUTHORITY.

IS IT SO STIPULATED?

Have the parties state their agreement with the stipulation.

THE STIPULATION IS RECEIVED.

The following is an example of a factual stipulation for a supervisory position:

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

IT IS HEREBY STIPULATED BY THE PARTIES THAT ... (name of person) IS A SUPERVISOR WITHIN THE MEANING OF SECTION 7103(a)(10) OF THE STATUTE BASED ON HIS/HER AUTHORITY TO HIRE EMPLOYEES. ON THREE OCCASIONS S/HE HAS BEEN THE SELECTING OFFICIAL FOR MERIT PROMOTION ACTIONS INCLUDING..... (identify the positions and/or promotion announcements as well as the names of those hired).

IS IT SO STIPULATED BY THE ACTIVITY?

BY THE PETITIONER?

BY THE INTERVENOR?

THE STIPULATION IS RECEIVED INTO THE RECORD.

Note that this stipulation includes a description of the legal conclusion agreed upon by the parties and a justification for that conclusion.

The following is a sample stipulation where the parties agree that the testimony of one employee holding a particular position at a particular grade is representative of all employees holding that position at that grade:

THE PARTIES STIPULATE THAT THE DUTIES PERFORMED BY (identify individual) ARE REPRESENTATIVE OF ALL ACTIVITY EMPLOYEES AT ISSUE IN THIS PETITION WHO HOLD THE POSITION OF (identify position title, series and grade). THE PARTIES FURTHER STIPULATE THAT THE DECISION REACHED BY THE REGIONAL DIRECTOR/AUTHORITY REGARDING THE BARGAINING UNIT ELIGIBILITY OF (identify same individual named in first sentence) WILL BE APPLIED TO DETERMINE THE BARGAINING UNIT ELIGIBILITY OF (identify all other employees at issue in the petition who hold the same position at the same grade). THESE EMPLOYEES ALSO HOLD THE POSITION OF (identify same position title, series, and grade name in the first sentence).

NOTE: Using more than one employee as a “representative sample” defeats the purpose of the stipulation since the employees could contradict each other, necessitating expanding the testimony to include all employees in the disputed category.

35.10 Outlining issues to explore at the hearing: Outline the issues to address at the hearing. These include issues identified by the Regional Director as crucial to resolution of the petition, even if the parties do not agree that they are relevant (see *HOG 2, 3.7, 32.13, and 33.9*).

I WILL NOW OUTLINE THE ISSUES TO ADDRESS AT THIS HEARING:

The Hearing Officer outlines the issues.

If the Regional Director authorizes the Hearing Officer to make recommendations on the record, the Hearing Officer states:

THE REGIONAL DIRECTOR HAS GIVEN ME DISCRETION TO MAKE RECOMMENDATIONS ON THE RECORD ON THE FOLLOWING ISSUES.

If the Hearing Officer is not authorized to make recommendations on the record, the Hearing Officer states:

I WILL NOT BE MAKING RECOMMENDATIONS ON THE RECORD IN THIS PROCEEDING.

35.11 Summarizing the parties' positions: (see *HOG 32.14*) If not already placed into the record by this point, each party makes an opening statement summarizing its position on each issue raised by the petition as well as any other issue outlined by the Hearing Officer (see *HOG 32.13*). Note that in eligibility issues, the parties state their position on each disputed position.

MR./MS., WHAT IS THE POSITION OF THE PETITIONER REGARDING THE.... (state issue)?

MR./MS., WHAT IS THE POSITION OF THE ACTIVITY(IES) REGARDING THE(state issue)?

35.12 Presentation of evidence: (see *HOG 32.15*)

WE ARE NOW READY FOR DISCUSSION AND EXAMINATION OF THE ISSUE(S) IN THIS CASE.

MR./MS., YOU MAY PROCEED WITH YOUR FIRST WITNESS.

Usually the Activity/Agency goes first. When the witness reaches the stand, the Hearing Officer administers the oath:

DO YOU SWEAR THAT THE TESTIMONY YOU ARE ABOUT TO GIVE WILL BE TRUE AND CORRECT TO THE BEST OF YOUR KNOWLEDGE OR BELIEF?

The Hearing Officer then asks the witness to state his/her name, position and business address (optional), and place of employment for the record. Once this information is provided, the Hearing Officer advises the Representative to proceed with the examination.

See *HOG 12 through 14*, "Evidence," which addresses leading questions, relevancy, etc.; *HOG 15* specifically concerns "Exhibits."

35.13 ***Recommendations on the record:*** (see *HOG 32.17*). If the Hearing Officer is permitted to make recommendations on the record, the following is a guideline for ensuring the record reflects the issue, the recommendation and the basis for the recommendation. The Hearing Officer states:

I WILL NOW MAKE MY RECOMMENDATIONS WITH RESPECT TO THE FOLLOWING ISSUES: (list issues)

WITH RESPECT TO THE ISSUE OF , I WILL SUMMARIZE THE RELEVANT EVIDENCE:

When summarizing the evidence, the Hearing Officer references testimony and documentation so that the reader of the record is able to refer directly to the evidence used to support the recommendation.

DO ANY OF THE PARTIES HAVE ANY FURTHER FACTS. THIS INCLUDES ANY INFORMATION WHICH IS ON THE RECORD THAT I HAVE NOT SUMMARIZED ON ANY OTHER EVIDENCE THAT THE PARTIES WOULD LIKE TO ENTER INTO THE RECORD. NO ARGUMENT IS PERMITTED AT THIS TIME.

The Hearing Officer allows the parties to reference evidence that the Hearing Officer did not summarize, but is already in the record and the party(ies) consider relevant. The Hearing Officer cannot permit the parties to place on the record new evidence without calling witnesses and/or introducing documentation. If the parties argue that the evidence cited by the Hearing

Officer is incorrect, then the Hearing Officer notes the disagreement for the record, but does not engage in a discussion or argument of the merits.

I WILL NOW GO OFF THE RECORD TO PREPARE MY RECOMMENDATION(S). I ANTICIPATE THAT I WILL REQUIRE APPROXIMATELY (minutes, hours or one day) (depending on the issues) ... WE WILL RESUME AT (state time).

After hearing additional evidence, the Hearing Officer makes his/her recommendation.

I RECOMMEND THAT THE REGIONAL DIRECTOR FINDS

It is not sufficient to state simply that: "I am prepared to recommend that Ms. Smith is not a confidential employee... ." Any recommendation is supported by a factual summary, an analysis of the factors considered in making the recommendation and references to applicable case law, as appropriate.

A PARTY IS NOT PERMITTED TO RESPOND TO THE RECOMMENDATION ON THE RECORD EXCEPT DURING THE CLOSING ARGUMENT OR, AFTER THE CLOSE OF THE HEARING, IN HIS/HER BRIEF.

35.14 Before closing the record: Before making any recommendation(s), or in the absence of a recommendation, prior to closing the hearing, the Hearing Officer:

- a) reviews his/her notes to ensure that all issues raised prior to or during the hearing are dealt with on the record. If there are changes, the Hearing Officer notes on the record any regulatory requirements.
- b) asks the petitioner to amend the petition if the parties reached agreement on any issue on which the petitioner no longer seeks a Regional decision.
- c) reviews notes to identify whether evidence reveals that additional parties should be notified and given an opportunity to participate in the hearing.
- d) contacts the Regional Director to recommend postponement if the issues or parties change to allow for proper notification and preparation for the hearing.

- e) asks the parties to restate their positions to ascertain if any party wishes to change its position.

35.15 *Change of party position:* Once the presentation of evidence has been completed, the Hearing Officer asks the parties whether, in light of the evidence received, they wish to make any changes to their respective positions on the issues. In addition, if applicable, the Hearing Officer also asks whether the parties would now agree to proceed to an election in the proposed unit or in an alternative unit (see *HOG 32.19*).

If the petitioner states it is willing to proceed to an election in the event the Regional Director found ... unit appropriate, the Hearing Officer reminds the petitioner, that any alternative unit must be supported by the showing of interest that has already been submitted. If the petitioner seeks to amend the petition, additional showing of interest is submitted with the amendment and the petitioner must be specific as to the scope of the unit. *U.S. Department of the Interior, National Park Service, Washington, DC, 55 FLRA 311 (1999). HOG 18.7.6 and 32.11.*

IN LIGHT OF THE EVIDENCE PRESENTED, DO ANY OF THE PARTIES WISH TO CHANGE THEIR POSITION ON ANY ISSUE?

IN LIGHT OF THE EVIDENCE PRESENTED, ARE THE PARTIES WILLING TO PROCEED TO AN ELECTION IN THE PROPOSED UNIT OR IN AN ALTERNATIVE UNIT?

35.16 *Additional matters:*

IS THERE ANYTHING FURTHER THAT EITHER OF THE PARTIES WISH TO PRESENT?

35.17 *Closing remarks:* (see *HOG 32.20 and 32.21*)

DOES EITHER OF THE PARTIES WISH TO ARGUE ORALLY AT THIS TIME?

AT THIS TIME, SINCE NEITHER OF THE PARTIES DESIRES TO PRESENT FURTHER EVIDENCE IN THE ABOVE-REFERENCED CASE, I WILL MAKE THE FOLLOWING REMARKS. A PARTY DESIRING TO FILE A BRIEF IN THIS MATTER WITH THE REGIONAL DIRECTOR, (provide address of the appropriate regional office) MUST FILE THE ORIGINAL AND TWO (2) COPIES WITHIN THIRTY (30) DAYS FROM THE CLOSE OF THIS HEARING. THE DATE OF FILING SHALL BE

DETERMINED BY THE DATE OF MAILING INDICATED BY THE POSTMARK DATE. IF NO POSTMARK DATE IS EVIDENT ON THE MAILING, IT SHALL BE PRESUMED TO HAVE BEEN MAILED FIVE (5) DAYS PRIOR TO RECEIPT. IF THE FILING IS BY PERSONAL DELIVERY, IT SHALL BE CONSIDERED FILED ON THE DATE IT IS RECEIVED BY THE REGIONAL DIRECTOR. COPIES OF THE BRIEF SHALL BE SERVED ON ALL PARTIES TO THE PROCEEDING.

REQUESTS FOR ADDITIONAL TIME IN WHICH TO FILE A BRIEF SHALL BE MADE TO THE REGIONAL DIRECTOR, IN WRITING, AND COPIES SHALL BE SERVED UPON THE OTHER PARTIES, AND A STATEMENT OF SUCH SERVICE SHALL BE FILED WITH THE REGIONAL DIRECTOR. REQUESTS FOR EXTENSION OF TIME SHALL BE IN WRITING AND RECEIVED NOT LATER THAN FIVE (5) DAYS BEFORE THE DATE SUCH BRIEFS ARE DUE. NO REPLY MAY BE FILED IN ANY PROCEEDING EXCEPT BY SPECIAL PERMISSION OF THE REGIONAL DIRECTOR.

DOES EITHER OF THE PARTIES INTEND TO FILE A BRIEF WITH THE REGIONAL DIRECTOR, FEDERAL LABOR RELATIONS AUTHORITY, ...REGION? IF SO, BRIEFS ARE DUE TO THE REGIONAL DIRECTOR BY CLOSE OF BUSINESS, _____, _____. IS THERE ANYTHING FURTHER TO COME BEFORE THE HEARING OFFICER AT THIS TIME? LET THE RECORD SHOW NO RESPONSE. THE HEARING IS NOW CLOSED.