

- 8** **Prehearing conference:** This section pertains to prehearing conferences and:
- a. addresses the purpose and objectives of the conference,
 - b. suggests areas to cover, and
 - c. describes circumstances which may arise that generally require clearance from the Regional Office.

8.1 **General policy:** Section 2422.17(c) states:

A prehearing conference will be conducted by the Hearing Officer, either by meeting or teleconference. All parties must participate in a prehearing conference and be prepared to fully discuss, narrow and resolve the issues set forth in the notification of the prehearing conference.

There can be any number of "prehearing" teleconferences or meetings. They may be held weeks before the hearing and/or immediately before the hearing. However, in some cases, due to resource limitations, an onsite prehearing meeting may not be practical until the day before the hearing opens.

The Office of the General Counsel reads § 2422.17(c) of the regulations in conjunction with § 2422.13(b). This section provides that a Regional Director may require all affected parties to meet to narrow and resolve the issues raised in the petition. In this regard, the Hearing Officer makes every effort in appropriate cases to actively pursue resolution of the issues raised by the petition through the use of one or more meetings with the parties pursuant to § 2422.13(b) of the regulations. Note that while at least one prehearing conference is required for every case, not every case lends itself to the type of meeting envisioned in § 2422.13(b) (for example, objections cases).

For more information concerning preparing for and conducting meetings held pursuant to § 2422.13(b), see section CHM 25.

NOTE: Preparing for the prehearing conference is crucial to obtaining an adequate and concise, but complete record. It is important that the Hearing Officer establish standards or requirements for the parties to prepare properly for the prehearing conference.

8.2 Areas to cover (not necessarily in the following order):

- a) A review of the issues raised by the petition or otherwise identified by the Regional Director;
- b) Interests and positions of the parties on those issues;
- c) A review of the outline and evidence required to obtain a full, complete factual record regarding all matters at issue (*HOG 3.7*);
- d) A discussion of evidence that the parties have accumulated to coincide with the outlines and issues;
- e) A review and exchange of exhibits and witnesses including correlating discussion about and entry of exhibits to specific witnesses;
- f) When several employees whose eligibility is in dispute have the same title, series and grade (i.e., same job), the parties discuss obtaining testimony from one employee whose testimony is representative of others in the same positions. Details concerning representative testimony or aggregate testimony are resolved prior to the opening of the hearing.

Representative testimony is taken from only one witness (unless there is a stipulation that aggregation of testimony of identified witnesses is representative of a group of employees' testimony). ***NOTE: only one decision is made based on aggregate testimony. If testimony appears to conflict, Hearing Officer decides whether aggregate testimony is inconclusive and additional testimony is required.***

- g) Details relating to taking testimony over the telephone or by video transmission are discussed when the parties have witnesses scattered across the country.
- h) A review of and distribution of relevant Authority case law to determine whether any issues have not been identified and to ensure all relevant evidence is placed on the record through documents or testimony.
- i) An examination and exchange of formal papers (*HOG 4.1 and 10.2.2*);

- j) Possible stipulations to shorten the record or in lieu of the hearing [see 5 U.S.C. 7111(g), *HOG 9 and 26*];
- k) A discussion of hearing procedures including a review of:
 - (i) FLRA Document 1014 including proper procedures for marking, authenticating and entering exhibits; entering joint exhibits; calling witnesses; objections and motions; and
 - (ii) the Hearing Officer's script, if written, to familiarize the parties with the hearing process.
- l) Order of witnesses (*HOG 10.2.3*);
- m) Possible execution of an election agreement or other appropriate resolution in lieu of the hearing [see 5 U.S.C. 7111(g) and *HOG 31*]; and
- n) Arrangements for the hearing room.

8.3 *Circumstances arising at the prehearing conference which generally require clearance from the Regional Office:*

- a) Parties are willing to stipulate in lieu of hearing (see *HOG 9, CHM 27.10 and 28.11.3*);
- b) Parties are willing to enter into an election agreement or other resolution in lieu of hearing (see *HOG 31 and CHM 28*);
- c) Requests for subpoenas (see *HOG 27*);
- d) Motions to intervene or requests to cross petition (see *HOG 17.3 and 17.4* for prehearing motions to intervene and *HOG 23* for cross-petitions; *CHM 17* for processing requests for intervention and cross-petitions filed prior to the opening of the hearing);
- e) Requests to withdraw intervention or petition (see *HOG 19*);
- f) A party files a challenge to the validity of the showing of interest or a challenge to the status of a labor organization

[see *HOG 24* (discusses both types of challenges), *CHM 18.19* (challenges to the validity of the showing of interest) and *HOG 46*, *RCL 10* and *CHM 19* (concerning challenges to the status of a labor organization)]; and

- g) The petitioner requests to amend the petition and the amendment changes the character and scope of the unit (see *HOG 18.7 and 25* and *CHM 13.9, 13.10, and 13.11*).