

Figure 34.4

HEARING OFFICER'S REPORT

Case Name: _____

Case Number: _____

Hearing Officer: _____

1. Pleadings:

(a) Petition filed on _____ (date)

(b) Hearing on _____ (date(s)) at _____ (place)

(c) Parties:

Agency/Activity: _____

Petitioner: _____

Intervenor: _____

Intervenor: _____

2. Issue(s): Summarize the matters that were in issue at the hearing and the pertinent evidence with respect to each issue.

___ Appropriate Unit:

___ Eligibility:

___ Clarification or amendment relating to recognition or certification (explain):

___ Clarification or amendment relating to matter relating to

representation (explain):

___ Timeliness:

___ Consolidation:

___ Determinative challenged ballots:

___ Other:

3. Procedure: Discuss any unusual or significant problems affecting the proceeding and/or any rulings made as to which the Hearing Officer is in doubt:

List only those rulings on important or unusual questions as to which the Hearing Officer is in doubt, such as rejection of offer of proof, refusal to issue subpoena, denial of motion to intervene. It is not necessary to list rulings on motions to correct names, places, minor amendments of petition, denials of motions to strike testimony, etc.

4. Bar(s) to Election:

In Issue _____ Not in Issue _____

Indicate alleged bar in issue; i.e., agreement bar, election bar or certification bar, positions of the parties and summary of the relevant evidence.

5. Showing of Interest: (see *CHM 18.15*)

___ FLRA Form 52 attached

___ Showing of Interest (not) adequate for unit contended appropriate by Activity and/or incumbent-intervenor

___ Showing of Interest (not) adequate for alternative unit(s) acceptable to petitioner

___ Showing of Interest (not) adequate in relation to (inclusion) (exclusion) of classification(s) in issue

6. Stipulations: List the stipulations.

7. Recommendations made on the record: Review the instructions given by the Regional Director concerning making recommendations on the record. Note the issue and the recommendations made.

8. Other Issue(s) or Problem(s): Summarize relevant facts regarding any issue(s) or problem(s) not covered under any of the above paragraphs; e.g., status of labor organization.
9. Briefs:
 - a. Will briefs be filed? ____
 - b. Due date: ____
10. Reporter*s estimate of transcript pages: ____

Dated: _____

Hearing Officer

HEARING OFFICER'S SCRIPT

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 must also show 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 SHOULD BE AS CONCISE AS POSSIBLE. OBJECTIONS AND EXCEPTIONS MAY, UPON APPROPRIATE REQUEST, BE PERMITTED TO STAND TO AN ENTIRE LINE OF QUESTIONING. AUTOMATIC EXCEPTIONS WILL BE 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.

1. *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 PAPERS PRIOR TO THE OPENING OF THIS HEARING.

ARE THERE ANY OBJECTIONS TO RECEIVING IN EVIDENCE THE FORMAL PAPERS AS AUTHORITY EXHIBITS MARKED Ia 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 the formal papers are necessary to the Authority's jurisdiction in the matter, that receipt of the exhibits in evidence does not establish the truth of the matters contained therein, that any relevant evidence may be introduced irrespective of the contents of the exhibits and, in any event, the Regional Director will pass 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 after disposing of Authority exhibits. If an issue is raised regarding:

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

of this Guide.

2. *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 party enters the correct name 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 given 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.

3. *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).

4. **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 and 32.7*).

(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.

(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.

- (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 will ask the party to state the grounds for the request and the reasons for the delay in filing. The Hearing Officer will then contact 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. If it does not appear that the party’s untimely intervention warrants further consideration, the Regional Director will instruct the Hearing Officer to refer the intervention request to the Regional Director for action (see *HOG 17.4*, and *18.4* and *23* for cross-petitions).

5. **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*).
6. **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 *3.8*)

a. **Appropriate unit:** (see *HOG 37*)

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)?

b. Eligibility: (see HOG 51 through 64)

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 may rely 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, a petition must 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 must track the petition and reflect the names of the individuals who encumber the positions affected by the petition. The record in this example then reflect 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.

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'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?

- c. **Matters relating to representation (e.g., reorganization, accretion, successorship, Montrose):** (see HOG 37 through 50)

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 being 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 can 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 being 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.

- d. **Unit consolidations:** (see HOG 49 and CHM 23.8)

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 Hearing Officer may rely 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 discrepancy is clarified on the record, either through a stipulation or testimony.)

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, the Hearing Officer may rely 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 discrepancy is clarified on the record, either through a stipulation or testimony.)

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 number of units to be consolidated, the parties may prepare a joint exhibit describing each of the units sought to be consolidated, 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 PETITION?

e. 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 (name of activity/agency and number of employees 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 THE CHALLENGED AND THE REASON FOR THOSE CHALLENGES BY THE?

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

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 BY THE?

THE PARTIES SHOULD BE AWARE THAT IF THE REGIONAL DIRECTOR, OR ULTIMATELY, AS APPLICABLE, THE FEDERAL LABOR RELATIONS 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 ACTIVITY'S UNDERSTANDING OF THE MATTERS AT ISSUE IN THIS PROCEEDING?

f. 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 question is asked to clarify the record. (see *HOG 32.10 and 48*)

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 be explored 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.

7. **Alternative unit(s):** If appropriate to the issues, the Hearing Officer asks the petitioner if there are any alternative units for which the petitioner would be willing to seek representation through an election (see *HOG 32.11*). As noted above, the Hearing Officer may ask the parties for their positions on alternative units early in the proceeding; other Hearing Officers may ask this question at the end of the hearing; or 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.
8. **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 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 will be 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).

9. **Outlining issues to be explored at the hearing:** Outline the issues to be addressed 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 BE ADDRESSED 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.

- 10. *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 are required to 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 ACTIVITIES REGARDING THE(state issue)?

- 11. *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 address leading questions, relevancy, etc., *HOG 15* specifically concerns "Exhibits."

- 12. *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 may refer directly to the evidence used to support the recommendation.

DO ANY OF THE PARTIES HAVE ANY FURTHER INFORMATION?

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 may not 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 FIND

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.

- 13. *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 32.18*).

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?

- 14. *Additional matters:***

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

- 15. *Closing remarks:*** (see *HOG 32.19 and 32.20*)

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 AN EXTENSION OF TIME SHALL BE IN WRITING AND RECEIVED NO 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.

Figure 37.1

REPRESENTATION OUTLINE I
(TO ASSIST PARTIES IN PREPARING FOR HEARING)

1. BASIC REQUIREMENTS

A. Evidence

1. **Standards.** Assertions by the parties are not evidence. Evidence is established through the testimony of witnesses, stipulations and exhibits admitted into the record.
2. **Necessity.** At the prehearing conference and during the hearing, the Hearing Officer will determine the necessity of the testimony of proposed witnesses and proposed exhibits and will identify additional witnesses whose testimony is required and additional exhibits necessary to a complete record.

B. Witnesses

1. **Standards.** The parties present witnesses who can testify to and answer questions concerning all facts and issues raised by the petition(s).
2. **Necessity.** All participants deemed necessary by the Hearing Officer will receive official time under section 7131 of the Statute. Any disputes over necessity of participants will be decided by the Hearing Officer.
3. **Knowledge.** Witnesses testify to and answer questions about their personal knowledge of the facts. Second-hand, third-hand or lesser knowledge reduces the relevance of the testimony.
4. **Reference to record.** All testimony during the hearing refers to specific exhibits which have been introduced into the record.
5. **Stipulations.** All stipulations are based on fact and

include information and exhibits, as necessary, establishing the facts of the matter and/or referencing exhibits already received in the record which support the factual basis of the stipulation.

C. Testimony

1. **Standards.** Witnesses testify to and answer questions about their personal knowledge of the facts and documents relevant to the issues of the case. When testifying about documents, the witnesses are generally those who authored or initiated the documents.
2. **Availability.** If witnesses with personal knowledge are not readily available, the parties identify those with direct knowledge and also name additional witnesses whose personal knowledge most nearly approximates the direct testimony described above.
3. **Identification.** The parties name all of their respective witnesses and the subjects about which each witness will testify prior to the prehearing conference. This allows the Hearing Officer to determine the necessity of the proposed testimony of these witnesses.

D. Documents

1. **Standards.** Documents may be accepted into the hearing record by joint submission, by stipulation of the parties, or by one of the parties.
2. **Identification and authentication.** Any exhibit introduced by a party is identified by and testified to by a witness or witnesses who has\have first-hand knowledge of the authenticity of the exhibit, the content of the exhibit, and factual matters concerning the exhibit.
3. **Regulations.** If a party proposes to introduce excerpts from agency regulations, the excerpts are authenticated as true and correct copies. In addition, if only a portion from a regulation is submitted, a copy of the whole regulation is available for review by the parties.

4. **Joint exhibits.** If the parties jointly introduce exhibits, all such exhibits may be referred to by witnesses and/or in briefs.
5. **Objections.** Any party objecting to the introduction of evidence should state the basis for the objection on the record. The Hearing Officer then allows the party proposing introduction of the evidence an opportunity to state a position. The Hearing Officer then rules on admissibility. Exceptions to overruled objections are automatically a part of the record. Thus, there is no need for the parties to state such exceptions.
6. **Stipulations.** Stipulations concerning the introduction of exhibits includes information demonstrating the factual basis of the stipulation and the relevance of the document.

2. **MISSION AND FUNCTION STATEMENTS**

- A. **Mission.** Agency statement of its basic mission. Activities' statements of basic mission(s).
- B. **Function.** Description of how each Activity functions (as needed).
 1. **Differences.** If a proposed unit involves employees of a particular Activity but a party asserts that the unit is broader or narrower, basic mission statements of all entities is entered into the record and testified to.
 2. **Mission and function.** Testimony is required from witness(es) knowledgeable about the mission and function of each Agency and Activity and the interrelationships between them.
 3. **Exhibits.** Obtain for the record copies of the mission and function statements from all affected Agencies, Activities/organizational components.

3. **ORGANIZATION**

- A. **Charts.** Organizational charts of Agency and Activity(ies), updated as necessary.
- B. **Identification.** Testimony concerning which Activity(ies) employ the employees involved in the petition and where in the organization the employees are located is crucial.
- C. **Commonality.** Testimony is required concerning shared mission and functions of organizations in which employees involved in the position are employed. Testimony specifically identifies where in those organizations the employees are located.
- D. **Geographic - Physical Location.**
1. **Organization.** What are the geographic locations in relation to the organization of the Activities? Do Activities have field organizations? Where?
 2. **Function.** Testimony matches the mission and function statements to the organizational charts, thereby showing each Activity's function and relationship to others. What is the organizational framework, beginning with the major organizational components and working down the chart? What does each component do? Similarities? Differences? Interrelationships?
 3. **Location.** Where are each of the employees involved in the petition physically located? How far are the separate locations from each other? Describe any interchange of work and employees between locations.
 4. **Numbers.** Obtain information concerning the numbers and types of employees at each agency / activity / organizational component. This can be established by having the Agency prepare an employee listing reflecting each employee's organizational placement, job title, series and grade, and unit eligibility.

4. **DELEGATIONS OF AUTHORITY**

What authority has been delegated for bargaining, management, supervision, policy, procedure, regulation, administration, and personnel functions? At what level do these delegations exist? What is the effect of these delegations?

5. **BARGAINING HISTORY**

- A. **Incumbents.** Obtain the complete name of each exclusive representative and description of each unit at each Activity.
- B. **Units.** Obtain copies of certifications/recognitions for each unit.
- C. **Contracts.** Obtain copies of the most recent collective bargaining agreements for each unit. What is the status of each such agreement, including the status of any negotiations?
- D. **Dealings.** What is the history of former or existing recognitions, including information as to elections, certifications and contracts. Obtain copies of all certifications, letters of recognition and contracts, for the proposed unit(s) and any other existing units of the agency. When were elections held, what groups of employees were involved and how many employees were affected? Did contracts automatically renew? At what level were negotiations held, both term negotiations and impact negotiations?

6. **SUPERVISORY HIERARCHY**

- A. **Structure.** What is the supervisory structure at the Agency and at each Activity (as relevant) and the lines of supervisory authority within each Activity (and/or between Activities), using the organizational chart(s)?
- B. **Nature.** What is the extent and nature of supervisory duties and responsibilities within or between Activities? Who reports to whom? Who is responsible for specific supervisory functions within or between Activities?
- C. **Control.** Is supervision centrally or locally controlled within the organizational structure? Are there differences in the supervisory controls between the Activities involved? Are supervisors responsible for common supervision over more than one work

group?

7. **JOB FUNCTIONS AND SKILLS**

- A. **Positions.** Obtain copies of the position descriptions for the categories of employees involved in the petition.
- B. **Employees.** The Activity is required to compile listing(s) of all employees involved in the petition which show each employee's name, position title, classification, grade and location within the organization. Include a numerical table showing total numbers of employees by eligibility in each proposed unit.
- C. **Work.** Evidence includes the types of work performed by employees involved in the petition, including descriptions of job duties and actual work performed, the flow of work within and between Activities, and the qualifications and training necessary to perform the work.
- D. **Equipment.** Is special equipment needed to perform certain work? Where is this equipment located? Is training needed to operate the equipment? What is the availability of such training? Are opportunities for advancement and/or movement between positions affected by the availability of this equipment or training?
- E. **Differences.** How do work flow, job duties and/or necessary qualifications, equipment and training differ within and between Activities?

8. **INTEGRATION OF OPERATION AND INTERCHANGE OF EMPLOYEES**

- A. **Movement.** Testimony and documents showing personnel movement, policy and decision making flow, using organizational charts.
- B. **Commingling.** Whether and how employees and functions are commingled among different organizations within and between Activities.
- C. **Commonality.** Whether and in what ways components of the Activities have employees, supervisors and/or managers in common, identifying the individuals involved using the organizational charts, employee listings, position descriptions, etc.
- D. **Work flow.** What is the flow of work processes, duties and responsibilities in relation to the mission(s)? Is there

interrelationship or interdependence between components in work flow, processes or responsibilities?

- E. **Integration.** In what ways are employees and their job functions integrated within and between Activities? Are there frequent transfers of work and/or personnel? How is this accomplished? How is the work coordinated within and between Activities? Are employees required to apply for openings to cross organizational lines?
- F. **Operations.** Is there employee contact between components in performing or transferring work? What is the relative isolation of components? Obtain a description of mobility and interchange of employees between components. What is the extent of telephone contact or inter-component visits? What for? By whom? How often? Where to and from? How many people involved? Clearance necessary from another component to perform certain work?
- G. **Interchange.** Who substitutes for employees' absences for vacation or illness? Over the prior year or so, what is the extent, purpose and duration of TDY assignments? What category/classification of employee(s) have gone on this travel and for what purpose? Within the past three years, how many permanent or temporary transfers were made laterally or by promotion? What category/classification of employee(s) were transferred and for what reason? Have the numbers of transfers increased or decreased ? If so, why?

9. **PERSONNEL POLICIES AND PRACTICES**

- A. **Pay systems.** Description of the pay systems applicable to all of the employees involved (GS, WG, Excepted Service, NAF, etc.), including descriptions of the differences between pay systems.
- B. **Payroll office.** Location of servicing payroll office? Placement within the organizational structure?

C. Administrative Services

1. **Personnel services.** Location of servicing personnel office? How is the personnel office staffed? Placement within the organizational structure? Who handles personnel management? Where does personnel management fit within the organizational structure? If there is more than one personnel office, are there differences in authority between personnel offices?
2. **Personnel actions.** Are personnel actions done centrally or locally? Who decides on hiring, firing, promotion, transfer, layoff, and recall of employees? How are these actions accomplished and these actions processed? Where do the entities performing these functions fit within the organizational structure?
3. **Employment and classification authority.** Who has classification authority for the employees involved in the petition? Who decides to establish positions, to fill vacancies, and what skills or training are needed for a position? How are vacancies filled? What are the differences within or between Activities?
4. **Retention, promotion and RIF.** What are the areas of consideration? How were these established? How have they been applied recently? What are the differences within and between Activities?
5. **Disciplinary and adverse action.** Who has authority to propose and decide such action? What are the differences within or between Activities?
6. **Personnel policies and regulations.** Are personnel regulations promulgated centrally or locally? What are the differences within and between Activities? To what extent do local officials have any discretion with respect to implementing policies and regulations initiated centrally?

D. Personnel changes. How are personnel moved between non-supervisory positions? From non-supervisory to supervisory positions? What are the differences in the ways changes are accomplished within and between Activities?

E. Employee services. At what level are programs administered for

equal employment, employee assistance, upward mobility, disability and workers compensation benefits, individual development, retirement, and health and life insurance? What are the differences in these programs within and between Activities?

F. Conditions of Employment

1. **Hours.** What are the hours of work of employees affected by the petition? Alternative Work Schedules, including whether employees work flexible schedules and/or compressed work weeks? Compensatory time? Starting and quitting times? Core hours? Restrictions on days off? Lunch hours? Break times? How were these established? What are the differences within and between Activities or organizations within each Activity?
2. **Training.** What training is required and/or available for the employees involved in the petition? What are the differences in training within and between Activities?
3. **Personnel.** At what level is the authority for personnel policy, service, and/or action? At what level are employee service programs provided? What are the differences in programs, services, and levels of authority within and between Activities?
4. **Associations.** At what level do associations exist such as Credit Unions, athletic, health or wellness groups, blood drives, literacy projects, and/or public school sponsorship? What are the differences within and between Activities?
5. **Impact.** All parties state specific positions concerning impact of the possible unit findings. What impact on the Agency/Activity is there from the various possible unit findings? What is the impact on employees?
6. **Factors.** What are the areas of consideration for hiring, promotion and RIF? Who issues vacancy announcements? Who has the authority to hire, fire, lay off, transfer or promote? Who determines the

compensation and salary structure for vacancies? Where are the OPF's maintained? Who rates performance and writes appraisals? Who reviews and approves the appraisals? Who has the authority to initiate disciplinary or adverse action? Who has the authority to issue travel orders, direct training of employees, grant incentive and achievement awards? Who assigns parking, determines break and leave schedules, approves leave, overtime and compensatory time? Who initiates personnel actions, personnel management programs, standards for performance evaluation and/or standards of personal conduct? Who determines the budget or is responsible for meeting a budget? Who has authority to negotiate and execute a collective bargaining agreement?

10. **EFFECTIVE DEALINGS**

Efficient use of resources derived from inclusion in existing units and negotiation in one unit rather than many units in segments of the activities.

- A. **History.** What is the history of collective bargaining dealings under the existing unit structure(s)? How have labor relations policy and labor relations authority been implemented and exercised respectively?
- B. **Grievances.** What are the formal, informal, negotiated and activity grievance procedures for employees involved in the petition? What is the past history of grievance processing?
- C. **Units.** In what way would the proposed units involved in the petition affect existing bargaining and grievance procedures? The parties are required to state their positions as to how the proposed units would promote effective dealings.
- D. **Authority.** What is the locus and scope of responsible personnel office(s)? Who handles the various personnel functions at present? How would the existence of the proposed units affect this authority? Are the employees involved special or unique because of job duties or work location in a manner which could affect the appropriateness of unit.
- E. **Limitations.** What is the extent of and who has authority to negotiate? What limitations are there on the authority of the petitioned-for Activity to negotiate? Are there any matters which could be negotiated if the unit were different from that proposed in the petition? Are there matters which could be negotiated only if

the unit structure were different from that proposed? Why is this so?

- F. **Expertise.** What is the likelihood that personnel with greater labor relations experience will be available in the existing unit, the proposed unit or other possibly appropriate units? Who currently handles labor-management relations? Where in the organizational structure does this exist? At what level is labor relations consultation and support provided?
- G. **Policy.** At what level is labor relations policy set? How does the existence of multiple negotiated agreements, bargaining obligations, and grievance procedures affect labor relations dealings? Are employees performing essentially the same functions currently covered by different systems?
- H. **Training.** How and by whom are supervisors and managers trained in labor relations? Who decides on training requirements and those needing training? Where are the trainers located?

11. **EFFICIENCY OF AGENCY OPERATIONS**

Benefits to be derived from a unit structure bearing a rational relationship to the operational and organizational structure of the Activity.

- A. **Organization.** What, specifically, are the structure, chain of command, line of authority, and uniformity of personnel policy and practice considerations supporting the effectiveness of the various proposed units?
- B. **Structure.** What are the organizational structure, supervisory hierarchy, chain of command, authority over work functions, personnel and labor relations policies and dealings? Who reports to whom? What is the organizational structure of the personnel staff?
- C. **Authority.** Do personnel with operational authority also have labor relations authority? What are the differences within and between Activities?

- D. **Benefits.** Why would any proposed unit be more beneficial than another proposed unit? How do the personnel policies and job benefits of employees differ within and between Activities?
- E. **Resources.** How is the effective use of negotiation resources derived from the existing unit structure? How would the proposed units affect the use of these resources? What effect would the various proposed units have on cost of the labor-management program, hours spent administering the program, staffing requirements, etc.
- F. **Impact.**
1. **Views.** What are the parties' views of the impact of the proposed and/or other potentially appropriate units on efficiency of operations or the effectiveness of dealings?
 2. **Agency operations.** What is the impact of the proposed unit structure on agency operations in terms of cost, productivity and use of resources?
 - a. **Cost.** What savings or costs (in terms of labor relations personnel, productivity, etc.) result from the existing unit(s), proposed unit(s) or other possibly appropriate units? What effect would the proposed unit(s) have on the cost of the labor-management relations program, hours spent administering the program, staffing requirements, etc.?
 - b. **Productivity.** What impact on productivity would result from the existing unit(s), proposed unit(s), other possibly appropriate unit(s), or the existence of one or several units. Productivity includes work performed by employees as it affects them if one unit were found appropriate versus several and work performed by the managerial, supervisory and labor-management staff.
- G. **Fragmentation.** Would the proposed unit result in fragmentation? If so, how, and how would this affect agency operations?

Figure 37.2

REPRESENTATION OUTLINE II
(IDENTIFYING AREAS TO STRESS)

(note this particular outline is, in some respects, an example of an outline for a case involving a reorganization)

1. MISSION

Formal mission statements from former and new Activities. Testimony includes changes in mission and function as well as effect on organizational structure.

What effect do mission changes have on unit function(s)?

2. ORGANIZATION

A. Charts

Before and after charts

Overall structure

Complete branch-by-branch structure, including information as to what functions performed before and after

Description of work flow and flow of authority before and after reorganization

B. Numbers

Number of unit employees in old and new organizations. How many employees were directly affected by the reorganization?

Types of personnel actions used to staff new organization; what placements were used? Transfers? Requirement to apply for positions in new organization?

C. Geography

What was the physical layout before and after? Where were the employees located before and after the reorganization?

3. BARGAINING HISTORY

Copies of collective bargaining agreements. What are the effective and termination dates? What is the status of each contract? What is the status of negotiations, if any?

Copies of certification/recognition for each unit involved in the petition

History of negotiations at former and present Activities

4. SUPERVISORY HIERARCHY

Employee break down before and after, including lists of employees by name, position title, classification, grade and organizational placement.

Supervisory structure, including numerical ratios to employees before and after the reorganization. Numbers and classifications of employees reporting to each supervisor.

Is supervision controlled locally or centrally? What is the nature and extent of supervision in terms of the organizational structure before and after? What chains of command and lines of authority existed before and after the reorganization?

5. JOB FUNCTIONS AND SKILLS

Before and after lists of employees by name, position title, classification, grade and organizational placement. Testimony concerning ratios of GS, WG, Excepted Service, NAF, etc., employees.

Description of before and after job duties. Are there new functions, duties and employees?

Following the reorganization, are employees performing the same work under the same conditions of employment? If no, what are the specific changes?

What was the actual impact of the reorganization on the affected employees?

6. INTEGRATION AND INTERCHANGE

What facilities and equipment existed before and after the reorganization?

Detail any changes to the agency functions and employee interdependence of work functions following the reorganization.

Detail the effect, if any, of the reorganization on interchange between organizational entities, work locations of employees and intra-employee

dealings/work relationships.

Prior to the reorganization, did units have any employees, supervisors or managers in common? If so, did this change as a result of reorganization? What were the changes and how did they affect the employees' day-to-day dealings within and between the Activities?

7. TRANSFERS

How were employees notified of the reorganization?

Were special placement programs used in the reorganization? If so, what were they and how did they affect employment in the current organization?

Before and after lists of employees by name, position title, classification, grade, organizational placement and type of appointment?

8. PERSONNEL POLICIES AND PRACTICES

List of employees by name, position title, classification, grade and organizational placement, before and after.

Pay. What were the compensation plans (GS, WG, etc.) of employees before and after the reorganization? What was the basis for these systems? Where is the payroll office located and did it change in reorganization?

Personnel. Is hiring, firing, promotion, transfer, layoff, or recall controlled centrally or locally? Has this changed in reorganization?

Employment and Classification Authority. What were they before and after?

Promotion and RIF. Where did authority lie before and after reorganization? What were the areas of consideration before? What are they now?

Bargaining. History of bargaining and the level of bargaining before and after the reorganization.

Personnel Services. Physical location of the servicing personnel office before and after the reorganization. Obtain evidence on the services that were/are provided and whether the personnel authority was/is local or central.

9. CONDITIONS OF EMPLOYMENT

Flow of work

Old and new manpower utilization

Desires of employees

Proposed Unit vs. Prior Unit

10. EFFECTIVE DEALINGS

Efficient use of resources derived from inclusion in existing units and negotiation in one unit rather than many units in segments of the Activities.

History. What is the past history of collective bargaining dealings under the existing unit structure(s)? How have labor relations policy and labor relations authority been exercised?

Grievances. What are the formal, informal, negotiated and activity grievance procedures for employees involved in the petition? What is the past history of grievance processing?

Units. In what way would the proposed units affect existing bargaining and grievance procedures? The parties state their positions as to how the proposed units would promote effective dealings.

Authority. What is the locus and scope of responsible personnel office(s)? Who handles the various personnel functions at present? How would the existence of the proposed units affect this? Are the employees involved special or unique because of job duties or work location.

Limitations. What is the extent of the authority to negotiate? Who has authority to negotiate? What limitations are there on the authority of the petitioned-for Activity to negotiate? Are there any matters which could be negotiated if the unit were different from that proposed in the petition? Are there matters which could be negotiated only if the unit structure were different from that proposed? Why is this so?

Expertise. What is the likelihood that personnel with greater labor relations experience will be available in the existing unit, the proposed unit or other possibly appropriate units? Who currently handles labor-management relations? Where in the organizational structure does this exist? At what level is labor relations consultation and support provided?

Policy. At what level is labor relations policy set? How does the existence of multiple negotiated agreements, bargaining obligations, and grievance procedures affect labor relations dealings? Are employees performing essentially the same functions currently covered by different systems?

Training. How and by whom are supervisors and managers trained in labor relations? Who decides on training requirements and those needing training? Where are the trainers located, physically and organizationally?

Impact. What is the impact of the proposed unit structure on agency operations in terms of cost, productivity and use of resources?

Cost. What savings or costs (in terms of labor relations personnel, productivity, etc.) result from the existing unit(s), proposed unit(s) or other possibly appropriate units?

Productivity. What impact on productivity would result from the existing unit(s), proposed unit(s), other possibly appropriate unit(s), or the existence of one or several units?

11. EFFICIENCY OF AGENCY OPERATIONS

Benefits to be derived from a unit structure bearing a rational relationship to the operational and organizational structure of the Activity.

Organization. What, specifically, are the structure, chain of command, line of authority, and uniformity of personnel policy and practice considerations supporting the effectiveness of the various proposed units?

Structure. What is the organizational structure, supervisory hierarchy, chain of command, authority over work functions, personnel and labor relations policies and dealings? Who reports to whom? What is the organizational structure of the personnel staff?

Authority. Do personnel with operational authority also have labor relations authority? What are the differences within and between Activities?

Benefits. Why would any proposed unit be more beneficial than another proposed unit? How do personnel policies and job benefits of employees differ within and between Activities?

Resources. How is the effective use of negotiation resources derived from the existing unit structure? How would the proposed units affect the use of these resources? What effect would the various proposed units have on cost of the labor-management program, hours spent administering the program, staffing requirements, etc.?

Impact. What are the parties' views of the impact of the proposed or various other possibly appropriate units on efficiency of operations or the effectiveness of dealings? Would the proposed unit result in

fragmentation? If so, how?

Figure 37.3

REPRESENTATION OUTLINE III

(SKELETON for use in developing a more detailed outline tailored to a specific case)

1. Mission Statement of the Activity
2. Organization
 - a. Organization charts and function statements of each subdivision, including the flow from one organization to another
 - b. Number of employees in the existing unit, as well as number of employees in petitioned-for unit
 - c. Physical layout of organization and entities involved
 - d. Physical location of employees involved
3. Bargaining History
 - a. Collective bargaining history of all units at installation, especially the involved unit.
 - b. Bargaining history within the existing unit involved, including:
 - (i) copy of certification
 - (ii) copy of collective bargaining agreement or any memorandum of understanding currently in effect
 - (iii) termination date of contract
 - (iv) testimony regarding contractual provisions covering petitioned-for employees only
 - c. Representation Practice
4. Supervisory Hierarchy
 - a. Organizational outline of employees' reporting structure before and after reorganization, including listings of employees involved.
 - b. Supervisory ratios

c. Extent of supervision, line of responsibility (central or local)

5. Job Functions and Skills

a. What are the WG, GS ratios and breakdowns within the existing unit as opposed to the petitioned-for unit?

b. What work functions are performed by each component group; what is the interrelationship of job functions?

c. Terms and conditions of employment

(i) duties

(ii) location of positions in question

(iii) classification of jobs

d. Actual impact of changes on operations and functions and on labor relations dealings

6. Integration of Operation and Interchange of Employees

a. Facilities used before and after internal realignment of functions

b. Would proposed unit(s) affect personnel practices and policies? How? Other agency functions?

c. Do petitioned-for employees actually spend working together with established unit employees?

7. Transfer of employees from one organization to another

a. How often have employees moved from one grouping to another?

8. Placement Programs: Merit Promotion

9. Personnel Policies and Practices

a. List of personnel breakdown before and after

b. Compensation plan and salary plan before and after

c. Payroll office

d. Plans under which hiring, discharge, promotion, transfer, RIF (central v. local)

- e. Re-employment and reclassification authorities
 - f. RIF, adverse action, discharge, seniority rosters, etc. (separate from or integrated with existing unit employees)
 - g. Personnel Mobility
 - (i) Movement of non-supervisory to supervisory
 - (ii) Movement of non-supervisory to non-supervisory
 - (iii) Movement of supervisory to non-supervisory to supervisory
 - h. Bargaining History - certifications, contracts, and status of each. Status of negotiations. Description of levels at which grievances are addressed. Actual or potential impact of changes due to internal realignment?
10. Conditions of Employment
- a. Flow of work
 - b. Desires of employees
 - c. Proposed unit

