25 MEETINGS TO NARROW AND RESOLVE REPRESENTATION ISSUES: Section 2422.13 of the regulations codifies the use of alternate methods for resolving representation matters to minimize procedural issues and assist the parties in defining and resolving substantive issues. This section highlights:

a. the importance of discussions among the parties to narrow and resolve issues raised in a representational matter; and

b. the role of Regional Office personnel in assisting parties in these discussions, both before and after the filing of a petition.

25.1 Overview: Section 2422.13 of the regulations is titled "Resolution of issues raised by a petition" and states:

> (a) *Meetings prior to filing a representation petition*. All parties affected by the representation issues that may be raised in a petition are encouraged to meet prior to the filing of the petition to discuss their interests and narrow and resolve the issues. If requested by all parties a representative of the appropriate Regional Office will participate in these meetings.
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> (b) *Meetings to narrow and resolve the issues after the petition is filed*. After a petition is filed, the Regional Director may require all affected parties to meet to narrow and resolve the issues raised in the petition.

25.2 Prefiling assistance pursuant to § 2422.13(a): Section 2422.13(a) encourages parties affected by representation issues that may be raised in a petition to meet prior to the filing of a petition to discuss their interests and narrow the issues. If requested by all parties, a representative of the appropriate Regional Office will participate in these meetings (see *CHM 2*). These meetings are usually instructive, rather than investigatory. Parties attend to discuss matters that affect exclusive bargaining relationships.

The role of the agent is to assist the parties in:

a. sharing relevant information;

b. defining issues;

c. understanding their interests;

d. learning about the standards that are applied; and

e. exploring options available to the parties for resolving representation matters.

The agent ensures that the discussion does not bind nor give the appearance of binding the Regional Director to a course of action or a decision, or advocate a particular position (see *CHM 25.11.2*).

25.3 Postfiling policy and requirements: After a petition is filed, § 2422.13(b) provides that the Regional Director may require all affected parties to meet to narrow and resolve the issues raised in the petition. In appropriate cases, the agent makes every effort 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).

Whenever the agent utilizes alternative dispute resolution techniques to discuss, narrow and if possible, resolve these issues, the agent's recommendations or actions are consistent with the Statutory requirements for appropriate units and unit eligibility.

25.4 Meetings held pursuant to § 2422.13(b):

25.4.1 When meetings are held: After the petition is filed, a meeting may be held at any time. Frequently, they occur prior to the Regional Director taking action pursuant to § 2422.30(c) or issuing a notice of hearing.

25.4.2 Who may request a meeting: Meetings held to discuss, narrow and resolve issues raised by the petition are held at any party's request or at the direction of the Regional Director.

25.5 Primary objective of the meeting: The primary objective of a meeting held pursuant to § 2422.13(b) is to:

a. identify representation issues;

b. discuss interests, options and bargaining obligations during the pendency of representation proceedings; and

c. endeavor to resolve the underlying representation issues without resort to formal litigation.

The role of the agent at these meetings is similar to § 2422.13(a) meetings except that the petition has been filed and its purpose identified. The Regional Director is now responsible for processing the petition. While the filing of the petition initially sets the parameters for the meeting, the facts, issues and parties' interests that are discussed during the meeting may affect the issues and purposes of the petition.

25.6 Purpose of the meetings: These meetings may resolve many procedural issues, narrow and/or resolve the substantive issues or identify new issues. Many procedural matters are resolved simply by explaining the issue and the requirements for correcting any perceived problem (such as service or information to be submitted). More significant procedural matters, such as timeliness or intervention requirements, often result when the parties are unaware of the regulations. Once the agent explains the regulations, the parties are likely to comply with the procedural requirements or, if necessary, withdraw the petition or the request for intervention.

Where there are substantive issues, these meetings allow the parties to review the facts, define and narrow the issues and discuss options for resolution. These meetings also afford the agent and the parties the opportunity to review applicable case law and the factors considered by the Regional Director and the Authority in reaching a decision. This often results in a stipulation in lieu of a hearing or a better hearing record that includes relevant, rather than extraneous or superfluous information.

25.7 Matters that are not generally conducive to meetings conducted pursuant to § 2422.13(b): Meetings to discuss: 1) the petitioner's or intervenor's showing of interest; 2) challenges to the validity of the showing of interest; or 3) the status of a labor organization are not appropriate under this section. The agent conducts these meetings privately with the appropriate party whose showing of interest or labor organization status is an issue.

Meetings to discuss objections to an election are not generally appropriate under this section. Since the objecting party bears the burden of proof in objections cases, the Regional Director does not schedule a meeting unless s/he determines that the objections have merit or unless the meeting is scheduled as:

a. a prehearing conference; or

b. as part of a discussion concerning procedural irregularities

discovered by the Regional Director pursuant to § 2422.29(a)(4) and a rerun election appears appropriate.

25.8 Matters that are generally conducive to meetings conducted pursuant to § 2422.13(b): Meetings contemplated under § 2422.13(b) take a variety of forms, serving several purposes: instructive, investigatory and/or exploratory as an alternative method to resolve the underlying representation issues. All meetings incorporate interest-based techniques for defining, discussing and narrowing the issues. Examples include:

a. Those that focus on clarifying the purpose of the petition and the parties who may be affected by the petition. These meetings occur very early in processing the case. They are useful to get the parties together and organize the proceedings. These meetings are usually more instructive than investigatory in nature. If the case involves the effects of a reorganization, the parties can articulate the facts surrounding the reorganization. These parties, however, are not usually ready to define issues or take a position.

b. The new regulations allow the parties to file a single petition having multiple purposes. This revision permits a variety of options when considering representation matters involving unit(s) affected by a reorganization. Meetings contemplated under § 2422.13(b) are essential in helping the parties sort out the issues and focus the parties on the facts and their interests. See *CHM 3.6.*

c. Another type of meeting occurs when the region is about ready to issue a notice of hearing or take other appropriate action pursuant to § 2422.30. These meetings are generally investigatory and focus on the substantive issues, the parties' interests and the appropriate procedures for resolution.

To prepare for the meeting the agent prepares an outline, as discussed in *CHM 23,* to serve as a guide or checklist for the meeting. The agent shares this outline with the parties at the meeting. At this stage, the issues may still not be clear because the parties do not yet have all of the facts.

These meetings provide the parties with the opportunity to review the facts and narrow the issues together. These meetings may lead to resolution of all issues or identify other appropriate alternatives for resolving the representation issues. Or, if the parties are unable to

resolve all issues, they may explore using stipulations, develop joint exhibits, etc.

In the event the issues are not resolved at the meeting, the agent updates the outline and provides a copy of it to the parties if a notice of hearing is issued.

d. A prehearing conference that is required in § 2422.17(c) lends itself to the type of meeting contemplated under § 2422.13(b). These conferences are "combination" meetings, serving to instruct, investigate and explore options of resolution. See *HOG 8.1* for more detail on prehearing conferences.

25.9 Preparing and conducting the meeting: The following is a guide to assist the agent when preparing for a meeting held pursuant to § 2422.13(b). The agent also reviews *CHM 23* and applicable sections of the *RCL* and *HOG* when drafting the substantive outlines.

25.9.1 Preparing for the meeting: The agent:

a. Compiles copies of the petition, certifications and other documents that are considered "formal documents" in the event a hearing were conducted on the representation issues;

b. Prepares a preliminary list of issues and an agenda for the meeting;

c. Makes copies of applicable substantive chapters from the *RCL*; outlines from the *HOG* and copies of relevant Authority or A/SLMR cases (when there are no applicable Authority cases) to distribute to the attendees;

d. Asks the agency, activity or labor organization to prepare and forward documents related to the issues identified for discussion. This may take the form of a briefing book. Examples include:

i) in petitions seeking to resolve matters related to representation following a reorganization, the activity submits documentation to show the origin of the reorganization or realignment, the bargaining units affected and the number of employees affected.

ii) in meetings to discuss eligibility questions, the agency brings personnel who are qualified to discuss the disputed positions and copies of the position descriptions. Copies of these documents are served on all parties.

25.9.2 Agenda for conducting the meeting:

a. The meeting usually begins with the agent stating the purpose of the meeting and asking the petitioner to review the petition and its purpose. The agent reviews the agenda for the meeting.

b. The agent briefly reviews the regulations and general case processing procedures. For participants not familiar with the regulations, the agent is prepared to discuss the pertinent provisions. In meetings that are mostly instructive, the agent may spend more time on this discussion than any other matter.

c. All parties need to have a common understanding of the facts before the issues and interests can be discussed. Since the parties are in the best position to know the facts, they normally lead the discussion. Agents exercise caution when summarizing facts before obtaining a complete picture from the parties. In a reorganization, for example, the agency discusses the background and events that lead to a reorganization. This is normally followed by a description of the bargaining unit(s) affected. The agent asks the agency to distribute copies of all documentation relied upon in the discussion.

d. After the agency's briefing and any comments by the parties, the agent and the parties define the representation issues. As part of this discussion, the agent briefs the parties on the representation process, inherent representation issues (appropriate unit questions, accretions, successorships, etc.,) and potential outcomes (for example, options/scenarios/ramifications of the reorganization on existing units).

e. Using an interest-based approach, the agent leads the parties in a discussion of their interests and options. The agent is also prepared to discuss the parties' bargaining obligations pre- and post-implementation (§ 2422.34). Finally, the parties discuss alternatives to standard case handling procedures utilizing an interest-based approach.

25.10 Attendance:

25.10.1 Attendance by Authority personnel: If the meeting is held during the investigation and prior to action by the Regional Director pursuant to § 2422.30, the agent assigned to the case attends the meeting. If the meeting is held after the notice of hearing is issued, the Hearing Officer who will hear the case attends the meeting. When appropriate, the Regional Director has discretion to attend meetings held pursuant to § 2422.13(b), particularly when the meetings are strictly instructive or investigatory. Examples: the region has a number of related cases involving a significant or novel issue.

If the cases concern issues or matters that are nationwide in scope, a representative of the Office of the General Counsel may also attend these meetings if requested by the Regional Director or directed by the Office of the General Counsel (see *CHM 63* - *consolidation and transfer policies*).

25.10.2 Attendance by the parties: Designated representatives of all affected parties are required to attend meetings held pursuant to § 2422.13(b). If a person appears at the meeting purporting to represent an activity or labor organization that has not been named as a party or potential intervenor, that party must provide the agent evidence of its status as an intervenor (§ 2422.8) or as an "interested party" (*CHM 17.13*).

25.10.3 Failure to attend or cooperate: If the petitioner or intervenor refuses to participate in a § 2422.13(b) meeting, the petition may be dismissed or the intervention denied [see § 2422.15(c) and *CHM 22*]. When a party other than the petitioner or intervenor refuses or fails to attend a § 2422.13(b) meeting, and their participation is crucial to the proceedings, the region has the option of issuing an investigatory subpoena in accordance with *CHM 23.5.3*, a notice of hearing and if necessary, a subpoena(s) to obtain documentary or testimonial evidence.

25.11 Decorum issues:

25.11.1 Agent's demeanor towards parties: The meeting is a formal proceeding and the agent conducts this meeting as if s/he were conducting a representation hearing. The agent's demeanor sets the tone for the remainder of the case. By dressing and conducting himself/herself in a manner consistent with the formality of the proceeding, the agent lends credibility to the Authority's processes. The parties' representatives are

treated with courtesy and respect. They are addressed in the same manner at all times. For example, if one party is addressed by his/her surname, they are all addressed by his/her surname.

25.11.2 Parties and witnesses: Parties are expected to conduct themselves appropriately at all times and to cooperate with the agent. If necessary, the agent instructs any individual(s), who is offensive or uncooperative, that his/her behavior will not be tolerated. If the misconduct or lack of cooperation continues, the agent contacts his/her supervisor.

25.12 If the agent is uncertain how to proceed: If at any point during the meeting, the agent is uncertain on how to proceed, he or she recesses the meeting and contact the Regional Director. It is never wrong to "call home."

25.13 Caution:

25.13.1 Deals versus solutions: Discussions among the parties to narrow and resolve issues raised in a representation matter are important and beneficial. There are several significant points to remember when conducting these meetings:

a. All parties are required to attend a meeting conducted pursuant to § 2422.13(b); if a labor organization, agency or activity's status has not yet been decided because of procedural or substantive issues, it is invited to attend on the conditional basis that the meeting may resolve its status.

b. Any resolution obtained during these meetings is required to be consistent with the Statutory requirements for appropriate units and unit eligibility. For example, only in rare and exceptional circumstances would the Authority permit severance of one unit from a consolidated unit and allow an accretion of that severed unit to another consolidated unit. While the parties may agree to the proposal, the Regional Director is required to find a statutory basis for the action.

c. Before any resolution is reached, the agent makes sure that the "resolution" resolves all outstanding issues and that the interests of all parties affected by issues raised by the petition or related petitions are considered. For example, the parties in one petition reach an agreement for an election and the unit appears appropriate. However, before approving the agreement,

the Regional Director also considers the impact of the resolution on any related cases.

d. If the parties are inclined to enter into an agreement and, in effect, withdraw the petition, the agent explains the difference between a "deal" and a "solution." "Deals" are not enforceable since the parties simply withdraw a case. "Solutions" resolve representation issues in a manner that effectuates the purposes and policies of the Statute and are enforceable. An example includes a representation proceeding involving the eligibility of disputed positions. If the parties agree informally on the status of each position and seek to withdraw the petition or the eligibility issue, their "deal" is not enforceable or binding. The agent explains that a stipulation and Decision and Order provides a written binding document that resolves the underlying representation issues and satisfies the parties' interests to avoid a hearing. The region cannot prevent the parties from making a deal and withdrawing the case; however, **the agent ensures the parties are aware that a "deal" and a withdrawal are not binding on the FLRA or either party.**

25.13.2 Communications with the parties: The agent ensures that his/her actions do not lead to an appearance of undue assistance to any party. The agent is the Authority's representative and that the parties expect objective consideration of their interests and positions. The services of the agent are equally available to all parties to the proceeding in the development of the evidence. Thus, an agent is extremely cautious, when assisting the parties in resolving their dispute prior to the Regional Director's decision on the merits, about maintaining his/her neutrality and convey to the parties that, absent an appropriate resolution of the representation matter, the Regional Director will render a decision on the merits of the petition.

25.13.3 Ex parte communications: During the investigation, the agent may engage in separate discussions with the parties regarding the status of the case including issues, evidence, relevant law, and general evidentiary procedures. At all times, the agent avoids the appearance that s/he is advocating a particular position, favoring a party or assisting a party in developing its position for the case.

After a hearing opens, the agent refrains from engaging in separate discussions. To do so could lead to the improper appearance of undue assistance to a party. Generally, any discussion about any facet of the proceeding at this stage is held in the presence of all parties.