

**23** **ISSUE IDENTIFICATION AND INVESTIGATIVE TECHNIQUES:** This section discusses basic investigative procedures and techniques. It also includes guidelines on investigating specific types of cases. [CHM 24](#) discusses issue analysis and [CHM 26](#) discusses preparing the case for the Regional Director's decision.

**23.1** **Responsibility of Regional Director:** The regulations streamline the case handling process and make the rules flexible in addressing the representation concerns of agencies, activities, labor organizations and individuals. The Regional Director takes a proactive role and ensures that the procedures followed result in an appropriate resolution of the representation issues ([CHM 1](#)). **The Regional Director is responsible for defining and resolving all underlying issues presented by the filing of the representation petition whether or not identified by the petitioner.** Issues are not only defined by the results the petitioner seeks, but also by the facts and circumstances that caused the petition to be filed.

The Regional Director acts to resolve the issues and the underlying representation matter in a manner consistent with the Statutory requirements for appropriate units and unit eligibility. For instance, the Statute and the regulations require that when the Regional Director has reasonable cause to believe a question exists regarding unit appropriateness, the Regional Director provides the parties with an opportunity for a hearing and issue a Decision and Order on the unit issues, absent an election agreement. Certain significant eligibility issues may also require a hearing while other representation issues may not. Thus, defining issues ensures proper application of the regulations, uniform case handling practices among the regions and decisions that are consistent with the Statute.

**23.2** **Identifying issues and developing a checklist for additional information:** Once the region identifies the parties, the agent can begin defining and outlining the issues for resolution. See also [CHM 20.6.1](#).

**23.3** **Basic requirements for resolving representation issues:** Issues arise in nearly every representation case, including those involving elections, amendments and clarifications, dues allotment, consolidation and other matters relating to representation. The agent is prepared to identify these issues, investigate and gather sufficient facts to enable the Regional Director to decide an appropriate course of action. It is possible that the Regional Director may identify issues that are crucial to resolution of the petition that the parties do not consider relevant.

Analyzing issues in a representation case is an evolving process with new issues becoming apparent as facts are gathered. Simply identifying the issues from the face of the petition and collecting evidence is not adequate. Assembling the facts is as important as identifying the issues. A suggested guideline follows:

- a. Review the petition to identify issues that surface from the petition;
  - (i) outline the procedural issues;
  - (ii) outline the potential substantive ones;
- b. Begin gathering the relevant facts. Developing a complete picture of the facts and applying them is crucial to analyzing issues;
- c. Attempt to resolve the procedural issues as quickly as possible:
  - (i) will an amended petition or supplemental information resolve the procedural issue?
  - (ii) are the positions of the other parties required? (For example, timeliness at first may appear to be a procedural matter; showing of interest issues are often resolved simply by discussing the eligibility list with the concerned parties.)
  - (iii) is an informal meeting pursuant to § 2422.13 advantageous at this point?
- d. Decide whether a procedural issue is a potential issue for hearing; if so, begin conducting research and preparing for a meeting pursuant to § 2422.13 ([CHM 25](#));
- e. Identify all affected parties and categorize them as automatic parties versus potential intervenors; consider whether any of the affected parties may raise issues in addition to those presented by the petition; anticipate the issues, procedural or substantive; and outline possible appropriate solutions based on existing policy and Authority case law;
- f. Outline and research the substantive issues identified from the petition or raised by the parties; consider whether the issues are related (in a reorganization, the petitioner could file a petition

seeking an election, but another party could claim successorship and yet another party that represents other employees at the activity could claim accretion);

- g. Review the substantive section discussions in the *RCL*; the outlines and questions in the *HOG*; and develop an outline for processing the petition including the standards and facts required to resolve the issues raised by the petition;

**Note:** *An outline is crucial to the identification of the issues and the development of the case. (CHM 23.4 and 23.5). The outline:*

- (i) enables the agent to become well acquainted with appropriate unit criteria and the factors considered in making such determinations;*
  - (ii) assists the parties when they compile information that is necessary for the Regional Director's decision;*
  - (iii) is required when a notice of hearing is issued;*
  - (iv) helps the Hearing Officer narrow and resolve issues during the prehearing conference; and*
  - (v) ensures a complete record at the hearing.*
- h. Review the facts that have been gathered during the investigation and apply them to the standards/factors necessary for resolution of the issues; secure any additional facts required;
  - i. Consider whether a meeting to discuss and define the issues is appropriate and useful to resolve any of the issues ([CHM 25](#));
  - j. Consider the issues and determine whether a hearing is required under the Statute and the regulations; [see § 2422.30(b) and [CHM 28.11.2.2](#) or eligibility issues];
  - k. "Look at the big picture" when reviewing the issues and the facts; do the issues affect a larger unit or affect more employees than those covered by the petition?
  - l. Continually reassess the issues and apply the standards to the facts

obtained during the investigation; what appeared to be an issue may disappear, similarly a new issue may appear as new facts unfold; and

- m. Begin preparing the case to present to the Regional Director for decision and action. See [CHM 26](#) for guidelines and requirements.

#### **23.4 Investigative procedures:**

**23.4.1 General policy:** The region will notify any labor organization and agency it identifies as being affected by issues raised in the petition and provide an opportunity for that labor reorganization and agency to participate in the case. All evidence, whether documentary or testimonial, must be relevant. The region will obtain evidentiary information relevant to the issues raised by the petition in a manner that minimizes disruption to the affected parties and expedites the processing of the case. Such evidence may be in the form of affidavits, documentation, position statements and legal arguments. The region may obtain this evidence through either an investigation or a fact-finding hearing. The region will inform the parties of the investigative process and its appropriateness.

#### **23.5 Evidentiary considerations:**

##### **23.5.1 Choosing between documentary and testimonial evidence:**

**23.5.1.1 Documentary evidence** is evidence which has been reduced to writing prior to the investigation for purposes unrelated to the investigation itself. This type of evidence, when available, is almost always preferable to testimonial evidence on the same point. In a fact-finding hearing, it is used to support testimony from a qualified witness. The agent always determines whether relevant documentary evidence exists and emphasizes to the parties who have access to that evidence its importance. When it is clear that the parties are unable to produce documents which are known to exist, the agent attempts to reproduce that evidence through testimony. In some cases, documentary evidence may be so critical that no decision on the merits can be made without it, regardless of testimony. For example, in an election case where a contract is alleged to bar the petition, the issue cannot be decided without the contract.

**23.5.1.2 Sworn testimony** is taken from a witness in a formal fact-finding hearing to authenticate documentary evidence or provide additional relevant evidence that does not exist in documents. A region may also obtain affidavits or

interrogatories as part of an investigation in lieu of a hearing. Affidavits are frequently taken during a region's investigation of certain objections to an election, challenges to the validity of a showing of interest, challenged ballots and petitions raising unit eligibility issues.

**23.5.1.3 Unsworn information** not supported by documentary evidence can be useful in processing a petition when the agent is identifying issues and the parties' positions. Unsworn information usually provides leads in determining a direction for processing a case. If the information will be used in the decisional process, i.e., as a basis for the Regional Director's decision, the agent confirms any relevant substantive information received about the case in a letter to the party who provided it. Confirming letters state clearly the information received from the party or witness, explain that information may be considered by the Regional Director in deciding the representation petition, and give the party or witness a reasonable period of time to advise the agent of any inaccuracies or changes in the information.

**23.5.1.4 Evidence obtained from the employing agency** is crucial to processing any representation petition. As discussed in [CHM 15](#), the agency is the party that provides most of the documentary information in petitions involving questions of unit appropriateness. **The employing agency must be contacted in every case that is opened and requested to cooperate in the investigation.** Information obtained from the employing agency often determines how the case will be resolved, i.e., hearing, election agreement or Decision and Order without hearing.

**23.5.2 Assessing the relevance and weight of evidence:** The purpose of an investigation in a representation petition is to define and narrow issues, ascertain and inquire into the respective positions of the parties, and obtain sufficient facts regarding all matters at issue so the Regional Director can make a well-reasoned and appropriate decision.

The Regional Director relies only on **relevant** evidence, whether documentary or testimonial, in his/her decision. Evidence is relevant if it can reasonably be expected to assist the Regional Director in reaching a proper disposition of the case. The agent or Hearing Officer insists that the parties produce witnesses or evidence that is probative. However, significant hearsay statements are sometimes accepted during the investigation or during a hearing even though their use is limited. The agent has no obligation to accept evidence that clearly makes no independent contribution to an understanding of the case or its resolution. Evidence of this sort includes not only obviously irrelevant material but material that merely duplicates evidence

already obtained. Although the agent, not the parties, is responsible for deciding during the investigation whether proffered evidence is relevant, any doubts are resolved by accepting the documents.

The **weight** of the evidence is ultimately a matter for the Regional Director to decide. Therefore, agents ensure that any investigation or fact-finding hearing obtains a complete record which the Regional Director can consider while analyzing applicable case law. The agent's responsibility is to develop all factual evidence that assists the Regional Director in assessing the weight of the evidence. This means, among other things, that the agent inquires into the source of all evidence whenever that source is not otherwise apparent. In the case of documentary evidence, for example, the agent establishes the purpose for which the documents were originally prepared and the circumstances of their preparation. In the case of testimonial evidence, the agent establishes the competence of the witness and the witness's interests, if any, in the case. **The agent's neutrality while taking evidence is critical to maintain the integrity of the decision making process.**

***NOTE: HOG 12 through 21 discusses evidentiary and procedural matters that may be relevant in an investigation or at a fact-finding hearing.***

**23.5.3 Subpoenas:** Investigatory subpoenas are rarely used in representation proceedings but there may be situations that require the use of an investigative subpoena.

Subpoenas issued in preparation for a hearing are discussed at *HOG 27*.

Subpoenas may also be issued during an investigation prior to issuing a notice of hearing. A Regional Director who is unable to secure information, documentary or testimonial, that s/he deems necessary to a case investigation before a notice of hearing can be issued or an election agreement can be approved may consider issuing a subpoena for the information. For example, a region that is unable to obtain an employee eligibility listing for an election, may consider issuing an investigative subpoena. When investigating a challenge to the validity of a showing of interest, a union representative who is accused of soliciting a showing of interest on work time and in work locations who refuses to provide a statement may be subpoenaed.

**23.5.3.1 Statutory basis of issuing subpoenas:** The General Counsel and Regional Directors have authority under section 7132(a) of the Statute to issue an

investigative subpoena and under 7132(b) to enforce an investigatory subpoena in an appropriate United States district court. Section 2429.7 of the regulations addresses the issuance and enforcement of investigatory subpoenas.

**23.5.3.2 When subpoenas are appropriate during an investigation:** The *Unfair Labor Practice Case Handling Manual* at Part 3, Section K outlines criteria for Regional Director's to apply in deciding whether to request permission to issue an investigatory subpoena. Many of these criteria are applicable to representation proceedings. A Regional Director obtains advice about issuing an investigatory subpoena when the employing agency or other party to the representation proceeding fails or refuses to cooperate during an investigation and a notice of hearing or an election agreement signed cannot be issued without the required information.

- a. ***NOTE: an investigative subpoena is not necessary if the agency refuses to turn over an eligibility list that is needed solely to check the showing of interest as compared to the eligibility list used to conduct an election. [CHM 18.13.2](#) provides that if the agency's payroll list is not submitted, the final determination may be based upon the petitioner's estimate of the number of employees in the unit.***
- b. An investigative subpoena is not necessary if the Regional Director can issue a notice of hearing and subpoena the information in a formal proceeding pursuant to *HOG 27*.
- c. An investigatory subpoena is not necessary when the petitioner fails or refuses to furnish requested material as the petition can be dismissed for lack of cooperation [§ 2422.15(c)].

**23.5.3.3 Procedures for issuing an investigatory subpoena:** The process for obtaining an investigatory subpoena in a representation proceeding is the same as in an unfair labor practice proceeding. See the *Unfair Labor Practice Case Handling Manual* at Part 3, Section K for detailed procedures.

- a. The Regional Office drafts a memorandum to the Deputy General Counsel requesting advice on issuing an investigatory subpoena. The memorandum states the purpose of the petition, the circumstances surrounding the party's failure to provide the necessary information and the reasons why an investigatory subpoena is required.

- b. If the Office of the General Counsel gives clearance to the Regional Director to issue the investigatory subpoena, the Regional Director follows the procedures in *HOG 27*, although the Regional Director is the party issuing and serving the subpoena, not the General Counsel.

**23.6 Issues that may develop in petitions seeking an election, a determination of eligibility for dues allotment, certain petitions that seek to clarify or amend a matter relating to representation and any petition seeking to consolidate existing units:**

The *RCL* provides significant guidance on the substantive issues listed below. Subject matter areas are presented in the *RCL* in a distinct format. The concept is described and includes: (1) its definition and the statutory basis, if applicable; (2) the standards or criteria on which a decision is based; and (3) the factors and relevant information required for decision. Potential outcomes are also discussed in many instances. The *HOG* may also be useful as it includes a brief identification of the topic and the outline or relevant questions required to ensure a complete record.

- a. *RCL 1 and HOG 37* - Appropriate unit determinations

Appropriate unit questions arise in nearly every representation case. Appropriate unit(s) are defined before resolving any other representational issue raised in a petition. Since many petitions involve unit determination questions, an outline is a mandatory tool for processing petitions properly. Sample investigative outline formats are contained in [Figures 37.1 through 37.3](#). Figure 37.1 is the most thorough and is the outline to be forwarded to the parties in the event an appropriate unit determination is required.

- b. *RCL 2 and HOG 38* - Scope of unit (including residual units, add-ons, expanding and contracting units).

Investigation of these issues is conducted similarly to the investigation of appropriate unit issues.

- c. *RCL 3 and HOG 39* - Effect of changes in the character and scope of a unit due to a reorganization or realignment in agency operations.

These issues usually result from reorganizations and are all-

inclusive in that reorganization-related issues concern appropriate unit questions, accretion and successorship issues. *RCL 3* provides a discussion of the potential scenarios and issues that may result from agency reorganizations. When investigating and analyzing questions resulting from agency reorganizations, the agent refers to this section and *RCL 1*. The cases cited in *RCL 1* also provide an outline of issue and evidence requirements for resolution of reorganization related issues.

- d. *RCL 3C* and *HOG 39C* - Accretion
- e. *RCL 8* and [HOG 44](#) - Schism
- f. *RCL 9* and [HOG 45](#) - Severance
- g. *RCL 10* and [HOG 46](#) - Status of a labor organization (see also [CHM 19](#) and [CHM 23.9.3](#) for procedures for processing)
- h. *RCL 3B* and [HOG 39](#) -Successorship
- i. *RCL 14* and [HOG 50](#) - Units including supervisors
- j. Procedural issues: Procedural issues such as proper service, timeliness, and inadequate showing of interest are often corrected without resort to formal litigation; they are however, be resolved. Many of these issues are resolved by amending the petition, or as a result of discussions with the parties pursuant to § 2422.13. Refer to appropriate sections of the *CHM* or *HOG* for discussions on these issues.
- k. Issues relating to identifying parties that may be affected by issues raised by the petition: The failure to identify a labor organization, agency or activity that may be affected by issues raised by a petition could nullify a certification or other action taken on a case. **Follow the checklist outlined in [CHM 15.5](#) and be sure to document the file on these matters.**

**23.7 Unique issues in petitions seeking an election:** In addition to those issues discussed in [CHM 23.5](#), the following issues are unique to petitions seeking an election.

- a. *RCL 12* and [HOG 48](#) - Timeliness of election petitions, amendments

etc.

- b. [CHM 18](#) - Showing of interest
- c. Challenges to the validity of the showing of interest or the status of a labor organization may be filed prior to the opening of the hearing, or if there is no hearing, prior to issuance of the Regional Director's Decision and Order. See [CHM 18.19](#) and [CHM 19](#) for procedures for investigating and processing these challenges.
- d. Status of a party that believes it is affected by issues raised in the petition ([CHM 15.5.2](#) at "NOTE").
- e. Is the unit in the process of being expanded or does it include employees who are seasonal, thus raising election timing issues? See [CHM 20.1.2](#).

**23.8 Unique issues in petitions requesting a determination of eligibility for dues allotment:** Petitions for dues allotment are governed by 5 U.S.C. 7115(c) and § 2422.1(a)(ii). See also *RCL 6 - dues allotment*. The three requirements include:

- a. the petition must be for a unit for which there is no exclusive representative;
- b. the claimed unit must be appropriate for exclusive recognition; **and**
- c. the petitioner must provide a showing of *membership* of not less than 10 percent in the unit claimed to be appropriate.

During the region's investigation, the agent ensures that none of the employees in the proposed unit are already part of an existing certified unit. The agent checks the certification files, certification database, and OPM's "Union Recognition in the Federal Government" for any evidence that the unit was previously certified. Once the agent receives the agency's statement, if there are no intervenors or a dispute about unit or eligibility issues, the agent prepares a stipulation for use by the Regional Director in preparing the Decision and Order (see [HOG 26](#) for stipulations).

**23.9 Unique issues in petitions to clarify, and/or amend:**

**23.9.1 A certification in effect:** Such cases usually include petitions to:

- a. clarify the bargaining unit status of certain employees/positions after a labor organization has been recognized or certified as the exclusive representative in an appropriate unit; and/or
- b. amend the original recognition or certification to conform to technical or nominal changes which have occurred affecting the original designation or identity of either party ( such as a change in the name of the exclusive representative, a change in the name or location of the agency or activity, or a change in the title of the employees).

Clarifying the bargaining unit status of certain employees involves eligibility issues. *RCL 15 through 28* includes an extensive discussion of employees categories, including definitions, coverage, an analysis of relevant cases and references. For hearing, *HOG 51 through 64* includes a short discussion of the definition of the employee categories and information required for a decision. When there are eligibility issues, the agent makes a list of the disputed positions and prepare outlines or checklists of significant cases to share with the parties. Eventually, the agent will be required to make a recommendation to the Regional Director concerning whether to hold a hearing (see *CHM 26 and 28*).

Changing the designation or identity of either party to the recognition or certification usually involves verifying, in the case of the activity, that the change in the name was technical and the unit or the representation of the unit was not affected in any way. Changing the name of the exclusive representative may be purely technical or more complicated if the union merged or affiliated with another labor organization. In the latter situation, the *Montrose* factors are applied. For a discussion of technical changes vs. the *Montrose* requirements, see *RCL 7*.

**NOTE: In a *Montrose* case, see also *CHM 17.13.1* re “Interested Parties” and *CHM 7* for limitations on the service requirements.**

**23.9.2 Or any matter relating to representation:** Examples of these cases include:

- a. questions relating to the continued appropriateness of an existing unit(s).

Questions arising in this context usually concern the effects of a reorganization or realignment of agency operations on established units. As noted in *CHM 23.5*, appropriate unit issues, accretion and successorship issues usually factor into the determination of these

cases. See *RCL 3*. These cases may also include the effects of base closures on existing units or disclaimers of representational interest submitted by the incumbent. Start by asking the parties what happened, what units were affected and how. Once it is determined what happened, the issues are usually identified.

- b. questions relating to the majority status of the currently recognized or certified labor organization.

These petitions are usually filed by the agency or activity that is a party to the existing bargaining relationship. The agency states that it has a good faith doubt based on objective considerations that the certified labor organization represents a majority of employees in the existing unit. The agency petitions the Authority for an election among employees in the unit. These cases are subject to the timeliness consideration that apply to other petitions seeking an election. See *RCL 4* for a detailed discussion of these cases and [HOG 40](#) relevant information that is necessary for making a determination of the merits of the case.

***NOTE: Regional Directors are required to issue a notice of hearing whenever a majority status petition is filed by an agency, activity or labor organization that is not a party to the exclusive bargaining relationship. The issue in this situation is the standing of the petitioner to file such a petition.***

**23.9.3 Petitions seeking to decertify the incumbent exclusive representative pursuant to section 7111(f)(1):**

**23.9.3.1 Basis for filing:** In *USIA*, 53 FLRA 999, 1004 (1997) the Authority stated that the filing of a section 7111(f) petition requesting decertification is consistent with the Statute. Further, the Authority held that a bargaining unit member's petition for decertification pursuant to section 7111(f), unlike a decertification petition filed pursuant to section 7111(b)(1)(B), will be considered to have been properly filed without the need for a showing of interest. "In all other respects, such a petition should be processed according to the regulations concerning petitions which do not require an election." *USIA*, 53 FLRA at 1004. Therefore, petitions filed pursuant to section 7111(f) are processed similarly to petitions filed pursuant to section 7111(b)(2) of the Statute or § 2422.1(b) of the regulations.

**23.9.3.2 Processing guidelines:** The issue of freedom from corrupt or anti-democratic

influences can arise in every representation case. The issue can arise when a party in a pending representation proceeding files a **timely** challenge alleging corrupt or anti-democratic influences against a union party in the same proceeding, as in *NYNG*, 53 FLRA 111 (see [CHM 19.10.2](#)). In addition, based on *USIA*, any bargaining unit member may at any time file a petition seeking decertification of the incumbent union based on an allegation of corrupt or anti-democratic influences. Regardless of the method utilized to raise the challenge, the legal analysis remains the same.

a. Violations of Standards of Conduct Do Not Automatically Establish Corrupt Influences Warranting Revocation or Denial of Certification.

It is significant to note the difference between the traditional remedies ordered in standards of conduct cases and the remedy which the Authority is required to order if it finds that a union is subject to corrupt or anti-democratic influences. For example, the Department of Labor may order a respondent to cease and desist from violative conduct and may require a respondent to take such affirmative action as is deemed appropriate to effectuate the policies of the Statute. Under the Statute, however, a labor organization that is found to be subject to corrupt or anti-democratic influences may not be recognized under the Statute as an exclusive representative and thus, either loses its existing recognition for any bargaining unit it may represent or is precluded from being recognized as the representative for any new bargaining unit.

If a third party with jurisdiction over conduct alleged to constitute reasonable cause to believe that a labor organization is subject to corrupt or anti-democratic influences find a violation, that finding establishes only reasonable cause to believe that the presumption of freedom from corrupt or anti-democratic influences has been rebutted. That finding does not establish that, in fact, the union is subject to corrupt and anti-democratic influences. Rather, that is the Authority's sole province. Thus, even though certain conduct may be found to be violations of standards of conduct requiring an affirmative remedy, that same conduct may or may not establish that a union is subject to corrupt or anti-democratic influences requiring the denial or revocation of certification. Moreover, if a union is found to be subject to corrupt or anti-democratic influences, it is unclear whether any revocation of certification extends to all bargaining units represented by that union under the Statute. For example, some locals and nationals represent more than one bargaining unit. See

RCL 10B and HOG 46B.

- b. As discussed in [CHM 20.1.8](#), petitions seeking to decertify the incumbent labor organization are accompanied by specific information. **If the information is not included with the petition, the Regional Director issues an *Order to Show Cause* as it is the most effective manner of processing challenges and petitions alleging that a labor organization is subject to corrupt or anti-democratic influences warranting the denial or revocation of certification.** There are no Authority decisions on when a labor organization is, in fact, subject to corrupt or anti-democratic influences. Further, there is no guidance in the legislative history on this issue. The Authority has recognized “the damage to representation rights that can be caused by delay in processing a representation petition.” *NYNG*, 53 FLRA 111, 124 at n. 14. Moreover, the Authority has found that an order to show cause is a proper procedure in a representation proceeding. (*U.S. Army Corps of Engineers, Seattle, Washington and United Power Trades Organization and NFFE Local 8*, unnumbered application of review denied (March 12, 1998) finding that an *Order to Show Cause* is a proper procedure where petition sought to sever a group of employees from a bargaining unit: “We have reviewed the record and find nothing improper in the RD’s use of the *Order to Show Cause*.”

Using an order to show cause process will screen out any challenges which do not present a sufficient basis to rebut the presumption that a labor organization, which is subject to governing requirements that meet the specified standards in section 7120(a)(1) through (4) of the Statute, is free from corrupt and anti-democratic influences.

The order to show cause requires the party filing the corrupt influences challenge to establish a basis upon which to conclude that the challenged labor organization is subject to corrupt or anti-democratic influences. The order requires the challenging party to submit the following information, documents and argument:

1. **Whether there has been, or is currently pending, a proceeding before a third party that is based on the same or substantially similar allegations that support the section 7111(f) claim.**

The party is ordered to submit all documents filed, evidence submitted and rulings issued in that proceeding. The party is ordered to establish why the allegations in that proceeding are the same or substantially similar to the allegations that support the section 7111(f) claim. The party is ordered to establish that a finding of a violation in that proceeding requires a determination under the Statute that the challenged labor organization is subject to corrupt or anti-democratic influences.

- 2. If a third party has found no violation based on the same or substantially similar conduct, why the challenge or petition should not be dismissed, absent withdrawal.**

The party is ordered to submit all documents filed, evidence submitted and decisions rendered in that proceeding. The party is ordered to establish why the finding of no violation in that proceeding should not result in the dismissal, absent withdrawal, of the challenge filed under the Statute of corrupt or anti-democratic influences.

- 3. If a third party has found a violation based on the same or substantially similar conduct, why that violation establishes under the Statute that a labor organization is subject to corrupt or anti-democratic influences requiring the denial or revocation of certification.**

The party is ordered to submit all documents filed, evidence submitted and decisions rendered in that proceeding. The party is ordered to establish why the allegations in that proceeding are the same or substantially similar to the allegations that support the section 7111(f) claim. The party is ordered to establish why a finding of a violation in that proceeding requires a determination under the Statute that the challenged labor organization is subject to corrupt or anti-democratic influences.

- 4. If a third party proceeding is pending, assuming the allegations before the third party are true, why they establish under the Statute that a labor organization is subject to corrupt or anti-democratic influences requiring the denial or revocation of certification.**

The party is ordered to submit all documents filed, evidence submitted and ruling issued in that proceeding. The party is ordered to establish why the allegations in that proceeding are the same or substantially similar to the allegations that support the section 7111(f) claim. The party is also ordered to establish why a finding of a violation in that proceeding requires a determination under the Statute that the challenged labor organization is subject to corrupt or anti-democratic influences.

**5. If there has been no proceeding before a third party and none is currently pending based on the same or substantially similar conduct, why the challenge or petition should not be dismissed, absent withdrawal.**

The party is ordered to submit all evidence to support the challenge. The party is ordered to establish why that evidence requires a determination under the Statute that the challenged labor organization is subject to corrupt or anti-democratic influences.

**23.9.3.3 Office of the General Counsel clearance:**

Normally, if the allegation has been properly filed before a third party, based on the Authority's decisions in *NYNG*, 53 FLRA 111, 123-124 and *USIA*, 53 FLRA 999, 1004, the region stays processing a petition which was filed to decertify the incumbent labor organization pursuant to section 7111(f)(1) or in which a challenge to the status of the labor organization is raised. However, the Authority cited certain exceptions to this "rule" in its decisions. Therefore, based on the Authority's desire to avoid "unwarranted delay in the processing of representation cases," the Regions obtain clearance from the Office of the General Counsel prior to staying any pending representation proceeding because of a challenge raising corrupt or anti-democratic issues. Similarly, in view of the small number of cases raising this issue and the absence of Authority decisions and legislative history, the Regions obtain clearance from the Office of the General Counsel prior to taking action on any challenge or petition raising the corrupt or anti-democratic influences issue after receipt of response to an order to show cause. [CHM 58.3.3](#)

**23.9.3.4 Making a determination on the merits:** See *RCL 10B* for substantive issues and guidance on making a decision on the merits of the case.

**23.10 Unique considerations in petitions to consolidate two or more units in an agency and for which a labor organization is the exclusive**

**representative:** *RCL 13* describes unit consolidations processed pursuant to 5 U.S.C. 7112(d), the statutory basis for the procedure, and factors considered in determining whether a consolidation is appropriate. [HOG 49](#) is a shorter version used at hearings. Other considerations include:

- 23.10.1 Bars:** The election, certification and agreement “bars” with respect to any of the units proposed for consolidation do not act as a bar to the filing of a petition to consolidate existing units ([CHM 11](#), *RCL 13B* and [HOG 49](#)).
- 23.10.1.1** Subsequent petitions seeking an election or clarification of a matter relating to representation in any existing exclusively recognized unit covered by a pending petition to consolidate existing exclusively recognized units must be filed in a timely manner and satisfy the election, certification and agreement bars. Petitions for an election filed after the filing of the related unit consolidated petition are held in abeyance pending the processing of the petition to consolidate. Upon the issuance of a certification on consolidation of units, the petitioner is given thirty (30) days from the issuance of the certification to submit an adequate showing of interest for the consolidated unit. If an adequate showing is filed, the petition will be processed and an appropriate certification will issue ([CHM 11.10.2](#)).
- 23.10.1.2** Petitions seeking an election or clarification of a matter relating to representation in any existing exclusively recognized unit, due to a substantial change in the character and scope of the unit, that is covered by a subsequently filed unit consolidation petition are resolved before the affected unit may be included in the proposed consolidated unit ([CHM 11.10.2](#)).
- 23.10.1.3** A valid election on a proposed consolidation that does not result in the issuance of a certification on consolidation of units acts as a bar for a twelve (12) month period with respect to any petition for consolidation of the same unit or any subdivision thereof ([CHM 11.2](#)).
- 23.10.1.4** A certification on consolidation of units acts as a bar to a petition seeking an election for the same unit or any subdivision thereof for a twelve (12) month period after the certification on consolidation of units has been issued. However, after an agreement has been signed and dated for the claimed consolidated unit, the agreement bar provisions discussed in [CHM 11](#) and § 2422.12(b) apply.

**23.10.2 Disputes regarding authority to file unit consolidation petitions:** The Office of the General Counsel is contacted whenever an issue develops involving a dispute regarding the authority of a party to file a petition to consolidate existing units. Examples include:

- a. When a local holds exclusive recognition for a unit that the national office of a labor organization seeks to consolidate into an agency-level consolidated unit. See *Internal Revenue Service*, 7 A/SLMR 357 (1977) and *U.S. Customs*, 8 A/SLMR 220 at 224 (1978) (when disputes arise the region may be required to review the constitution and bylaws).
- b. When an agency or activity seeks to consolidate two or more units represented by different locals of the same national union.

**23.10.3 Investigation:** In addition to issues discussed at [CHM 23.6](#), investigation of the issues raised by the petition is generally confined to:

- a. ensuring all units for which the union holds exclusive recognition are included in the proposed consolidation; if not, a statement from the petitioner explaining why all of the units are not included [see *Air Force Materiel Command*, 55 FLRA No. 58 (1999) where the Authority stated that the purpose of a proposed consolidation is not to eliminate fragmentation, thus the fact that one unit was not included in the proposed consolidation does not establish that the proposed unit does not reduce fragmentation].
- b. an attempt to clarify areas of disagreement, if any, such as the nature of a bilateral agreement, and the position of the parties with respect to the appropriateness of the proposed consolidated unit including scope and eligibility questions.
- c. a determination of the appropriateness of the proposed consolidated unit.

**23.10.4 Automatic parties:** As discussed in CHM 15.7.1 and 15.8.1, when a national labor organization seeks to consolidate all of the units for which its constituent locals hold exclusive recognition in an agency, the local unions and the activities that are on the certification are automatic parties to the proceeding pursuant to § 2422.8(d).

**23.11 Requirement for an election in consolidation petitions:**

**23.11.1 Employee request:** In unit consolidation proceedings, the employees are given the opportunity to submit in writing a thirty (30) percent showing of interest to the Regional Director, stating that the employees desire an election on the issue of the proposed consolidation (see also [CHM 18.1](#) and [18.5.7](#)). No special notice other than the notice set forth in [CHM 16](#) is required. The notice includes instructions that the showing of interest must be timely, i.e., prior to opening a hearing, if one is held, or prior to the Regional Director taking action on the case, pursuant to § 2422.30.

If employees submit a showing of interest, they do not become a party to the case. No individual may seek to represent the employees' interest regarding election arrangements, participate in a hearing, have observers at the election, challenge ballots, or file objections to any election. If the agent receives a call from any employees in the unit proposed for consolidation, the agent apprises the employees of this right and the procedures for submitting the showing of interest. Note that the showing of interest must constitute thirty (30) percent of the proposed consolidated unit.

**23.11.2 Agency or labor organization request:** The current regulations do not have a provision that permits an agency or a labor organization in consolidation petitions to request an election. [Provisions in the former regulations at § 2422.2(h)(ii) were deleted.] If the parties agree on the appropriateness of the consolidated unit and/or if the Regional Director finds in a Decision and Order that the proposed consolidated unit is appropriate, neither party may request an election. Contact the Office of the General Counsel if the region receives a request from an agency or labor organization to conduct an election.

**23.11.3 Professionals vote on consolidation:** An election is required when the parties propose to consolidate professional employees with nonprofessional employees if:

- a. the professionals have never had the opportunity to vote on the issue of being included in a unit with nonprofessionals; or
- b. the professionals previously voted to be in a separate unit and the parties propose a mixed consolidated unit of professionals and nonprofessionals.

See [CHM 28.17](#) for details on elections to consolidate existing units.

