

**2** **Hearing Officer's responsibilities:** The representation hearing is conducted by a Hearing Officer whose primary duty is to ascertain and inquire into the respective positions of the parties and obtain a full, complete factual record regarding all matters at issue so that the Regional Director may make a reasoned decision.

**2.1** **Accomplishment of primary duty:** In carrying out this duty, the Hearing Officer requires all parties to participate in a prehearing conference for the purpose of fully discussing, narrowing and, if possible, resolving the issues set forth in the notice of hearing (see § 2422.17 of the regulations). At the hearing, the Hearing Officer has discretion to:

- a) call and question witnesses.
- b) question witnesses called by the parties.

The Hearing Officer does not normally conduct the lead questioning of all witnesses. Although the Hearing Officer is responsible for ensuring the record is complete, the Hearing Officer, if he or she prepares the parties properly, normally asks follow-up questions to fill in gaps in witness testimony - listening to testimony and obtaining testimony on areas not covered. However, the Hearing Officer recognizes that it is his/her responsibility to call necessary witnesses for testimony, if for some reason the parties do not, since the Hearing Officer is responsible for the development of a complete record. If there is some reason why a necessary witness does not testify, the Hearing Officer ensures that the reason is in the record. See also *HOG 11.8*.

- c) call for and introduce appropriate documentary evidence, limited only by the relevance of the evidence to the issues.

These actions may be necessary to explore matters not raised by the parties. In the interest of keeping the record as short as possible, the Hearing Officer has the authority to:

- d) seek stipulations,
- e) confine the taking of evidence to relevant disputed issues, and
- f) exclude irrelevant and cumulative material.

**2.2 Other duties:** A Hearing Officer also has the authority to:

- a) grant requests for subpoenas pursuant to § 2429.7 of the regulations (see *HOG 27*);
- b) rule upon offers of proof;
- c) take or cause depositions or interrogatories to be taken when appropriate;
- d) regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct;
- e) note on the record when witnesses are selective when answering pertinent questions and encourage their cooperation in answering all questions;
- f) dispose of procedural requests, motions or similar matters on the record, including motions referred to the Hearing Officer by the Regional Director, and motions to amend petitions;
- g) have the parties state on the record, at any time during the hearing, their respective positions concerning any issue in the case or theory in support thereof;
- h) continue the hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing or by other appropriate notice;
- i) at the discretion of the Regional Director, make recommendations on the record; and
- j) take any other action necessary not prohibited by the regulations.

**2.3 Ethical considerations:**

**2.3.1 General:** As noted in chapters 1 and 23 of the Representation Case Handling Manual (*CHM 1 and 23*), the Regional Director is responsible for identifying and defining the underlying issues presented by the filing of a representation petition. Often many of these issues can be narrowed or resolved completely by the Hearing Officer and the parties prior to, or during, the hearing. To the extent the Hearing Officer utilizes alternative dispute resolution techniques to discuss, narrow and if possible, resolve these

issues, the Hearing Officer cannot usurp the Authority's responsibility under the Statute to establish appropriate bargaining units and provide an opportunity for eligible employees to be exclusively represented by a labor organization. The Hearing Officer recognizes at all times that any narrowing or resolution of such issues must be consistent with the Statutory requirements for appropriate units and unit eligibility.

**2.3.2 Caution:** The Hearing Officer ensures that his/her actions described in *HOG 2.1 and 2.2* do not lead to an appearance of undue assistance to a party. The Hearing Officer cannot forget that to the parties s/he is the Authority's representative and that the parties expect objective consideration of their interests and positions. The services of the Hearing Officer are equally available to all parties to the proceeding in the development of the evidence.

**2.3.3 Ex parte communications:** Prior to the start of the hearing, it is appropriate for the Hearing Officer to engage in separate discussions with the parties regarding the status of the case including case issues, evidence, relevant law, and general evidentiary procedures. During these discussions, the Hearing Officer 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.

Once the record opens, however, the Hearing Officer refrains from such separate discussions to avoid the appearance of providing 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. See also § 2414 of the regulations.

