

I am pleased that the Agency is able to provide you with this updated edition of the “Guide for Hearing Officers in NLRB Representation and Section 10(k) Proceedings.” One of the most important responsibilities of field employees is to serve as hearing officers in a representation case or 10(k) proceeding. The hearing officer must ensure that the hearing is conducted in accord with Agency procedures and that the resulting record is free of cumulative or irrelevant testimony yet sufficient to allow for an informed determination of disputed issues by the Board or the Regional Director. The Guide’s availability on the Agency’s website (www.nlr.gov) makes it particularly valuable to practitioners inside and outside the Agency.

One of my goals as General Counsel is to improve on the high quality product that has always been the hallmark of Board casehandling. This updated version of the Guide will assist in achieving that goal in representation case work. For the first time, the Guide provides direct references to *An Outline of Law and Procedure In Representation Cases* and provides instruction on conducting postelection hearings. The Guide is designed to assist hearing officers in doing the most effective job of developing the record. Advance preparation and exploration of issues with the parties are critical to success as a hearing officer. The suggested lines of inquiry provide a resource both for advance preparation and for dealing with issues that may arise during the hearing. However, as always, the responsibility lies with the hearing officer to research potential issues and to develop specific inquiries that are relevant to the issues at hand.

This edition reflects the efforts of many individuals. I want to recognize the members of the committee who were responsible for updating the Guide: Louis Cimmino, Deputy to the Assistant General Counsel, who served as chairperson of the committee; Wayne Gold, Regional Director, Region 5, Baltimore; Rhonda Aliouat, Regional Attorney, Region 3, Buffalo; D. Michael McConnell, Assistant to the Regional Director, Region 17, Kansas City; Ariella Bernstein, Supervisory Field Examiner, Region 29, Brooklyn; and Lafe Solomon, Director of the Office of Representation Appeals. The committee was also assisted by David Leach, Deputy Regional Attorney, Region 2, Manhattan, who drafted some portions of the manual, and Steve Shuster, Assistant to the Regional Director, Region 5, Baltimore, who assisted in reviewing some portions of the manual.

My thanks also to the reviewers of the manuscript: Gary Kendellen, Regional Director, Region 22, Newark, and Assistants to the Regional Directors Elbert Tellem, Region 2, Manhattan; Robert Chester, Region 18, Minneapolis; and Randy Malloy, Region 8, Cleveland.

This guide will be a valuable training resource for the field. I hope that you will find it useful in the years to come.

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PREFACE

This Guide has been prepared by the Office of the General Counsel to provide guidance to hearing officers in conducting hearings in NLRB representation proceedings and Section 10(k) hearings.

The Guide emphasizes techniques of conducting the hearing and developing a complete record. It is designed only to provide procedural and operational guidance to the Agency's staff and is not intended to be a compendium of substantive or procedural law, nor a substitute for knowledge of the law. Similarly, the Guide does not constitute rulings or directives of the Board or the General Counsel, and is not a form of authority binding on either the Board or General Counsel.

As to matters on which the Board has issued rulings, the Guide seeks to accurately describe and interpret Board law; while the Guide can thus be regarded as reflecting Board policies as of the date of its preparation, in the event of conflict, it is the Board's decisional law, not the Guide, that is controlling. Similarly, while the Guide reflects casehandling policies of the General Counsel as of the date of its preparation, such policies may be revised or amended from time-to-time.

Although it is expected that the Agency's Regional Directors and their staffs will follow these guidelines in the handling of cases, it is also expected that in their exercise of professional judgment and discretion, there will be situations in which they will adapt these guidelines to circumstances.

FOREWORD

Preelection representation case hearings are formal proceedings conducted in accordance with Section 102.63 et seq., of the Board's Rules and Regulations. It is part of the investigation to determine whether a question concerning representation exists, and therefore is nonadversarial in character. A preelection representation hearing is conducted by a hearing officer, whose duty is "to inquire fully into all matters in issue and to obtain a full and complete record upon which the Board or the Regional Director may discharge their duties under Section 9(c) of the Act." (Rules and Regulations, Section 102.64(a).)

Postelection representation case hearings are also formal proceedings conducted in accord with Section 102.69(d) of the Board's Rules and Regulations. In a postelection hearing, by contrast with preelection case hearings, the hearing officer makes credibility resolutions and issues a report setting forth his/her findings, conclusions and recommendations.

The entire election process seeks to resolve a question concerning representation (QCR). The Agency's staff is engaged in an investigation of that QCR and the proceedings, whether formal or informal, or preelection or postelection, are nonadversarial.

A 10(k) hearing is conducted pursuant to Section 102.89 et seq., of the Board's Rules and Regulations and Section 101.34 of the Board's Statements of Procedure, and is nonadversarial. In a 10(k) hearing, the "primary interest of the hearing officer is to ensure that the record contains a full statement of the pertinent facts as may be necessary for a determination of the issues by the Board." Statements of Procedure, Section 101.34.

In the aid of the above duties, the hearing officer may call and question witnesses, question witnesses called by the parties, and call for and introduce appropriate documentary evidence, being limited only by the relevance of the evidence to the issues. Such actions may be particularly necessary to explore matters not raised by the parties. The hearing officer has the authority to seek stipulations, confine the taking of evidence to relevant disputed issues and exclude irrelevant and cumulative material. The services of the hearing officers are equally at the disposal of all parties to the proceeding in developing the material evidence.

This Guide is a checklist of steps to be considered and techniques available for utilization by the hearing officer in preparing for and conducting the hearing, as well as a ready reference to some procedural aspects of the hearing. The contents are a guide to the hearing officer in the exercise of his/her discretion in conducting the hearing and are necessarily of selective applicability depending on the issues and posture of a given case.