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made and may, if a substantial issue is raised, direct a hearing on the challenged ballots or the objections to the conduct of the election. Or, the Board may, if no substantial issues are raised, affirm the Regional Director's report and take appropriate action in termination of the proceedings. If a hearing is ordered by the Regional Director or the Board on the challenged ballots or objections, all parties are heard and a report containing findings of fact and recommendations as to the disposition of the challenges or objections, or both, and resolving issues of credibility is issued by the hearing officer and served on the parties, who may file exceptions thereto within 14 days with the Board in Washington, DC. The record made on the hearing is reviewed by the Board with the assistance of its staff counsel and a final determination made thereon. If the objections are found to have merit, the election results may be voided and a new election conducted under the supervision of the Regional Director. If the union has been selected as the representative, the Board or the Regional Director, as the case may be, issues its certification and the proceeding is terminated. If upon a decertification or employer petition the union loses the election, the Board or the Regional Director, as the case may be, certifies that the union is not the chosen representative.

§ 101.20 Formal hearing.

(a) If no informal adjustment of the question concerning representation has been effected and it appears to the Regional Director that formal action is necessary, the Regional Director will institute formal proceedings by issuance of a notice of hearing on the issues, which is followed by a decision and direction of election or dismissal of the case. In certain types of cases, involving novel or complex issues, the Regional Director may submit the case for advice to the Board before issuing notice of hearing.

(b) The notice of hearing, together with a copy of the petition, is served on the unions and employer filing or named in the petition and on other known persons or labor organizations claiming to have been designated by employees involved in the proceeding.

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(c) The hearing, usually open to the public, is held before a hearing officer who normally is an attorney or field examiner attached to the Regional Office but may be another qualified Agency official. The hearing, which is non-adversary in character, is part of the investigation in which the primary interest of the Board's agents is to ensure that the record contains as full a statement of the pertinent facts as may be necessary for determination of the case. The parties are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions. In most cases a substantial number of the relevant facts are undisputed and stipulated. The parties are permitted to argue orally on the record before the hearing officer.

§ 101.21 Procedure after hearing.

(a) Pursuant to section 3(b) of the Act, the Board has delegated to its Regional Directors its powers under section 9 of the Act to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof. These powers include the issuance of such decisions, orders, rulings, directions, and certifications as are necessary to process any representation or deauthorization petition. Thus, by way of illustration and not of limitation, the Regional Director may dispose of petitions by administrative dismissal or by decision after formal hearing; pass upon rulings made at hearings and requests for extensions of time for filing of briefs; rule on objections to elections and challenged ballots in connection with elections Directed by the Regional Director or the Board, after administrative investigation or formal hearing; rule on motions to amend or rescind any certification issued after the effective date of the delegation; and entertain motions for oral argument. The Regional Director may at any time transfer the case to the Board for decision, but until such action is taken, it will be presumed that the Regional Director will decide the case. In

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the event the Regional Director decides the issues in a case, the decision is final subject to the review procedure set forth in the Board's Rules and Regulations.

(b) Upon the close of the hearing, the entire record in the case is forwarded to the Regional Director or, upon issuance by the Regional Director of an order transferring the case, to the Board in Washington, DC. The hearing officer also transmits an analysis of the issues and the evidence, but makes no recommendations in regard to resolution of the issues. All parties may file briefs with the Regional Director or, if the case is transferred to the Board at the close of the hearing, with the Board, within 7 days after the close of the hearing. If the case is transferred to the Board after the close of the hearing, briefs may be filed with the Board within the time prescribed by the Regional Director. The parties may also request to be heard orally. Because of the nature of the proceedings, however, permission to argue orally is rarely granted. After review of the entire case, the Regional Director or the Board issues a decision, either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner already described in § 101.19.

(c) With respect to objections to the conduct of the election and challenged ballots, the Regional Director has discretion (1) to issue a report on such objections and/or challenged ballots and transmit the issues to the Board for resolution, as in cases involving stipulated elections to be followed by Board certifications, or (2) to decide the issues on the basis of the administrative investigation or after a hearing, with the right to transfer the case to the Board for decision at any time prior to disposition of the issues on the merits. In the event the Regional Director adopts the first procedure, the parties have the same rights, and the same procedure is followed, as has already been described in connection with the postelection procedures in cases involving stipulated elections to be followed by Board certifications. In the event the Regional Director adopts

the second procedure, the parties have the same rights, and the same procedure is followed, as has already been described in connection with hearings before elections.

(d) The parties have the right to request review of any final decision of the Regional Director, within the times set forth in the Board's Rules and Regulations, on one or more of the grounds specified therein. Any such request for review must be a self-contained document permitting the Board to rule on the basis of its contents without the necessity of recourse to the record, and must meet the other requirements of the Board's Rules and Regulations as to its contents. The Regional Director's action is not stayed by the filing of such a request or the granting of review, unless otherwise ordered by the Board. Thus, the Regional Director may proceed immediately to make any necessary arrangements for an election, including the issuance of a notice of election. However, unless a waiver is filed, the Director will normally not schedule an election until a date between the 25th and 30th days after the date of the decision, to permit the Board to rule on any request for review which may be filed. As to administrative dismissals prior to the close of hearing, see § 101.18(c).

(e) If the election involves two or more labor organizations and if the election results are inconclusive because no choice on the ballot received the majority of valid votes cast, a runoff election is held as provided in the Board's Rules and Regulations.

Subpart D—Unfair Labor Practice and Representation Cases Under Sections 8(b)(7) and 9(c) of the Act

§ 101.22 Initiation and investigation of a case under section 8(b)(7).

(a) The investigation of an alleged violation of section 8(b)(7) of the Act is initiated by the filing of a charge. The manner of filing such charge and the contents thereof are the same as described in § 101.2. In some cases, at the time of the investigation of the charge, there may be pending a representation petition involving the employees of the employer named in the charge. In those