

Hearings

a. DLR Staff Assigned to the Case

The Hearing Officer initially assigned to investigate the Petition processes the case through the Hearing. In addition, in most cases, the DLR assigns a mediator to meet with the parties in a continued effort to assist the parties in reaching a Consent Election Agreement.

b. Pre-Hearing

The Hearing Officer holds a pre-hearing conference (Conference) to ensure that the parties litigate the issues as efficiently as possible. At the Conference, the Hearing Officer discusses potential issues, including all possible stipulated facts and joint exhibits. The parties are strongly encouraged to agree to as many facts in the form of stipulations as possible. The parties should be able to agree to all facts that are not in dispute.

c. Role of the Hearing Officer

The Hearing Officer's role is to guide, direct, and control the presentation of evidence at the Hearing. It is also the Hearing Officer's job to keep the record as concise and complete as possible. The Hearing Officer calls and questions witnesses; introduces or requires the parties to produce relevant documentary evidence; solicits stipulations from the parties; takes administrative notice of evidence in related proceedings before the DLR; and excludes unnecessary evidence.

The role and authority of the Hearing Officer is detailed in 456 CMR 14.08(4)(c).

d. Nature of the Hearing

The Hearing is an investigatory hearing to enable the CERB to determine whether the petitioned-for unit is an appropriate unit under the Law. Although it is investigatory in nature and not adjudicatory, it is a formal proceeding and many of the unfair labor practice hearing procedures apply. It is open to the public.

e. Order of Presentation

There is no set order of presentation. In most cases, the employer proceeds first, since it can provide an overview of its operations that may be helpful to the Hearing Officer and

to the parties. If the parties are unable to agree on the order of presentation, the Hearing Officer directs the order of testimony.

f. **Written Briefs**

The parties generally file written briefs after the conclusion of the Hearing. The briefs must be submitted within ten days after the close of the hearing. Requests for additional time to file briefs are granted only in extraordinary circumstances or to permit parties an opportunity to obtain a recording of the hearing, provided that the time period for filing briefs, including any extensions that are permitted do not exceed 21 days.

Post-Hearing

a. **The Record**

The investigatory hearing record includes the Petition, Notice of Hearing, Motions, Rulings and Orders, digital recording or computer disc of the recording, stipulations, exhibits, and documentary evidence.

b. **Hearing Officer Report to the CERB**

Generally, within 30 days of the parties submitting their briefs, the Hearing Officer meets with the CERB to inform the CERB of the factual findings ascertained during the Hearing.

c. **The Decision**

The CERB issues its decision generally within 30 days of receiving the Hearing Officer's factual findings. The CERB bases its decision on the Hearing Officer's report and the Hearing Record. The CERB decides to dismiss the Petition or to direct an election by secret ballot among the employees in a bargaining unit determined to be appropriate.

d. **There is no Judicial Review of Representation Decisions**

CERB representation decisions are not adjudicatory and are not subject to judicial review. Therefore, an employer that wishes to challenge the CERB's decision in a representation case must do so by refusing to bargain and raising the issue as a defense to a prohibited practice charge.