



MERO

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

**PROCEDURES MANUAL
FOR PROCESSING REPRESENTATION CASES UNDER
THE MASHANTUCKET PEQUOT LABOR RELATIONS LAW**

- 1.0 Introduction**
- 2.0 Filing a Representation Case**
- 3.0 Initial Representation Case Processing**
- 4.0 Processing Beyond Initial Investigation**
- 5.0 MERO Board or Special Master**
- 6.0 Elections**
- 7.0 Post-Election Challenges and Objections**
- 8.0 Appeals**
- 9.0 General Provisions Applicable to All Cases**
- 10.0 Concurrent Representation and Prohibited Practice Cases**
- 11.0 Representation Case Manual Amendments**

1.0 Introduction

This manual will set forth the procedures of the Mashantucket Employment Rights Office (MERO) for processing representation cases brought pursuant to §§ 12 and 13 of the Mashantucket Pequot Labor Relations Law (MPLRL), 32 M.P.T.L., Ch. 1.

2.0 Filing a Representation Case

2.1 Who May File a Representation Case

2.1.1 RC Petition: Any labor organization (See, MPLRL § 4(h)) may file a petition for certification under § 12 of the MPLRL, 32 M.P.T.L., Ch. 1.

2.1.2 RD Petition: Any Tribal employee(s) (See, MPLRL § 4(b)) or labor organization (See, MPLRL § 4(h)) may file a petition for decertification under § 13 of the MPLRL, 32 M.P.T.L., Ch. 1.

2.1.3 RM Petition: Any Tribal employer (See, MPLRL § 4(a)) may file an RM petition.

2.1.4 UD Petition: Any Tribal employee(s) (See, MPLRL § 4(b)) in a bargaining unit covered by a collective bargaining agreement that includes a union security provision may file a petition seeking to rescind the authority for the union security provision under § 12 of the MPLRL, 32 M.P.T.L., Ch. 1.

2.1.5 UC Petition or AC Petition: Either a Tribal employer (See, MPLRL § 4(a)) or a labor organization (See, MPLRL § 4(h)) may file a petition for unit clarification or amendment of a certification with respect to an existing bargaining unit.

2.2 What Must be Filed

In each representation case, a fully completed Petition Form (MERO Form 32-2010) bearing the original signature of the petitioner or petitioner's authorized representative must be filed. The petition should clearly indicate the party filing it in addition to the representative signing it. The petitioner must make a good faith effort to provide all requested information as specified on the form. In RC cases, the petition must include a description of the proposed bargaining unit, including a designation of each job category or position the petitioner seeks to include in the bargaining unit.

Petition Form 32-2010 is available on the MERO website, which may be accessed through www.mptnlaw.org, or from the MERO Director upon request. The MERO Director may provide pre-filing assistance to the petitioner.

2.2.1 RC petition: A petition requesting a certification election must be accompanied by a showing of interest consisting of a petition or individual authorization cards bearing the signatures of thirty percent (30%) of the Tribal employees in the proposed bargaining unit. See also, § 2.4 of this Manual.

2.2.2 RD petition: A petition seeking decertification of an incumbent union must be accompanied by a showing of interest consisting of a written request for a decertification election signed by thirty percent (30%) of the Tribal employees in the bargaining unit. See also, § 2.5 of this Manual.

2.2.3 RM petition: A petition filed by an employer to determine if a union should be certified must be accompanied by proof of demand for recognition made by a labor organization upon the Tribal employer.

2.2.4 UD petition: A petition seeking to rescind authorization for a union security provision in a collective bargaining agreement must be accompanied by a petition signed by thirty percent (30%) or more of the Tribal employees in an existing bargaining unit covered by a collective bargaining agreement containing a union security clause, stating that they desire that the authorization to enter into the union security clause be rescinded. See also, § 2.5 of this Manual.

2.2.5 UC or AC petition: A petition seeking to clarify or amend an existing bargaining unit must be accompanied with a statement attached to the Form 32-2010 petition explaining the basis for the requested clarification or amendment.

2.3 Where a Representation Case Must be Filed

A representation case must be filed with the MERO Director. The Form 32-2010 petition received by the MERO Director must bear an original signature.

2.4 When a Representation Case May be Filed

In addition to completing the Form 32-2010 and gathering the appropriate showing of interest or other required documentation, there may be time constraints for filing a petition. The primary permissible time periods for filing a petition are addressed below, however, circumstances may permit the filing of a petition at other times. Potential petitioners are encouraged to contact the MERO with any questions about appropriate filing periods.

2.4.1 RC Petition: Generally, an RC petition may be filed at any time for an unrepresented group of Tribal employees.

2.4.2 RD Petition: Generally, a petition to decertify an incumbent union may be filed only at the following times: (1) If there is a collective bargaining agreement in place with a term of three years or less, 45-90 days prior to the expiration of the agreement; (2) If there is a collective bargaining agreement in place with a term in excess of three years, any time after the third year of the contract; or (3) after an agreement expires but before a new one is agreed upon. (See, MPLRL § 13)

2.4.3 RM Petition: Generally, an RM petition may be filed only if a Tribal employer has received a demand for recognition made by a labor organization or the Tribal employer's has evidence of objective considerations that support the petition.

2.4.4 UD Petition: Generally, a UD petition may be filed at any time that a union security provision is in effect in a collective bargaining agreement.

2.4.5 UC Petition or AC Petition: Generally, a UC petition may be filed only if an existing bargaining unit requires clarification and an AC petition may be filed only if a party seeks to amend an existing bargaining unit.

2.4.6 Twelve Month Limitation: Elections pursuant to RC, RM or RD Petitions may not be directed or held within twelve months of a prior election pursuant to an RC, RM or RD petition within the same bargaining unit. (See, MPLRL § 12(f))

2.5 Submission to the MERO of the Showing of Interest or Other Accompanying Documentation

The showing of interest or other accompanying documentation described in Section 2.2 of this Manual must be submitted with the Form 32-2010 petition, within 48 hours of filing of the Form 32-2010 petition or within such additional time as permitted by the MERO Director. Docketing and processing of a petition may be held in

abeyance until such time as the showing of interest or other requisite accompanying documentation is received.

The showing of interest (RC or RD cases) or petition (UD cases) required to accompany Form 32-2010 must include an appropriate statement supporting the petition, bear original signatures and dates that are current, and be accompanied by a typewritten or clearly handwritten, alphabetized listing of the names appearing on the showing of interest or petition. Interested individuals are invited to contact the MERO for assistance with an appropriate statement supporting the type of petition the individual is interested in filing.

2.6 Notifying Other Parties in Interest

A copy of the Petition Form (MERO Form 32-2010) must be delivered by the petitioner to the other party or parties in interest to the proceedings for receipt by the party or parties on the same date as the submission of the forms to the MERO. The parties in interest for particular types of cases are identified below.

Important: Only the Petition Form (MERO Form 32-2010) is required to be served. A copy of the showing of interest (or petition signed by employees in UD cases) is not required to be served on any other party or parties in interest.

2.7 Amendment or Withdrawal of Petition

Any RC or RD petition may be amended, in whole or in part, by the petitioner or the MERO, or withdrawn by the petitioner, prior to an election being held, upon such conditions as the MERO Director (if prior to referral to the MERO Board or Special Master) or the MERO Board or Special Master, as applicable, may deem proper and just.

3.0 Initial Representation Case Processing

3.1 When a Representation Case is Filed

Upon receipt of a properly completed Form 32-2010 petition and showing of interest or other supporting documentation as required, the MERO Director shall assign a MERO docket number to the petition and note the date of filing. If the submission to the MERO is incomplete or not properly completed, the MERO Director may return the form to the petitioner and decline to docket the case until such time as a fully completed form is provided by the petitioner.

3.2 Creating the Case File

The MERO Director shall create a case file for each representation case. The case file shall include copies of all documents sent and received in the case, including

correspondence, MERO forms, notes of oral communications, printed copies of emails, faxes and other documents.

Each case file should contain a contact information sheet (MERO Form 32-0100) containing the names, addresses, telephone numbers, and other contact information for the parties and their representatives.

3.3 Initial Investigation of Petition

After a petition is filed, the MERO Director, or his/her designee, may communicate with interested parties for the purpose of ascertaining the facts and the parties' positions on the petition.

The purpose of the initial investigation shall be to narrow any issues that may need to be decided by the MERO Board or Special Master, as applicable, assist the parties in developing an agreement for an election, or otherwise effectuate the purposes of the MPLRL. In conjunction with or after referral, the MERO Director will forward relevant information to the MERO Board or Special Master, as applicable.

3.4 Verification of Showing of Interest

The Tribal employer may be required to submit an alphabetized payroll list, including the positions held by employees, for the purpose of a check of the showing of interest. The payroll list will be considered confidential and will not be disclosed to other parties to the proceeding or to the public.

Factors to be considered in determining the validity of a showing of interest include, without limitation:

- Whether the names on the showing of interest appear on the payroll list.
- Whether the dates of signatures are current.
- Whether there is any evidence of forgery or fraud on the face of the showing of interest.
- Whether the requisite 30% showing of interest for the proposed or actual bargaining unit was provided.

Results of the review of the showing of interest are recorded on a Verification of Showing of Interest form. (MERO Form 32-2202) During the review process, additional information may be requested from the parties, including an additional showing of interest from the petitioner, in an effort to resolve any showing of interest issue. Review of the showing of interest and certification of compliance with the MPLRL on Form 32-2202 by the MERO Director or the Chair of the MERO Board shall constitute verification by the MERO Board or Special Master, as applicable, pursuant to the MPLRL, provided that if the showing of interest is found not to be in compliance with the MPLRL, the full MERO Board or special master, as applicable, shall review the showing of interest for compliance upon request of the petitioner.

4.0 Processing Beyond Initial Investigation

4.1 Requesting and Appointment of a MERO Board

Step 1: Any party may request a three-member MERO Board by submitting a completed Form 32-0300 (Request for Three-Member MERO Board), which must be received by the MERO Director within five (5) days of the filing of the petition and served by the requesting party upon the other party or parties, via hand delivery, electronic mail or facsimile transmission, on the same date.

Step 2: Within five (5) days of a party's submission of a completed Form 32-0300 to the MERO Director, the parties must submit to the MERO Director a completed Form 32-0310 (Appointment by Party of MERO Board Member) and a Form 32-2115 (Certification for Appointment to MERO Board) completed by the party's appointee. Forms 32-0310 and 32-2115 are not required to be served upon the other party or parties.

Step 3: Upon receipt of the parties' properly completed Forms 32-0310 and 32-2115, the MERO Director will issue Form 32-0315 (Notification of Party-Appointments to MERO Board) advising the selected Board Members of their appointments. Party representatives will be provided a copy of the Form 32-0315.

Step 4: Within five (5) days of the MERO Director's issuance of Form 32-0315, the MERO Board Member appointees must complete and return to the MERO Director Form 32-0320 (Designation of MERO Board Presiding Officer) advising of the status of selection of the third MERO Board member, who would serve as the presiding officer of the MERO Board. If so indicated on the Form 32-0320, the MERO Director shall request from the American Arbitration Association (AAA) a random panel of seven (7) labor arbitrators who are members of the National Academy of Arbitrators. Within five (5) days of receipt of the list, the MERO Board Member appointees shall select the Board's presiding officer from among the seven (7) names received and submit completed Form 32-0320 to the MERO Director. The MERO Director may accept alternative reliable means of notification from MERO Board members.

Under any of the following circumstances, the MERO Director may request from AAA a random panel of seven (7) labor arbitrators who are members of the National Academy of Arbitrators and appoint a MERO Board member from the list:

- If a party fails to submit Forms 32-0310 or 32-2115 in accordance with Step 2.
- The MERO Board members do not submit Form 32-0320 timely or fail to select a presiding officer as set forth in Step 4.

The MERO Director may take any other actions in his/her discretion to advance the processing of the petition.

Step 5: The MERO Director will issue Form 32-0360 (Referral of Case to MERO Board). The parties or their representatives will receive notice of the referral.

4.2 Challenge to Party Appointment

Any objection to a party's selection for appointment to a MERO Board must be submitted in writing to the MERO Director no later than five (5) days after the MERO's issuance of Form 32-0360 and must include the legal and factual basis for objection. Failure to timely file an objection will be considered a waiver of the party's right to object on any basis the party knew or should have known at the time.

4.3 Referral to Special Master

If neither party timely requests a MERO Board, the MERO Director shall refer the case to the Tribal Court for adjudication before a Special Master pursuant to the MPLRL, Section 7, by issuing Form 32-0365 (Referral of Case to Tribal Court). The parties or their representatives will receive notice of the referral.

4.4 Agreement of the Parties

During the initial investigation of the petition, the MERO Director will obtain information and work with the parties to determine if an agreement for an election would be acceptable to both parties, and if so, assist in developing the terms of an election agreement. A stipulated election agreement must be approved by the MERO Board or Special Master. The MERO Board or Special Master may delegate approval authority to the MERO Director.

5.0 MERO Board or Special Master

5.1 General Duties

The MERO Board or Special Master, as applicable, shall determine the parameters of processing the petition in accordance with the MPLRL, which may include, without limitation:

- Determining whether the MERO has jurisdiction;
- Assessing whether the petition, showing of interest, and/or other documentation or pre-requisites to proceeding meet all applicable requirements;
- Reviewing and deciding any issues raised by any parties in interest, including appropriate bargaining unit determinations;
- If applicable, overseeing the conduct of a secret ballot election;
- Reviewing and deciding any post-election issues.

The MERO Board or Special Master, as applicable, may gather information and perform its functions through investigation, evidentiary hearings or in such other manner

deemed appropriate under the circumstances. Administrative, investigative or other duties may be delegated to the MERO Director. If an evidentiary hearing is held, the MERO Director shall receive notice and the MERO Director, or his/her designee, shall appear at the hearing to serve as a resource for the MERO Board with respect to interpretation of, and legal developments under, the MPLRL.

The duties of the MERO Board or Special Master are to be carried out expeditiously. The MERO Director shall be available to assist the MERO Board or Special Master in expediting processing of the case. If an election is determined to be appropriate, the election should be held as soon as feasible after the filing of the petition.

5.2 Conduct of Hearings

Any hearings conducted by a MERO Board shall include the following procedures:

- Written notice of hearing provided to the parties in interest;
- Right to be represented by legal counsel at the party's own expense;
- Notice of rules or regulations governing the hearing;
- An opportunity for all parties in interest to appear, present evidence, and examine and cross-examine witnesses;
- A transcription of the proceedings;
- An opportunity for the parties to submit briefs.

Hearings shall be conducted in a manner to minimize delay while affording all parties an opportunity to be heard. The MERO Board is not required to follow the Mashantucket Rules of Civil Procedure or any special procedures adopted by the Tribal Court for Special Masters. The presiding officer of the MERO Board shall rule on all pre-hearing and hearing objections and motions. Appeal of an adverse ruling may be made before the close of the hearing to the full three (3) member Board, whose decision by majority vote shall be rendered prior to the close of the hearing.

Absent unusual circumstances, any pre-election hearing should be scheduled within ten (10) days of the issuance of the Form 32-0360 referral of the petition and limited to one (1) day of hearing; post-hearing briefing schedules should not exceed five (5) days; and a written decision should be rendered within ten (10) days of the close of the hearing.

Any hearing conducted by the Special Master shall be conducted in accordance with any special procedures the Tribal Court may adopt for claims to be heard by a Special Master or, in the absence of such procedures, in accordance with the Mashantucket Pequot Rules of Civil Procedure.

Neither the MERO Director nor any agent of the MERO may be required to testify at a hearing and are not permitted to testify at a hearing without the written consent of the MERO Director.

5.3 MERO Board or Special Master Decisions

Decisions by a MERO Board must be by a majority of the MERO Board. Written decisions must be signed by all members of the Board.

If a MERO Board directs that an election be held, the written decision shall include, without limitation, the following:

- Findings of fact to support jurisdiction under the MPLRL, including Tribal employer and labor organization status issues;
- Certification that the petition and the showing of interest or other required submissions comply with the MPLRL and this Manual;
- Identification of the bargaining unit, including any exclusions not specified in the MPLRL and in accordance with the considerations set forth in the MPLRL;
- Resolution of any voter eligibility issues raised by the parties or identified by the MERO Board, or deferral of the eligibility issue to the voter challenge procedure;
- Arrangements for the election, including the date(s), time(s) and place(s), or an order delegating to the MERO Director the authority to determine the arrangements in consultation with the parties. In determining the arrangements for an election, consideration should be given to maximizing voter participation while limiting potential interference in the conduct of the election by any party to the proceeding. An election may not be scheduled earlier than fifteen (15) calendar days from the date of the MERO Board's decision.

Any party or the MERO Director may seek clarification of a decision of a MERO Board by submission of a Request for Clarification within two (2) calendar days of the issuance of the MERO Board's decision, with delivery to the other parties on the same date. The MERO Board shall provide a written response to any Request for Clarification within five (5) calendar days of receipt of the request.

Any decision by the Special Master shall be issued in accordance with any special procedures the Tribal Court may adopt for claims to be heard by a Special Master or, in the absence of such procedures, in accordance with the Mashantucket Pequot Rules of Civil Procedure.

5.4 MERO Board Costs and Fees

The costs and fees associated with a MERO Board processing a representation case are borne equally between the parties. Each party is responsible for payment of the costs and fees associated with that party's appointee, as well as any costs and fees specific to that party. The parties are equally responsible for the costs and fees associated with the retention and service of the Presiding Officer, as well as any costs and fees associated with the overall proceedings, including without limitation any hearing transcripts and administrative support required by the MERO or the MERO Board for processing the Petition.

Invoices will issue through the MERO Director and payment must be made within ten (10) days after receipt. If timely payment is not received, the MERO Board may defer further processing of a case or take other appropriate action until payment is made, unless such deferral or other action would be deemed by the MERO Board to be prejudicial to one of the parties to the proceeding.

5.5 Representation Case Records

Representation case documents and other records must be transmitted to the MERO director within two (2) days of the close of a case or notice of an appeal. Representation case records may be transmitted to the MERO Director at such other times as deemed appropriate by the MERO Board or Special Master. Completed Form 2450 (Report of MERO Board) should accompany any transmission of records from the MERO Board.

6.0 Elections

6.1 Voter Eligibility List

Within three (3) calendar days of approval of a stipulated election agreement or decision of a MERO Board or Special Master directing an election, the Tribal employer shall submit to the MERO Director a list of names and home addresses of all employees within the bargaining unit. The MERO Director shall forward the voter eligibility list to the labor organization (and the employee petitioner, if applicable) for receipt at least ten (10) days prior to the date of the election.

Employees eligible to vote in an election shall be those employees in the defined bargaining unit on the Tribal employer's payroll ending immediately prior to (1) the date of approval by the MERO Board or Special Master of a stipulated election agreement or (2) the date of the MERO Board or Special Master decision directing an election.

6.2 Election Notices

The MERO Director shall provide to the Tribal employer notices for posting in conspicuous places where they are likely to be seen by employees eligible to vote in the

election. The notice shall include a sample ballot and summary of employee rights to vote in a secret ballot election free from interference, restraint or coercion by the labor organization or Tribal employer. Notices should be posted as directed, and no later than midnight three (3) work days prior to the election.

6.3 Conduct of Elections

Elections shall be conducted by secret ballot in a manner consistent with the MPLRL and any applicable order of a MERO Board or Special Master. The election shall be conducted in a manner that would minimize the possibility of voters being subjected to intimidation, interference, restraint, coercion, or campaigning in or around the polling area(s).

The MERO Board or Special Master may delegate the conduct of the election to the MERO Director.

6.4 Party Observers

The parties may each have an observer present at the polling station(s). The observers must appear at the polling site one half hour prior to the opening of the polls to receive instructions. The observer is to make certain all eligible voters who appear at the polls during the polling times have an opportunity to cast a secret ballot vote in the election. The observers will have access to the list of voters and will be asked to indicate on the list when an individual has appeared to vote. The observer also may challenge voters.

Party observers may be eligible voters, non-supervisory employees of the Tribal employer or other individuals. Party observers may not be supervisory employees of the Tribal employer. If an observer is a voter, the observer may vote during the polling period. The selection of a party of an observer who may be considered intimidating, coercive or otherwise inappropriate under the circumstances may be grounds for a post-election objection.

6.5 Ballots

Election ballots shall be provided by the MERO. No substitutions will be considered valid.

6.6 Voter Challenges

The MERO Director shall develop guidelines and procedures for challenging voters during the election under appropriate circumstances. The challenged votes shall be resolved only if they may be determinative of the results of the election.

6.7 Election Results

Except where the ballots are impounded or where other circumstances warranting deferral of the count as determined by the MERO Director, MERO Board or Special Master, as applicable, the votes shall be counted at the election site after the close of the election polls. A representative of each party may be present for the count of the ballots. The individual(s) conducting the election on behalf of the MERO determine(s) if any others may be present.

A majority (fifty percent plus one) of the valid votes cast in an election are required to prevail on the ballot question. Absent determinative challenges or the filing of timely objections, the final results of the election shall be issued within fifteen (15) days of the election.

7.0 Post-Election Challenges and Objections

7.1 Determinative Challenges

Within ten (10) days of the date of the election, each party may submit to the MERO Director its written position with respect to any determinative challenges. Determinative challenges and any submissions of the parties will be referred to the MERO Board or Special Master.

7.2 Objections

If any party advances a good faith reason to believe that the election was not conducted in a fair and impartial manner or that fraud or prohibited practices affected the outcome of the election, the party may file written objections within ten (10) days of the date of the election. The objections must specify with particularity each basis upon which the party alleges the election was objectionable.

7.3 Processing of Challenges and Objections

Determinative challenges and/or objections may be resolved through investigation, hearing or any other manner determined by the MERO Board. Section 5 of this Manual is applicable.

7.4 Decisions on Challenges and Objections

The MERO Board's written decision on determinative challenges or post-election objections should include the following:

- Identification of the issues in dispute;
- Determination of the issues in dispute;

- An appropriate remedy, which may include counting impounded or challenged ballots, revising the results of the election, ordering a re-run election, dismissing objections, or dismissing the petition.

8.0 Appeals

Decisions of a MERO Board or Special Master, as applicable, may be appealed to the Tribal Court. When an appeal is filed, the MERO Director shall transmit Form 2180 (Motion for Adoption of MERO Board Decision) or take such other action he/she deems appropriate under the circumstances.

If an appeal is being taken to a decision directing an election, the appealing party must notify the MERO Director at least five (5) days prior to the election date. Absent an order from the MERO Board or Special Master prior to the election, the MERO Director shall determine any appropriate action with respect to the scheduled election, which may include postponing the election or impounding the ballots at the election until such time as the appeal is resolved.

On appeal, the Tribal Court shall adopt the decision of the MERO Board or Special Master unless it determines by clear and convincing evidence that the decision resulted from fraud or bias or is in direct conflict with Tribal law. The Tribal Court's decision is final, with no right of further appeal.

9.0 General Provisions Applicable to All Cases

9.1 Parties' Cooperation

A party's failure to cooperate with the MERO in the processing of a representation case may result in an adverse inference or adverse finding against the uncooperative party.

9.2 Time Calculations

When the MPLRL or this manual provide for a time period of ten (10) days or less, weekends and Tribal holidays shall be excluded. Any time period in excess of ten (10) days shall include weekends and holidays. The date of filing or notice from which a time period begins to run is not counted.

9.3 Filing of Documents with the MERO

Unless otherwise specified in the MPLRL or this Manual or specifically directed by a MERO Board or Special Master (including as may be provided by any special procedures the Tribal Court may adopt for claims to be heard by a Special Master or, in the absence of such procedures, in accordance with the Mashantucket Pequot Rules of Civil Procedure), all documents permitted or required to be filed with the MERO, including a MERO Board, or Special Master, must be filed with the MERO Director.

9.4 MERO Director's Notice to Interested Parties

Notwithstanding the obligation of any party to notify any other parties of filings with the MERO, the MERO Director shall take reasonable and appropriate measures to notify the parties in interest of such filings.

9.5 Methods of Delivery

Unless otherwise specified, any reliable delivery method is acceptable for the delivery of documents to the MERO, including facsimile and e-mail. Unless otherwise specified, acceptable methods of delivery to and between parties include any reliable methods under the circumstances, which may include facsimile and e-mail.

9.6 Communicating with Parties

If an attorney or representative has entered a notice of appearance (Form 1001) on behalf of the party, all communications to/with the party will be to/with the attorney or representative of record.

9.7 Extensions of Time

Any request for extension of time must be submitted to the MERO Director. The party making the request must make reasonable efforts to secure the position of the other parties in interest and represent to the MERO Director when making the request either the positions of other parties or efforts to secure the positions to the extent said efforts were unsuccessful. Any request for an extension of time, including a multi-party request, will be denied if a determination is made that delay would not effectuate the purposes of the MPLRL.

9.8 Information and Witnesses

At the request of a party, MERO Board or Special Master, the MERO Director may require the submission of documents or attendance of witnesses to obtain information relevant and necessary to the processing of a case through the issuance of subpoenas or in any other manner consistent with the MERO Director's authority.

9.9 Public Documents

Representation case documents available to the public shall be limited to the petition, any amended petition, any publicized order or decision, and any final election results.

The MERO Director shall maintain a database of representation case decisions and shall make the decisions reasonably available to the public.

10.0 Concurrent Representation and Prohibited Practice Cases

10.1 Concurrent Cases Generally.

When a prohibited practice charge is filed before or after the filing of a representation petition but prior to an election, and the prohibited practice charge alleges conduct that, if proven, would interfere with employee free choice in an election, a determination is required as to whether the processing of the petition shall be affected.

10.2 Options for Processing Representation Case

Processing of the representation petition would not be affected if (a) the petitioner files a written request that the representation petition proceed notwithstanding the prohibited practice charge and the request is deemed appropriate under the circumstances or (b) processing the petition is deemed appropriate under the circumstances regardless of whether a written request to proceed has been filed.

A representation petition that is determined to be affected by the filing of a prohibited practice charge is subject to partial processing and being held in abeyance pending disposition of the prohibited practice case. Partial processing may include, but is not limited to the following:

- Docketing and determining jurisdiction and the adequacy of the showing of interest;
- Holding a pre-election conference, hearing or other pre-election processing;
- Determining all election arrangements but postponing the date of the election;
- Holding the election as scheduled but impounding the ballots.

In addition, in certain circumstances, such as when a prohibited practice charge is filed so close in time to an election that adequate consideration of the concurrent case issue is not feasible, the election may be conducted, the tally of ballots issued, and, in the absence of objections, a certification of representative or results issued notwithstanding the prohibited practice charge.

10.3 Determining Effect of Charge Allegations on Representation Case Processing

In determining the extent to which a representation petition shall be processed after the filing of a prohibited practice charge, the MERO Board, Special Master or MERO Director, as applicable, must decide whether employees would be able to exercise their free choice in an election notwithstanding the alleged prohibited practices. Factors that shall be considered include, but are not limited to the following:

- Whether the representation case petitioner submits a written request to proceed with the representation case;
- Comparison of the timing of the conduct alleged in the charge, the filing of the charge and the filing of the petition;
- The scope and character of the conduct alleged in the charge;
- The number of employees in the petitioned for bargaining unit directly affected by the conduct alleged in the charge and the degree of likely or actual dissemination of the conduct;
- The size of the petitioned for bargaining unit relative to the number of employees involved in, or affected by, the conduct alleged;
- Whether the employees in the petitioned for bargaining unit were targets of the alleged conduct or bystanders to the alleged conduct;
- The relationship between the charging party and the petitioner;
- The showing of interest presented by the petitioner;
- The entitlement and interest of employees in the petitioned for bargaining unit in an expeditious expression of their preference regarding representation;
- The timing of the filing of the charge relative to a scheduled pre-election hearing or scheduled election.

Generally, if the implications of the prohibited practice charge go beyond the employees' right to a free and fair election, such as implicating the validity of the petition, the representation case should be held in abeyance pending disposition of the prohibited practice charge.

10.4 Filing and Service of a Claim of a Concurrent Prohibited Practice Charge

A claim that a prohibited practice charge is sufficiently related to a representation petition that if proven, the prohibited practice charge conduct would interfere with employee free choice in an election, may be brought at any time prior to an election by submitting a completed and signed MERO Form 2260 (Claim of Concurrent Prohibited Practice Charge) to the MERO.

The completed Form 2260 must be accompanied by a copy of the filed prohibited practice charge at issue and completed prohibited practice intake questionnaire. The completed Form 2260 and accompanying charge and intake questionnaire must be

served on the parties to the representation petition in a manner for receipt by the parties on the same date as the filing with the MERO.

If Form 2260 (Claim of Concurrent Prohibited Practice Charge) is submitted by the petitioner in the representation case, an affirmative response to Question 4 will be considered the petitioner's written submission of a request to proceed with the representation petition processing notwithstanding the prohibited practice charge.

10.5 Party Submissions of Support for Positions

The parties to the representation petition may file evidence, factual assertions and/or arguments in support of their positions regarding the implications of the prohibited practice charge on the representation case processing. Party submissions must be received by the MERO within five (5) calendar days of the filing of the Claim of Concurrent Prohibited Practice Charge, except that if the Claim of Concurrent Prohibited Practice Charge is filed within ten (10) calendar days of a scheduled hearing or scheduled election, the party submissions must be received within three calendar days or such other period of time as specified by the MERO.

10.6 When a Determination is Required

In addition to determining the effect of a prohibited practice charge on the processing of a representation petition after a Claim of Concurrent Prohibited Practice Charge is filed, any determination shall be re-considered, as necessary and at such times as determined by the MERO Board or Special Master, including under the following circumstances:

- If processing of the representation petition is based, in part, on the petitioner submitting a written request to proceed, and the petitioner subsequently revokes its request;
- Upon receipt of evidence or a finding of no causal relationship between the prohibited practice charge conduct and the representation petition;
- Submission of confirmation of withdrawal or dismissal of the prohibited practice charge;
- Changed circumstances are found based on the investigation of the prohibited practice charge or otherwise;
- At the request of a party to the representation case;
- At such other times deemed appropriate by the MERO, MERO Board or Special Master.

10.7 Limitation on Authority

The Special Master or MERO Board, as applicable, shall determine the effect of the prohibited practice charge on the processing of the representation petition, except that if the prohibited practice charge is filed prior to the representation petition being referred to the Special Master or MERO Board, as applicable, the MERO Director may determine the effect of the prohibited practice charge on the processing of the representation petition.

Any findings of fact or conclusions of law made in the representation petition case have no force or effect in the prohibited practice case unless and until adopted in a written decision of the prohibited practice case MERO Board or Special Master. Contents of the prohibited practice case file are not available to the representation case MERO Board or Special Master.

10.8 Form and Service of Determinations

Any determination with respect to the processing of the representation petition due to a concurrent prohibited practice charge must be in writing, signed by the MERO Board, Special Master or MERO Director, as applicable, and delivered by the MERO to the parties to the representation case.

11.0 Representation Case Manual Amendments

This Representation Case manual may be amended from time to time at the MERO Director's discretion.