

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**KIMPTON HOTEL & RESTAURANT GROUP,  
LLC & KHRG EMPLOYER, LLC, DBA HOTEL  
BURNHAM & ATWOOD RESTAURANT**

**and**

**Case 13-CA-141211**

**UNITE HERE LOCAL 1**

**KIMPTON HOTEL & RESTAURANT GROUP,  
LLC & MH LODGING, LLC, DBA HOTEL  
MONACO & SOUTH WATER KITCHEN**

**and**

**Case 13-CA-141268**

**UNITE HERE LOCAL 1**

**ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND  
NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board), and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 13-CA-141211, which is based on a charge filed by UNITE HERE Local 1 (the Union), against Kimpton Hotel & Restaurant Group, LLC & KHRG Employer, LLC, d/b/a Hotel Burnham & Atwood Restaurant (Hotel Burnham), and Case 13-CA-141268, which is based on a charge filed by the Union against Kimpton Hotel & Restaurant Group, LLC & MH Lodging, LLC, dba Hotel Monaco & South Water Kitchen (Hotel Monaco) (collectively, Respondents), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations and alleges Respondents have violated the Act as described below.

**I**

(a) The charge in Case 13-CA-141211 was filed by the Union on November 17, 2014, and a copy was served on Hotel Burnham by U.S. mail on November 19, 2014.

(b) The first amended charge in Case 13-CA-141211 was filed by the Union on December 1, 2014, and a copy was served on Hotel Burnham by U.S. mail on December 1, 2014.

(c) The second amended charge in Case 13-CA-141211 was filed by the Union on February 20, 2015, and a copy was served on Hotel Burnham by U.S. mail on February 23, 2015.

(d) The charge in Case 13-CA-141268 was filed by the Union on November 17, 2014, and a copy was served on Respondent by U.S. mail on November 20, 2014.

(e) The first amended charge in Case 13-CA-141268 was filed by the Union on December 1, 2014, and a copy was served on Respondent by U.S. mail on December 1, 2014.

(f) The second amended charge in Case 13-CA-141268 was filed by the Union on February 20, 2015, and a copy was served on Respondent by U.S. mail on February 23, 2015.

## II

(a) At all material times, Kimpton Hotel & Restaurant Group, LLC has been a limited liability company with an office and place of business in Chicago, Illinois, among other places, and has been engaged in the business of operating hotels and restaurants.

(b) At all material times, Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common insurance, purchasing and sales; and have held themselves out to the public as a single-integrated business enterprise.

(c) Based on its operations described above in paragraph II(b), Respondents constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(d) During the past calendar year, a representative period, Respondents, in conducting the business operations described above in paragraph II(a), derived gross revenues in excess of \$500,000.

(e) During the past calendar year, a representative period, Respondents, in conducting the business operations described above in paragraph II(a), purchased and received at its Chicago facility goods valued in excess of \$5,000 directly from points outside the State of Illinois.

(f) At all material times Respondents have been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## III

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

## IV

(a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act):

### Hotel Burnham

Tonya Scott	-	General Manager
Carlos Tahuada	-	Housekeeping
Bill Smith	-	Assistant Manager

Damian Palladino	-	General Manager of the Atwood Restaurant
Brian Millman	-	Head Chef of the Atwood Restaurant Hotel Monaco
Marco Scherer		General Manager
Selwyn (last name unknown)		Housekeeping Manager
Charlotte D'onahue		General Manager of the South Water Kitchen
Roger Waysock		Head Chef of the South Water Kitchen
Nicole Willis		Assistant Manager of the South Water Kitchen
Josh Caldill		Sous Chef at the South Water Kitchen
Jose Ortega		Sous Chef at the South Water Kitchen

(b) About November 14, 2014, Ray Anguiano held the position of Hotel Burnham's bartender and served as a Spanish interpreter and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

(c) About November 17, 2014, Angel Garcia held the position of Hotel Burnham's cook and served as a Spanish interpreter and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

## V

### Hotel Burnham

(a) About November 16, 2014, Hotel Burnham, at Hotel Burnham's facility, by Tonya Scott and Carlos Tahuada interpreting into Spanish:

- (i) in order to dissuade employees from engaging in concerted activities, orally prohibited employees from having materials not relating to Kimpton in any part of the hotel.
- (ii) by telling employees that the Union will not make the rules, informed its employees that it would be futile for them to select the Union as their bargaining representative.

(b) About November 17, 2014, Hotel Burnham, at Hotel Burnham's facility, by Bill Smith and Carlos Tahuada interpreting into Spanish, in order to dissuade employees from engaging in concerted activities, orally promulgated and since then has maintained the rule that employees cannot post any fliers at the hotel nor distribute or sell anything, which includes catalogues or books that are not part of the company.

(c) About November 17, 2014, Hotel Burnham, at Hotel Burnham's facility, by Tonya and Carlos Tahuada interpreting into Spanish:

- (i) in order to dissuade employees from engaging in concerted activities, orally prohibited employees from distributing union fliers in the hotel.
- (ii) threatened employees with discipline if they distribute union fliers.
- (iii) by telling employees that management knows they are requesting the Union and that the Union has visited employees' residences, created an impression

among its employees that their union activities were under surveillance by Hotel Burnham.

- (iv) by telling employees that the Employer doesn't accept unions, informed its employees that it would be futile for them to select the Union as their bargaining representative.
- (v) threatened employees with loss of benefits if they select the Union as their bargaining representative.
- (vi) threatened employees with increased and/or more onerous work if they select the Union as their bargaining representative.
- (vii) threatened employees with layoff if they select the Union as their bargaining representative.
- (viii) threatened employees with termination if employees participate in a strike.
- (ix) solicited grievances from employees and impliedly or otherwise promised to remedy such grievances in order to dissuade them from engaging in concerted activities.

(d) About November or December 2014, a more precise date being presently unknown to the undersigned, Hotel Burnham, at Hotel Burnham's facility, by Carlos Tahuada:

- (i) threatened employees with more onerous work if they select the Union as their bargaining representative.
- (ii) threatened employees that management will look more closely at the work employees perform in order to dissuade them from engaging in concerted activities.
- (iii) threatened employees with discipline in order to dissuade them from engaging in concerted activities.

(e) About November 14, 2014, Hotel Burnham, at Hotel Burnham's facility, by Damian Palladino and Ray Anguiano interpreting into Spanish:

- (i) by telling employees that the Employer will never agree to a Union proposal of free health insurance at no cost for employees, informed its employees that it would be futile for them to select the Union as their bargaining representative.
- (ii) threatened employees, impliedly or otherwise, with closure of the restaurant if they select the Union as their bargaining representative.

(f) On about November 14, 2014, Hotel Burnham at Hotel Burnham's facility by Brian Millman and Ray Anguiano interpreting into Spanish:

- (i) threatened employees, impliedly or otherwise, with layoff if they select the Union as their bargaining representative.

- (ii) threatened employees that terms and conditions of employment, including pay raises, cannot change if they select the Union as their bargaining representative.

(g) On about November 17, 2014, Hotel Burnham at Hotel Burnham's facility by Brian Millman and Angel Garcia interpreting into Spanish:

- (i) by telling employees that the Union will never get in, informed its employees that it would be futile for them to select the Union as their bargaining representative.
- (ii) interrogated its employees about their union membership, activities, and sympathies.
- (iii) in order to dissuade employees from engaging in concerted activities, by making an oral announcement, orally promulgated and since then has maintained the rule that employees cannot talk about the Union in the kitchen during working hours.

(h) In about mid-November 2014 on a more precise date being presently unknown to the undersigned, Hotel Burnham at Hotel Burnham's facility by Brian Millman:

- (i) threatened employees, impliedly or otherwise, with closure of the restaurant if they select the Union as their bargaining representative.
- (ii) in order to dissuade employees from engaging in concerted activities, by making an oral announcement, orally promulgated and since then has maintained the rule that employees cannot talk about the Union while on the clock.

(i) In about mid-November 2014 on a more precise date being presently unknown to the undersigned, Hotel Burnham at Hotel Burnham's facility by Damian Palladino, in order to dissuade employees from engaging in concerted activities, by making an oral announcement, orally promulgated and since then has maintained the rule that employees cannot talk about the Union inside the restaurant.

(j) In about mid-November 2014 on a more precise date being presently unknown to the undersigned, Hotel Burnham at Hotel Burnham's facility by Brian Millman:

- (i) Threatened employees with layoff if they select the Union as their bargaining representative.
- (ii) Threatened employees with loss of benefits if they select the Union as their bargaining representative.

(k) On about November 20, 2014, Hotel Burnham at Hotel Burnham's facility by Damian Palladino, told employees to stop talking about the Union, in order to dissuade employees from engaging in concerted activities.

(l) On about November 22, 2014, Hotel Burnham at Hotel Burnham's facility by Brian Millman, in order to dissuade employees from engaging in concerted activities, orally prohibited employees from talking with other employees about the Union .

(m) On about December 1, 2014, Hotel Burnham at Hotel Burnham's facility by Brian Millman, solicited signatures from employees who no longer want the Union for purposes of representation by circulating an anti-union petition.

#### Hotel Monaco

(n) About October 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Marco Scherer and Selwyn interpreting in Spanish, asked employees to report their union activities to the Employer.

(o) About October 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Marco Scherer and Selwyn interpreting into Spanish, solicited grievances from employees and impliedly or otherwise promised to remedy such grievances in order to dissuade them from engaging in concerted activities.

(p) About October 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Marco Scherer and Selwyn interpreting into Spanish, threatened employees with loss of benefits if they select the Union as their bargaining representative.

(q) About October 22, 2014, Hotel Monaco at Hotel Monaco's facility by Marco Scherer,

(i) threatened employees that they would be replaced or terminated if they participated in strike activity,

(ii) informed its employees that it would be futile for them to select the Union as their bargaining representative by telling them that the company does not have to negotiate with the Union if employees select the Union as their bargaining representative,

(iii) threatened employees with loss of jobs, wages and benefits if they select the Union as their bargaining representative,

(iv) threatened employees that unspecified terms and conditions of employment will change for the worse if they select the Union as their bargaining representative, and

(v) threatened employees that it would be harder for employees to take time off if they select the Union as their bargaining representative.

(r) About December 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility put up a posting for employees to view:

(i) informing its employees that it would be futile for them to select the Union as their bargaining representative by telling them that the company does not have to negotiate with the Union if employees select the Union as their collective bargaining representative, and

(ii) threatening employees with loss of benefits if they select the Union as their bargaining representative.

(s) About October 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Selwyn, interrogated its employees about their union membership, activities, and sympathies.

(t) About November 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Marco Scherer, in order to dissuade employees from engaging in concerted activities, orally prohibited off-duty employees from being on Hotel Monaco's premises in a non-work area of the hotel despite its past practice of allowing off-duty employees to be present at Hotel Monaco's facility.

(u) About mid-October 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Nicole Willis, threatened employees with loss of unspecified benefits if they select the Union as their bargaining representative.

(v) On about October 20, 2014, Hotel Monaco at Hotel Monaco's facility by Jose Ortega, interrogated its employees about their union membership, activities, and sympathies.

(w) About late-October 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Roger Waysock and Jose Ortega interpreting into Spanish, by telling employees that management knows they are signing up employees for the Union, created an impression among its employees that their union activities were under surveillance by Hotel Monaco.

(x) About mid-November 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Roger Waysock and Jose Ortega interpreting into Spanish, by telling employees that management has people in the hotel and restaurant who will find the people engaging in union activities, created an impression among its employees that their union activities were under surveillance by Hotel Monaco.

(y) About mid-November 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Roger Waysock and Jose Ortega interpreting into Spanish threatened employees with reprisals if they engage in union activities.

(z) On about November 12, 2014, Hotel Monaco at Hotel Monaco's facility by Roger Waysock and Jose Ortega interpreting into Spanish,

(i) created an impression among its employees that their union activities were under surveillance by Hotel Monaco by telling employees that management knows employees are giving out co-worker information to the Union,

(ii) asked employees to report their and/or other employees' union activities to the Employer, and

(iii) threatened employees with unspecified reprisals if they do not report their and/or other employees' union activities to the Employer,

(aa) On about November 14, 2014, Hotel Monaco at Hotel Monaco's facility by Roger Waysock and Jose Ortega interpreting into Spanish,

(i) threatened employees that they could no longer come to management with issues if they select the Union as their bargaining representative,

(ii) threatened employees with closure of the restaurant if they select the Union as their bargaining representative, and

(iii) threatened employees with unspecified reprisals if they gave information concerning their co-workers to the Union.

(bb) In about mid-November 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Jose Ortega, by telling employees he knows who is for the Union, created an impression among its employees that their union activities were under surveillance by Hotel Monaco.

(cc) On about November 29, 2014, Hotel Monaco at Hotel Monaco's facility by Jose Ortega, threatened employees with closure of the restaurant and/or hotel if they select the Union as their bargaining representative.

## VI

(a) About November 21, 2014, Hotel Burnham removed from the schedule its employee, Evan Demma, for the lunch shift.

(b) About late November 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Charlotte D'onahue, directed its employee, Effie Yang, to stop talking to another employee.

(c) About late November 2014 on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Josh Caldill, directed its employee, Effie Yang, to stop talking to another employee.

(d) About mid-November 2014, on a more precise date being presently unknown to the undersigned, Hotel Monaco at Hotel Monaco's facility by Jose Ortega, reduced employee Antonio Lopez's meal benefit.

(e) Respondents engaged in the conduct described above in paragraphs VI(a) through (d) because the named employees of Respondents joined and or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

## VII

By the conduct described above in paragraphs V(a) through (cc), Respondents have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

## VIII

By the conduct described above in paragraph VI, Respondents have been discriminating in regard to the hire or tenure or terms or conditions of employment of their employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

## IX

The unfair labor practices of Respondents described above affect commerce within the meaning of Section 2(6) and (7) of the Act.



## ANSWER REQUIREMENT

Respondents are notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before May 14, 2015, or postmarked on or before May 13, 2015.** Respondents should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

## NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **July 21, 2015 at 10:00 a.m. at 209 South LaSalle Street, Suite 900, Chicago, IL**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondents and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: this 30<sup>th</sup> day of April, 2015

*/s/ Peter Sung Ohr*

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Peter Sung Ohr  
Regional Director  
National Labor Relations Board  
Region 13  
209 S La Salle St Ste 900  
Chicago, IL 60604-1443

Attachments

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**KIMPTON HOTEL & RESTAURANT GROUP,  
LLC & KHRG EMPLOYER, LLC DBA HOTEL  
BURNHAM & ATWOOD RESTAURANT**

**and**

**Case 13-CA-141211**

**UNITE HERE LOCAL 1**

**AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on , I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

Tonya Scott , General Manager  
Kimpton Hotel & Restaurant Group, LLC &  
KHRG Employer, LLC d/b/a Hotel Burnham  
& Atwood Restaurant  
1 W. Washington Street  
Chicago, IL 60602-1603

**CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED**

Brian M. Stolzenbach , Esq., Partner  
Seyfarth Shaw LLP  
131 S. Dearborn Street, Suite 2400  
Chicago, IL 60603-5577

**REGULAR MAIL**

Karla E. Sanchez , Attorney at Law  
Seyfarth Shaw LLP  
131 S. Dearborn Street, Suite 2400  
Chicago, IL 60603

**REGULAR MAIL**

Jordan Fein  
UNITE HERE Local 1  
218 S. Wabash Avenue, Fl 7  
Chicago, IL 60604-2449

**CERTIFIED MAIL**

Kristin L. Martin  
Murphy Anderson PLLC  
595 Market Street, Suite 1400  
San Francisco, CA 94105-2821

**REGULAR MAIL**

**April 30, 2015**

Date

**Denise Gatsoudis, Designated Agent of NLRB**

Name

***/s/ Denise Gatsoudis***

Signature

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

Case 13-CA-141211

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Tonya Scott , General Manager Kimpton Hotel & Restaurant Group, LLC & KHRG Employer, LLC d/b/a Hotel Burnham & Atwood Restaurant 1 W. Washington Street Chicago, IL 60602-1603	Karla E. Sanchez , Attorney at Law Seyfarth Shaw LLP 131 S. Dearborn Street, Suite 2400 Chicago, IL 60603
Brian M. Stolzenbach , Esq., Partner Seyfarth Shaw LLP 131 S. Dearborn Street, Suite 2400 Chicago, IL 60603-5577	Jordan Fein UNITE HERE Local 1 218 S. Wabash Avenue, Fl 7 Chicago, IL 60604-2449
Kristin L. Martin Murphy Anderson PLLC 595 Market Street, Suite 1400 San Francisco, CA 94105-2821	

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in

**evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and will set a deadline for filing, up to 35 days.

### **III. AFTER THE HEARING**

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.