

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

AMERISTAR CASINO EAST CHICAGO, LLC

and

UNITE HERE LOCAL 1

**Cases 13-CA-147013
13-CA-150086
13-CA-151075
13-CA-151766
13-CA-152520
13-CA-152522
13-CA-158952**

**ORDER CONSOLIDATING CASES, FIRST AMENDED 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 the Complaint and Notice of Hearing issued on May 4, 2015, in Case 13-CA-147013 alleging that Ameristar Casino East Chicago, LLC (“Respondent”) had violated the National Labor Relations Act (the Act), 29 U.S.C. § 151 *et seq.*, by engaging in unfair labor practices, is consolidated with Cases 13-CA-150086, 13-CA-151075, 13-CA-151766, 13-CA-152520, 13-CA-152522, and 13-CA-158952, which were filed by UNITE HERE, Local 1 (the Union) and allege that Respondent has engaged in further unfair labor practices within the meaning of the Act.

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 Act (the Act), 29 U.S.C. § 151 *et seq.*, and Section 102.17 of the Board’s Rules and Regulations, and alleges Respondent has violated the Act as described below.

I

The charges in the above cases were filed by the Union, as set forth in the following table, and served upon the Respondent on the dates indicated by U.S. Mail:

| Case Number | Amendment | Date Filed | Date Served |
|--------------------|------------------|-------------------|--------------------|
| 13-CA-147013 | | February 25, 2015 | February 25, 2015 |
| 13-CA-147013 | First Amended | April 30, 2015 | April 30, 2015 |
| 13-CA-150086 | | April 14, 2015 | April 15, 2015 |
| 13-CA-150086 | First Amended | April 27, 2015 | April 28, 2015 |
| 13-CA-151075 | | April 27, 2015 | April 28, 2015 |
| 13-CA-151075 | First Amended | August 28, 2015 | August 28, 2015 |
| 13-CA-151766 | | May 7, 2015 | May 7, 2015 |
| 13-CA-151766 | First Amended | August 28, 2015 | August 28, 2015 |
| 13-CA-152520 | | May 19, 2015 | May 19, 2015 |
| 13-CA-152522 | | May 19, 2015 | May 19, 2015 |

| | | | |
|--------------|---------------|-------------------|-------------------|
| 13-CA-158952 | | August 28, 2015 | August 28, 2015 |
| 13-CA-158952 | First Amended | November 30, 2015 | November 30, 2015 |

II

(a) At all material times, Respondent has been an Indiana limited liability corporation with an office and place of business in East Chicago, Indiana (Respondent's facility), and has been engaged in the operation of a casino, hotel and restaurants.

(b) In conducting its operations during the calendar year ending December 31, 2015, the Employer derived gross revenues in excess of \$500,000, and purchased and received at its East Chicago, Indiana, facility goods and materials valued in excess of \$5,000, directly from points located outside of the State of Indiana.

(c) At all material times the Respondent has 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 Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

| | |
|----------------|---|
| Jill Hornsby | Director of Human Resources |
| Mike Muskin | Vice President of Security Facilities and EVS |
| Mike Levin | Vice President of Hospitality |
| Chris Pellerin | Multi-Outlet Manager |
| Sheila Witak | Restaurant Manager |
| Stoja Tubic | Restaurant Manger |

(b) At all material times, Stephanie Tavarez held the position of Human Resources, Internal Communications Specialist and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

(c) At all material times, an unnamed person held the position of Respondent's attorney and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

V

(a) At all material times since April 7, 2003, Respondent has maintained and distributed to employees at its facility a multi-page Confidentiality – Non-Disclosure Policy (CND Policy), attached hereto as Appendix A.

(b) The CND Policy described above in paragraph V(a) includes provisions which restrict or prohibit employees' ability to engage in union and/or protected activities including their ability to provide the Union with the names of Respondent's customers and to communicate with others about their wages, hours, benefits, and other terms and conditions of employment including the following provisions or restrictions:

- (1) The definition of "Confidential Information" to include any information about Respondent not available to the general public and provided to Respondent's employees by Respondent including without any limitation, operating policies, procedures and practices, and customer information. (Section B(2) of the CND Policy).
- (2) Prohibitions in Section B(1) regarding the disclosure of Confidential Information and the requirement that employees not disclose Confidential Information to any other person or entity without obtaining prior written consent from Respondent.
- (3) Prohibitions in Section B(3) regarding the disclosure of Confidential Information and the requirements that prior to its disclosure employee must "have been advised by legal counsel in a written opinion that such disclosure is necessary to comply with applicable law or regulations; provided that you shall give [Respondent] reasonable advance written notice of such proposed disclosure, and you shall use your best efforts to secure confidential treatment of any such Confidential Information and shall advise [Respondent] in writing of the manner of the disclosure."
- (4) Prohibitions in Section B(4) and (8) of the CND Policy regarding the use of confidential information and the requirement that employees cannot use confidential information for any purpose whatsoever except in connection to the performance of their jobs.

(c) At all material times the Respondent has maintained in its employee handbook rules that prohibit the following conduct:

- (1) Treating a guest or another team member discourteously.
- (2) Engaging in off-duty conduct that reflects negatively on the company.

(d) About January 3, 2015, at various employee meetings held throughout the day, Respondent, by Jill Hornsby, Mike Levin, and Chris Pellerin interfered with employees' protected concerted activities by telling employees that they could not discuss the closure of Amerisports, a sports-themed venue in Respondent's facility, with employees who had not yet been informed by management of the closure.

(e) About January 3, 2015, Respondent, by Chris Pellerin, threatened employees with unspecified reprisals if they discussed the closure of Amerisports with employees who had not yet been told by management of the closure.

(f) About February 9, 2015, Respondent, by Jill Hornsby and its unnamed agent, at a collective-bargaining negotiation session, threatened employees with reprisal because of their union and or protected concerted activities.

(g) About March 3, 2015 and April 10, 2015, Respondent, by Jill Hornsby and/or Stephanie Tavarez, in front of Respondent's facility, surveilled employees by photographing them while they engaged in union activities.

(h) In about March and April of 2015, Respondent created the impression that its employees' union activities were under surveillance by using the photographs described above in paragraphs V(g) in internal communications to its employees.

(i) About April 3, 2015, Respondent, by its unnamed agent, at a collective-bargaining negotiation session, threatened to enforce an invalid overly broad rule against employees because of their union and or protected concerted activities.

(j) About April 7, 2015, Respondent, by Mike Muskin, in the employee breakroom, interfered with employees' union activity by telling them that they could not have a handwritten "union" sign on the table they were sitting at and removed the sign.

(k) About April 14, 2015, Respondent, by Jill Hornsby, interrogated employees about their union activity and the union activities of other employees, including but not limited to obtaining customer information for the Union.

(l) About April 17, 2015, Respondent, by Jill Hornsby, interfered with employees Section 7 activities by telling them that Respondent's confidentiality policy prohibits employees from contacting Respondent's customers for any purpose not related to their job.

VI

(a) About April 23, 2015, Respondent filed a Verified Complaint and Request for Injunctive Relief in the Indiana Superior Court, in Case No. 45D01-1504-P1-0034, against the Union.

(b) About April 23, 2015, Respondent filed a Motion for Preliminary Injunction in the Indiana Superior Court, in Case No. 45D01-1504-P1-0034, against the Union.

(c) From About April 23 to August 13, 2015, Respondent maintained its lawsuit described above in subparagraph VI(a) and the motion described above in subparagraph VI(b).

(d) About September 9, 2015, in furtherance of the lawsuit described above in paragraph VI(a), Respondent appealed the trial court's denial of injunctive relief and dismissal of the

lawsuit by filing a Notice of Appeal in the Appellate Court of Indiana, in Case 45A-031509-PL-01357.

(e) At all materials times since September 9, 2015, the Respondent has maintained its appeal described above in subparagraph VI(d).

(f) The lawsuit described above in subparagraph VI(a) which alleges state claims consisting of misappropriation of trade secrets, inducing breach of confidence, and replevin, lacked a reasonable basis and was filed and maintained by Respondent with a motive to retaliate against the Union for activity protected by Section 7 of the Act, including preventing the Union from asking Respondent's employees to provide it with customer information and to prevent the Union and employees from engaging in protected union activity.

(g) The Motion for Preliminary Injunction described above in subparagraph VI(b) seeks to restrain the Union from further misappropriation of and use of Respondent's trade secrets and personal information of its customers and to compel the Union to return any such information to Respondent and was filed and maintained by Respondent with a motive to retaliate against the Union for activity protected by Section 7 of the Act, including preventing the Union from asking Respondent's employees to provide it with customer information and to prevent the Union and employees from engaging in protected activity.

VII

(a) About April 17, 2015, Respondent discharged its employee Jessica Levin.

(b) Respondent engaged in the conduct described above in paragraph VII(a) because Jessica Levin violated Respondent's policy described in paragraph V(a) and (b) by providing customer names to the Union and contacting customers in furtherance of a consumer boycott, and to discourage employees from engaging in protected concerted activities.

(c) Respondent engaged in the conduct described above in paragraph VII(a) because the named employee assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

VIII

(a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Employees employed in the classifications set forth in Revised Addendum A of the collective-bargaining agreement effective by its terms for the period of November 1, 2009, through October 31, 2012, but excluding cooks and kitchen preparation employees, managerial, supervisory employees and confidential employees, office clerical and professional employees, temporary and casual employees, guards, and supervisors as defined in the Labor Management Relations Act, as amended, and all other employees.

(b) Since 1997, the Union has been the designated exclusive collective-bargaining representative of the Unit, and at all material times since then the Union has been recognized as the exclusive collective bargaining representative of the Unit by Respondent. This recognition

has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from November 1, 2009, through October 31, 2012, and was extended by agreement of the parties until about June 30, 2014.

(c) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the employees in the Unit.

IX

(a) About January 3, 2015, Respondent notified the Union that it was “closing” the sports-themed venue at Respondent’s facility known as Amerisports.

(b) About May 15, 2015, Respondent re-opened to the public the sports-themed venue at Respondent’s facility under the name Stadium.

(c) From about January 20 through March 4, 2015, the Union, verbally and by email, made several requests that Respondent provide it with the following information:

1. Copy of the exam that it intended to give to applicants for bartender positions at Stadium.
2. The definition of the terminology used in the bartender exam outline that was given to the Union.
3. The questions relating to Respondent’s assessment of Stadium applicants’ interest in learning about sports memorabilia.
4. The manner in which Respondent assessed interest in learning about sports memorabilia.

(d) The information requested by the Union, as described above in subparagraph IX(c) is necessary for, and relevant to, the Union’s performance of its duties as exclusive collective-bargaining representative of the Unit.

(e) Since January 20, 2015, Respondent has been failing and refusing to provide the Union with the information requested above in subparagraph IX(c).

(f) Beginning about February 9, 2015, Respondent, in preparation for the re-opening of the sports-themed venue at Respondent’s facility, implemented its last best offer and made changes to Unit employees terms and conditions of employment, including:

1. Created a new department, job classifications, and pay rates for Unit employees working at Respondent’s sports-themed venue;
2. Failed to recall employees who had worked at Respondent’s sports-themed venue when it was called Amerisports;
3. Required that employees who had previously worked at Respondent’s sports-themed venue when it was called Amerisports apply for positions with Stadium;

4. Caused employees that worked at Amerisports to lose their departmental seniority.

(g) The subjects set forth above in subparagraph IX(f) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(h) Respondent engaged in the conduct described above in subparagraph IX(f) without first bargaining with the Union to a good-faith impasse regarding the effects of its decision to remodel and re-name the sports-themed venue at Respondent's facility.

X

(a) About June 2015, Respondent changed its practice of assigning Unit employees in the classification of Land Bartenders to staff private events held in the venue at Respondent's facility known as the Owner's Lounge and began assigning that work to Unit employees in the classification of Banquet Bartenders.

(b) About August 15, 2015, Respondent eliminated its practice of giving a 30-minute paid break to Unit employees working a 7.25 hour shift at the venue at Respondent's facility known as the Heritage Buffet and began only giving those employees a 15-minute paid break.

(c) The subjects set forth above in paragraph X(a) and (b) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(d) Respondent engaged in the conduct described above in paragraph X(a) and (b) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and without first bargaining with the Union to a good-faith impasse.

XI

By the conduct described above in paragraphs V, VI, and VII(a) and (b), Respondent has 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.

XII

By the conduct described above in paragraphs VII(a) and (c), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

XIII

By the conduct described above in paragraphs IX and X, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

XIV

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

As part of the remedy for the unfair labor practices alleged above in paragraphs V(a) through (c) the General Counsel seeks an order requiring that the Respondent revise or rescind as appropriate, certain provisions of its CND Policy and its employee handbook and publish and distribute to its employees a revised CND Policy and employee handbook that provides lawfully worded provisions.

As part of the remedy for the unfair labor practices alleged above in paragraph VII, the General Counsel seeks an order requiring that the Respondent reimburse the discriminatee for all search-for-work and work-related expenses regardless of whether Jessica Levine received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period.

As part of the remedy for the unfair labor practices alleged above in paragraph IX(f), the General Counsel seeks an order requiring Respondent to restore the employees' terms and conditions of employment to the status quo, as it existed prior to February 9, 2015, and be made whole for any loss they may have suffered due to the unfair labor practices alleged in paragraph IX(e), including reinstatement to similar positions at the venue at Respondent's facility known as Stadium.

As part of the remedy for the unfair labor practices alleged in the above in paragraphs X(a) and (b), the General Counsel seeks and order requiring Respondent restore the status quo and make employees whole for any loss they may have suffered as a result of the unfair labor practices alleged in paragraphs X(a) and (b).

As part of the remedy for the unfair labor practices alleged above in paragraph VII, the General Counsel seeks an Order requiring Respondent to reimburse the Union, with interest, for all reasonable legal fees and expenses incurred in the defense of Case No. 45D01-1504-P1-0034 and Case 45A-031509-PL-01357. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is 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 April 3, 2016, or postmarked on or before April 4, 2016.** Respondent 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, 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 **June 27, 2016 at 11:00 a.m. at 219 S. Dearborn Street, Suite 808, 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, Respondent 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 21st day of March 2016

/s/ Daniel N. Nelson

Daniel N. Nelson
Acting Regional Director
National Labor Relations Board
Region 13
219 S. Dearborn Street, Suite 808
Chicago, IL 60604-1702

Attachments

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

AMERISTAR CASINO EAST CHICAGO, LLC

and

UNITE HERE LOCAL 1

Cases 13-CA-147013; 13-CA-150086; 13-CA-151075; 13-CA-151766; 13-CA-152520; 13-CA-152522; 13-CA-158952

**AFFIDAVIT OF SERVICE OF: Order Consolidating Cases, Consolidated 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 March 21, 2016, 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:

Jill Hornsby , Director of Human Resources
AmeriStar Casino East Chicago, LLC
777 Ameristar Blvd.
East Chicago, IN 46312-1806

**CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

Lauren S. Novak, Esq.
Schiff Hardin LLP
233 S. Wacker Drive
Suite 6600
Chicago, IL 60606-6473

REGULAR MAIL

Max G. Brittain , Esq.
Schiff Hardin LLP
233 S. Wacker Drive, Suite 6600
Chicago, IL 60606-6436

REGULAR MAIL

Max G Brittain Jr., or Matthew D. Lahey
AmeriStar Casino East Chicago, LLC
777 Ameristar Blvd.
East Chicago, IN 46312-1806

**CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

Daniel Miller , Organizing Director
UNITE HERE Local 1
218 S. Wabash Avenue, 7th Floor
Chicago, IL 60604

CERTIFIED MAIL

Kristin L. Martin, Esq.
Davis, Cowell & Bowe LLP
595 Market Street, Suite 1400
San Francisco, CA 94105-2821

REGULAR MAIL

March 21, 2016

Date

Denise Gatsoudis, Designated Agent of NLRB

Name

/s/ Denise Gatsoudis

Signature

**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE**

Cases: 13-CA-147013; 13-CA-150086;
13-CA-151075; 13-CA-151766;
13-CA-152520; 13-CA-152522; and
13-CA-158952

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.

Jill Hornsby , Director of Human Resources
AmeriStar Casino East Chicago, LLC
777 Ameristar Blvd.
East Chicago, IN 46312-1806

Max G Brittain Jr., or Matthew D. Lahey
AmeriStar Casino East Chicago, LLC
777 Ameristar Blvd.
East Chicago, IN 46312-1806

Lauren S. Novak, Esq.
Schiff Hardin LLP
233 S. Wacker Drive, Suite 6600
Chicago, IL 60606-6473

Max G. Brittain , Esq.
Schiff Hardin LLP
233 S. Wacker Drive, Suite 6600
Chicago, IL 60606-6436

Daniel Miller , Organizing Director
UNITE HERE Local 1
218 S. Wabash Avenue, 7th Floor
Chicago, IL 60604

Kristin L. Martin, Esq.
Davis, Cowell & Bowe LLP
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.

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, 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 to 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.