



Agricultural Employment Relations Board

THE LABOR ELECTION PROCESS

**A PROCEDURE MANUAL FOR CONDUCTING REPRESENTATION
AND DECERTIFICATION ELECTIONS**

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APPENDIX

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- B AERB Rules – Arizona Administrative Code Title 4, Chapter 2
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- D Office of Administrative Hearings Diagram of Process
- E Election Process Flowchart
- F Election Process Checklist
- G Table of Forms and Forms

INTRODUCTION AND PURPOSE OF THE MANUAL

The Arizona Agricultural Employment Relations Board (the “AERB” or the “Board”) was established in 1972 “to foster labor peace, to provide a forum for the state’s agricultural industry and employees to resolve labor disputes and to develop more constructive labor relations.” The Agricultural Employment Relations Act establishes certain rights of agricultural employers and workers; prohibits and remedies certain kinds of conduct, called unfair labor practices, on the part of agricultural employers and agricultural labor organizations; and insures but limits the right of agricultural workers to organize for collective bargaining and strike.

This Manual is intended to provide procedural and organizational guidance for the AERB staff and Board members when processing petitions for representation or decertification elections and making decisions relating to representation matters under the Arizona Agricultural Employment Relations Act.

As to matters where there exists legal rulings, the Manual seeks to accurately describe and interpret the law. In the event of a conflict, court and Board decisions, not this Manual, are controlling. While the Manual reflects policies and procedures as of the date of its preparation, such policies and procedures may be modified from time to time.

The Manual is not a form of binding authority, and the procedures and policies set forth in the Manual do not constitute rulings or directives of the General Counsel or the Board. Although it is expected that the Board members and staff will follow the Manual’s guidelines in the handling of cases, it is also expected that in their exercise of professional judgment and discretion, there will be situations in which they will adapt these guidelines to circumstances. Thus, the guidelines, to the extent they are not directly based on rules issued by the Board, are not intended to be and should not be viewed as binding procedural rules. The procedures provide a framework for the application of the Board’s rules.

The procedures in the Manual are not intended to prevent the Board from encouraging parties to reach agreements or waive hearings by stipulation. Consent election agreements should always be encouraged. A.R.S. § 23-1389(H); A.A.C. R4-2-218.

The Appendix section of the Manual contains the statutes and rules relating to the AERB and agricultural employment relations in the State of Arizona. It also contains forms to use when processing a petition for election, as well as a checklist and flowchart outlining the election process. The forms, checklist, and flowchart should be used in conjunction with the Manual to ensure the proper processing of petitions for election.

100-101 JURISDICTION OF THE BOARD

100 JURISDICTION OVER LABOR REPRESENTATION ELECTIONS

The Board has jurisdiction over certification election petitions brought by agricultural employees or labor organizations seeking to represent agricultural employees and decertification election petitions brought by agricultural employees, groups representing agricultural employees, or agricultural employers. It has the authority to order, conduct, and certify the results of labor representation petitions involving agricultural employers and agricultural employees in the State of Arizona.

100.1 Jurisdiction Limited by Jurisdiction of National Labor Relations Board

The AERB has jurisdiction only where the National Labor Relations Board (“NLRB”) does not. A.R.S. § 23-1394. By statute, the NLRB has no jurisdiction over agricultural workers. 29 U.S.C. § 152(3). However, it has indicated a willingness to assert jurisdiction over a grower/seller of fresh produce under the NLRB’s jurisdiction over non-retail enterprises. *Creekside Mushroom Ltd.*, 316 NLRB 810, 148 LLRM 1298 (1995). The NLRB’s jurisdiction is discretionary, and it will not likely assert jurisdiction in an agricultural labor dispute unless the employer is a large grower/seller and significant issues are involved. If the NLRB assumes jurisdiction, the AERB should not continue to process an election petition.

101 DEFINING AGRICULTURAL EMPLOYMENT

101.1 Agriculture

Agriculture means all services performed on a farm, as defined in A.R.S. § 23-603, which includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for raising agricultural or horticultural commodities, and orchards. Agriculture for purposes of the Agricultural Employment Relations Act also includes but is not limited to the recruiting, housing and feeding of persons employed or to be employed as agricultural employees. A.R.S. § 23-1382(3).

101.2 Agricultural Employer

An agricultural employer is any employer who is engaged in agriculture and who employed six or more agricultural employees for a period of thirty or more days during the preceding six month period. It includes any person who provides labor and services on one or more farms as an independent contractor if such person, for a period of thirty days during the preceding six month period, employed six or more employees in such work. In calculating the number of agricultural employees employed by an agricultural employer or provided by an independent contractor, one hour or more of employment in one day shall be considered a day of work. Agricultural employers also includes any employer who is engaged in agriculture with less than six agricultural employees and who voluntarily elects to be subject to the Agricultural Employment Relations Act by filing a request in writing with the Board. A.R.S. § 23-1382(2).

101.3 Agricultural Employee

An agricultural employee is any employee over sixteen years of age employed by a particular agricultural employer and who is engaged in growing or harvesting of agricultural crops or the packing of agricultural crops if packing is done in the field. A person is an agricultural employee if an agricultural employer pays the wages of the employee, even though the supervision of the employee, the bookkeeping, and the issuance of payroll checks are by a person other than the employer. In calculating a workday of an agricultural employee, one hour or more of employment in any one day shall be considered a workday. An individual on strike or whose work has ceased because of a labor dispute is considered an employee as long as the individual has not obtained any other regular and substantially equivalent employment. A.R.S. § 23-1382(1).

101.3(a) Permanent Agricultural Employee

A permanent agricultural employee is any agricultural employee who has been employed by a particular agricultural employer for at least six months during the preceding calendar year. A.R.S. § 23-1382(1). Preceding calendar year means the preceding January 1 to December 31. A.A.C. R4-2-101; *Arizona Farmworkers Union v. Agricultural Employment Relations Board*, 148 Ariz. 47, 712 P.2d 960 (App. 1985); *V.G.I. Harvesting Co. v. Arizona Agricultural Employment Relations Board*, 143 Ariz. 498, 694 P.2d 328 (App. 1985).

Six months means 132 work days. A.A.C. R4-2-209(B).

101.3(b) Temporary Agricultural Employee

A temporary agricultural employee is an agricultural employee who is employed by a particular agricultural employer, who has been so employed during the preceding calendar year and who is engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops if packing is accomplished in the field. A.R.S. § 23-1382(1). Preceding calendar year means the preceding January 1 to December 31. (Section 101.3(a)).

101.3(c) Individual not Considered Agricultural Employee

The following individuals are not considered agricultural employees, and therefore the Board has no jurisdiction over petitions or charges brought by them:

- An individual employed by his parent or spouse or by an immediate relative;
- An independent contractor;
- A supervisor or individual employed in a confidential capacity or as a clerical employee or guard;
- An executive, technical, or professional employee;
- An individual that has quit or been discharged for cause;

- A tenant or sharecropper who reasonably directs or shares in the management of an enterprise engaged in agriculture; and
- An individual engaged in hauling or stitching functions.

A.R.S. § 23-1382(1).

200-206 PETITION FOR ELECTION

200 BOARD OBJECTIVE

The expeditious processing of election petitions filed pursuant to the Agricultural Employment Relations Act represents one of the most significant aspects of the Board's operations. Because of the seasonal nature of the agricultural industry, expeditious handling of election petitions is particularly important.

201 RESPONDING TO PREFILING INQUIRIES

Staff and agents of the AERB may provide information to individuals, labor organizations, or employers seeking to file a petition for certification election or petition for decertification election. AERB staff and Board agents should always keep in mind that the Board is an impartial body that should maintain its neutrality. Board Staff and agents should not offer opinions or advice. Assistance provided to parties is strictly limited to providing forms, providing directions for how to complete forms, and general information on the processes and procedures of the Board.

If requested, the agent should mail the individual a Petition for Certification Election (Form 101) or Petition for Decertification Election (Form 102), along with the Statement of Procedures (Form 103) and a cover letter directing the individual to see the Agricultural Employment Relations Act, Arizona Revised Statutes, Title 23, Chapter 8, Article 5 and the Board's Rules, Arizona Administrative Code Title 4, Chapter 2, for further information. Alternatively, the Board may post the information on the Internet at its website and direct individuals to that site.

The Board agent responding to telephone or other inquiries can use the Statement of Procedures (Form 103), the Notice of Election (Rights of Employees and General Instructions) (Form 109), and the Election Process Flowchart (Appendix E) as guides for responding to inquiries. A copy of this Manual should also be available as a reference to the Board agent when responding to inquiries from the public.

201.1 Determination Whether Situation Covered

When a Board agent is contacted by an individual seeking information about filing a petition, the agent should attempt to make an initial determination regarding whether the matter raised is within the Board's jurisdiction. (Sections 100-101). Determine whether the individual is an agricultural employer (Section 101.2), agricultural employee (Section 101.3), or a labor organization seeking to represent agricultural employees in collective bargaining.

201.2 Situation Not Covered

If a situation is clearly not within the Board's jurisdiction, the Board agent should discourage the individual from filing a petition for election. The individual should be informed that he or she still has the right to file the petition, and it will be processed as any other petition until it is determined that the Board does not have jurisdiction.

201.3 Situation Covered

If the situation is one that would appear to be covered by the Agricultural Employment Relations Act, the Board agent should advise the individual of the right to file a Petition for Certification Election or Petition for Decertification Election. The agent may provide general information regarding Board policy and procedure with respect to certification or decertification elections. (Section 201). However, care should be taken to advise the individual that any ultimate result may hinge on various considerations. The Board agent should inform the individual seeking information that the election process may only be initiated by the filing of a petition for election.

201.4 Information as Contrasted With Advice

The Board agent should not provide legal advice regarding an individual's rights or obligations. Answers should include such statements as, "We cannot, of course, give advice," "We cannot commit the Board," "We cannot predict a result, as it depends on a variety of factors," or similar disclaimers where appropriate. A Board agent should not provide advice or opinions on legal matters. The agent should never counsel or suggest a specific course of action. If the individual seeking information persistently seeks legal guidance, suggest to the individual that he or she find legal counsel, but do not recommend specific counsel. The agent may refer the individual to the State Bar of Arizona (<http://www.azbar.org/> or 602-252-4804 or 1-866-48-AZBAR). The agent may provide factual information, but should never make specific suggestions or offer opinions.

The Board agent may provide information regarding Board processes and procedures and provide forms to parties making inquiries. However, the Board agent must remember that the Board is a neutral body and it cannot appear to be siding with or favoring any party. The Board agent may provide information, but not advice or suggestions. Information is limited to the actual contents of the Arizona Agricultural Employment Relations Act and the Board's Rules, the Board's procedures, and other factual, neutral information. The Board agent starts to give advice when the Board agent starts interpreting the rules or making suggestions or recommendations. For example, if the agent receives a call from a person that is completing a petition for a certification election and asks, "What should I put for description of the bargaining unit?" the agent can say, "That is asking for a description of the job positions that you think should be included in your bargaining unit. For example, a bargaining unit might be "All full-time, permanent lettuce pickers working at X location. You just need to describe the group of people that you want included in the bargaining unit you want the election for." However do not provide the example of lettuce pickers if you know you are talking to a lettuce picker—use an unrelated group of workers as an example. This is general information, which is permissible.

The Board agent should not start asking questions about the caller's specific situation and then help the caller decide what bargaining unit is appropriate. The Board agent should not tell the party filing the petition what to put on the petition, beyond generally describing the *type* of information that is being requested.

202 WHAT MUST BE FILED TO INITIATE AN ELECTION

202.1 Petition for Certification Election

Under A.R.S. § 23-1389(c), a petition for a certification election may be filed by an agricultural employee, a group of agricultural employees, an individual or labor organization acting on behalf of agricultural employees, or an agricultural employer alleging an organization has presented a claim to be recognized as a collective bargaining representative. The Board may provide parties seeking to initiate a certification election with a Petition for Certification Election (Form 101). The Board may also make the form available on the Internet.

The Petition for Certification Election form (Form 101) is self-explanatory with respect to the information requested. All information, except that with an asterisk next to it, must be completed before the Board processes the Petition for Certification Election. Information with an asterisk is requested for the Board's convenience and is not required by Board rules.

All petitions for certification election must be signed under oath. The Petition for Certification form (Form 101) contains the necessary oath or declaration.

Petitions submitted on other than the Board-provided form are acceptable, as long as they contain all the following elements.

1. The name of the agricultural employer;
2. The address of the agricultural employer.
3. A description of the bargaining unit that the party filing the petitions claims to be appropriate;
4. The approximate number of employees in the proposed collective bargaining unit;
5. A brief statement that the employer declines to recognize the party filing the petition as the bargaining representative within the meaning of A.R.S. § 23-1382(10) or that the petitioner is currently recognized but desires to be certified under the Agricultural Employment Relations Act;
6. The name, affiliation, if any, and address of the party filing the petition;
7. The name and address of any other person who claims to represent an employee in the alleged appropriate bargaining unit;
8. Whether a strike or picketing is in progress at the agricultural employer's establishment, and if so, the approximate number of employees participating and the date the strike or picketing commenced;
9. A statement that the petition for election is supported by 30 percent or more of the agricultural employees in the bargaining unit; and
10. Any other relevant fact.

A.A.C. R4-2-201(A). The Board may not accept a petition for certification election that does not contain all the required elements. The Board may return the Petition to the party filing it and indicate the missing elements.

202.2 Petition for Decertification Election

Under A.R.S. § 23-1389(c), a petition for a decertification election may be filed by an agricultural employer, agricultural employee, group of agricultural employees, or a labor organization acting on behalf of the agricultural employees. The Board may provide parties seeking to initiate a decertification election with a form Petition for Decertification Election (Form 102). The Board may also choose to make the form available on the Internet.

The Petition for Decertification Election (Form 102) is self-explanatory with respect to the information requested. All information, except that with an asterisk next to it, must be completed before the Board processes the Petition for Decertification Election. Information with an asterisk is requested for the Board's convenience and is not required by Board rules.

All petitions for decertification election must be signed under oath. The Petition for Decertification form (Form 102) contains the necessary oath or declaration.

Petitions submitted on other than the Board-provided form are acceptable, as long as they contain all the following elements.

1. The name of the party filing the petition;
2. The address of the party filing the petition;
3. A statement that a representative other than the petitioner has been recognized or certified as the collective bargaining representative of the employees in the unit sought in the petition and that the party filing the petition wishes to rescind the recognition or certification;
4. The identity and description of the bargaining unit claimed to be appropriate;
5. The approximate number of employees in the bargaining unit;
6. The name, affiliation, if any, and address of the person or organization whose recognition or certification the petition seeks to rescind;
7. A statement regarding whether the agricultural employer has a contract with any labor organization, and if so, the expiration date;
8. A statement whether a strike or picketing is occurring at the agricultural employer's establishment, and if so the number of employees participating and the date it started;
9. A statement that the petition for decertification election is supported by 30 percent or more of the agricultural employees in the collective bargaining unit;
10. Any other relevant facts.

A.A.C. R4-2-201(B). The Board may not accept a petition for decertification election that does not contain all the required elements. The Board may return the petition to the party filing it and indicate the missing elements.

202.3 Showing of Interest/Authorizations

A party seeking a certification or decertification election must submit the original of every authorization with the petition for election. The Board may not accept an authorization signed after the petition for election is filed, unless the initial showing of interest is inadequate and the Board requests additional authorizations. A.A.C. R4-2-205(A). (Section 307).

202.3(a) Contents of Authorization

An authorization may be in the form of an individual authorization card or a signature petition. A.A.C. R4-2-206(A).

202.3(a)(1) Individual Authorization Card

An individual authorization card is not valid unless it contains only one name, one signature, and contains all the following information, which is printed (except the signature):

1. The employee's name, name of employer, and social security or employee identification number;
2. The signature of the employee and date in the employee's own handwriting; and
3. A statement that the employee is authorizing the petitioner to represent that employee for the purpose of collective bargaining in the state of Arizona only, and to file a petition for election under A.R.S. § 23-1389.

A.A.C. R4-2-206(B).

202.3(a)(2) Signature Petition

A signature petition submitted as authorization to prove a showing of interest must contain the following information or it is not valid.

1. The signature of the employee, social security or employee identification number, and that date in the employee's own handwriting; and
2. The name of the employer and a statement that the employee is authorizing the petitioner to represent that employee for the purpose of collective bargaining in the state of Arizona only, and to file a petition for election under A.R.S. § 23-1389.

A.A.C. R4-2-206(C). The invalidity of one signature does not invalidate the entire petition. However, the absence of the required representation authorization statement will invalidate the entire petition.

202.4 Validity of Authorization

A valid authorization must:

- (1) Be signed by an individual who is an agricultural employee at the time of signing;
- (2) Be signed in the employee's own handwriting – a signature may be the name or any mark made by an individual employee to signify his or her consent to the authorization (A.A.C. R4-2-101);
- (3) Be signed during the authorization period, which is the four pay periods immediately prior to the date the petition for election was filed (A.A.C. R4-2-101) (unless it is additional showing of interest under A.A.C. R-4-205(B)) (Section 308).

An employee may sign an authorization for more than one labor organization, and all such authorizations are valid. A.A.C. R4-2-207

203 WHERE TO FILE

The petition for election must be filed at the Board's central office, located at 1688 W. Adams, Phoenix, Arizona 85007. The Petition may be filed the Board's office between 8:00 a.m. and 5:00 p.m., Monday through Friday, with the exception of Arizona legal holidays. A Petition may also be filed by mailing it to the Board's central office. A.A.C. R4-2-103(C).

The petition is considered filed on the date it is received by the Board. A.A.C. R4-2-103(C).

203.1 Receipt and Docketing of Petition for Election

Once the Board receives a petition for election, the Board agent should docket receipt of the petition, assign a case number, and create a case file. The original petition for election should be maintained in the file. A copy of the petition and the original authorizations should be provided to the Board agent assigned to conduct the initial investigation of the Petition. The agent is provided the original authorizations in order to better evaluate their validity and authenticity. The agent conducting the investigation must take care to maintain the confidentiality of the authorizations.

204 WITHDRAWAL OF THE PETITION FOR ELECTION

The party filing a petition for election and the other parties affected by the petition may jointly stipulate to withdraw the petition for election. A.A.C. R4-2-203. The stipulation, signed by both parties, terminates the Board's investigation or conduct of an election. The Board may provide parties seeking to withdraw a petition with a form Stipulation to Withdraw Petition for Election (Form 104) or make the form available on the Board's Internet website.

205 INITIAL COMMUNICATIONS WITH THE PARTIES

205.1 Acknowledgment to Party Filing a Petition for Election

After docketing receipt of a petition for election, the Board should send an acknowledgement of filing to the party filing the Petition. Acknowledgement of filing may be done by facsimile or mail.

205.2 Notice of Petition to Respondent

The Executive Secretary must send a copy of the petition for election to the respondent named in the petition (the employer in a certification election or current representative in a decertification election) within 10 days after the petition is filed. A.A.C. R4-2-201(D). With the petition, the Executive Secretary should include the Statement of Procedures (Form 103).

205.3 Notice of Petition to Current Bargaining Representative

If the Board had previously certified a representative of the collective bargaining unit sought in the petition, a copy of the petition for election should also be sent to the certified representative. A.A.C. R4-2-201(D).

205.4 Notice to Other Interested Parties

A person may make a written request to the Board to receive notice of the filing of a petition for election. A.A.C. R4-2-211(B). If such written request has been made, a Board agent should also send the individual a copy of the petition for election.

206 INTERVENTION IN ELECTION BY ADDITIONAL LABOR ORGANIZATION

After one party has filed a petition for election, a second labor organization may also file a petition for election alleging that 30 percent or more of the employees in the bargaining unit want to be represented by the second labor organization. The second petition is investigated in the same manner as the first and subject to the same showing of interest requirements (see Sections 300-307). If both labor organizations make a sufficient showing of interest, both labor organizations names should appear on the ballot, along with the choice of “no union.” A.R.S. § 23-1389(D).

In determining the validity of an authorization filed by a subsequent labor organization, the Board must use the same authorization period as that of the original petitioner and the same eligibility period used of the original party filing the petition for election. A.A.C. R4-2-212(B).

300-308 PRELIMINARY INVESTIGATION OF PETITION

300 INITIATION OF INVESTIGATION

The techniques used in conducting representation case investigations do not lend themselves to a set of hard and fast rules, except it should be noted that investigation of a petition filed concurrently with an unfair labor practice should await judgment as to the impact of the concurrent charges.

On receipt of the case, the Board should assign an agent to conduct an investigation of the petition for election. The agent should review the petition and any accompanying papers and check any prior related cases. With respect to any issues that may be anticipated after reviewing the petition and papers filed therewith, the Board agent should become familiar with the existing precedents, ensure that there are no fatal defects on the face of the petition for election (all required elements are completed – Sections 202.1 & 202.2), and check that the party filing the petition has presented a showing of interest that is adequate on the basis of its statement of the number of employees in the proposed bargaining unit (Section 303). After reviewing the petition, authorizations, and any other supporting documents, the Board agent should initiate communications with the parties and begin collecting information necessary for the investigation.

301 REQUEST FOR INFORMATION FROM EMPLOYER

Within 10 days after receipt of a petition for election, the Board agent conducting the investigation should call the agricultural employer and inform the employer a petition for certification/decertification election has been filed. This should be done as soon as possible after the petition is filed.

For the investigation of a petition for certification or decertification election, the agent should request that the employer provide the following information, as appropriate:

- (1) An alphabetized list of names of the employees encompassed in the petition for election along with the job classification of each as of the pay period directly prior to the filing of the petition for election;
- (2) A short statement of the employer's position on the appropriateness of the proposed bargaining unit;
- (3) A payroll signature list for the three weeks of the eligibility period (the three pay periods directly prior to the filing of the petition for election – A.A.C. R4-2-101); and
- (4) Employment records and other documents or records to assist the Board in investigating the election petition.

The agent should inform the employer that it must provide the requested information within 7 business days after the request, and the employer must certify in writing and under oath that the information provided to the Board is true, complete, and accurate. A.A.C. R4-2-204(A).

The original documents from the employer should be maintained in the case file.

For the investigation of a decertification petition, the Board agent should request that the certified representative provide a list of bargaining unit members and other records to assist the Board in investigating the election petition.

302 CHALLENGE TO PETITION

Within 5 business days after the employer receives the petition for election, the employer may file a challenge to the petition on grounds that the authorizations supporting the petition are not current or that the authorizations were obtained by fraud, misrepresentation, or coercion. A.R.S. § 23-1389(F). The Board agent should docket receipt of the challenge. The Board is not required to investigate a challenge to a petition for election. A.A.C. R4-2-203(A). The challenge does not stay the representation election process. However, if it is later determined that the authorizations are not current or were obtained by fraud, misrepresentation, or coercion, the election petition will be dismissed. A.R.S. § 23-1389(F).

If the Board decides to investigate a challenge to a petition for election, it should do so concurrently with the investigation of the petition, as the challenge does not stay the representation election proceedings without good cause. If after its initial investigation the Board determines that there is no reasonable cause to believe a question of representation exists and dismisses the petition, the challenge becomes moot.

A challenge to a petition may be one issue at a pre-election hearing, if the Board orders one. If the Board determines that the authorizations were not current or were obtained by fraud, misrepresentation, or coercion, it should dismiss the petition for election. If no merit is found to the challenge, the Board should so notify the parties.

302.1 Waiver of Challenge to Petition

If the employer does not file a challenge to a petition for election within 5 business days after receipt of the petition, the employer has waived the right to challenge the petition. A.A.C. R4-2-203(B). The petition cannot thereafter be challenged at the pre-election hearing or in a post-election objection.

303 CHECK OF THE SHOWING OF INTEREST

303.1 Showing of Interest

The purpose of requiring an adequate showing of interest on the part of labor organizations and individuals seeking a representation election is to determine whether the conduct of an election serves a useful purpose under the statute, i.e., whether there is sufficient employee interest to warrant an election. It is essential that a check of the adequacy of the showing of interest be performed in every case shortly after the filing of a petition. Issues concerning the showing of interest should be resolved before the case progresses beyond the initial stages.

A showing of interest is demonstrated by submission of individual authorization cards or a signature petition indicating the agricultural employee desires to be represented for purposes of collective bargaining by the party submitting the petition for election. (Section 202.3).

303.2 Review of Authorizations

In order to warrant continued processing, a petition for election must meet the test: is there reasonable cause to believe that a question of representation exists? As soon as practicable, the Board or its agent should review each authorization card or authorization petition to determine if they demonstrate a sufficient showing of interest to create reasonable cause to believe a question of representation exists. A.A.C. R4-2-204. Authorizations should be checked against the employee lists, payroll list, and other information provided by the employer.

Although authorizations should be examined on their face (to check, for example, for signatures which appear to be in the same handwriting), their validity should be presumed unless called into question by the presentation of objective evidence. (Section 202.3).

If it is practicable to check every authorization, the Board should do so. If there are several hundred authorizations, a spot check can be made, involving checking something less than all the authorizations. The sample checked should be large enough to afford validity. It should be based on a random sample of authorizations.

There is reasonable cause to believe that a question of representation exists if it appears that 30% or more of the employees in the proposed bargaining unit during the eligibility period (the three pay periods directly prior to the filing of the petition for election) wish to be represented for collective bargaining and the employer refuses to recognize the collective bargaining representative. A.R.S. § 23-1389(C).

303.3 Confidentiality of Authorizations

Authorizations are strictly confidential. The Board or its agent may not reveal the number of authorizations filed or the identity of any employee signing an authorization. A.A.C. R4-2-204(E).

304 COMPUTATION OF THE SHOWING OF INTEREST

The Board or its agent should calculate the showing of interest by using the authorizations submitted with the petition for election and the employee list or payroll list provided by the employer.

304.1 Formula for Calculating a Showing of Interest

The Board agent investigating the petition for election should use the Report on Investigation of Showing of Interest form (Form 105) to calculate the showing of interest and include the form in the case file. A separate Report on Investigation of Showing of Interest form (Form 105) should be used for each labor organization submitting a petition for election.

To determine a showing of interest, the Board must calculate the percentage of employees employed in each of the three weeks of the eligibility period that signed a valid

authorization. To calculate a showing of interest, the Board agent should divide the number of employees employed during each pay period of the eligibility period who signed valid authorizations any time during the authorization period by the total number of agricultural employees employed during each pay period of the eligibility period. A.A.C. R4-2-209(a). This calculation will lead to a percentage number for each week of the eligibility period.

The eligibility period is the three pay periods immediately prior to the filing of a petition for election. A.A.C. R4-2-101. The authorization period is the four pay periods immediately prior to the filing of a petition for election. A.A.C. R4-2-101. A pay period is the seven day period used by an agricultural employer for payroll purposes. If the employer does not use a seven day pay period, pay period means a seven day period, Sunday to Saturday. A.A.C. R4-2-101.

For a question of representation to exist, there must be a showing of interest of 30 percent or greater in the pay period directly before the date of the filing of a petition for election and one of the other two weeks of the eligibility period. A.A.C. R4-2-210. (Section 308).

304.2 Employees Excluded from Computation of a Showing of Interest

When calculating a showing of interest, the Board may not include the following employees:

1. An employee during a pay period in which the agricultural employee was eligible for unemployment benefits for the entire pay period. A.A.C. R4-2-209(C).
2. An employee on a leave of absence for the entire pay period unless (a) the employer produces a notarized document that is signed by the employee stating that the employee's leave is temporary and the expected return date is six months or less from the date the election petition is filed, and (b) there is not substantial evidence that the employee is not on bona fide leave or will not return from leave when scheduled. A.A.C. R4-2-209(D).
3. An employee who is on workers' compensation leave, unless (a) the employer produces a document signed by a licensed physician stating that date the employee was placed on leave and the expected date of return, (b) the expected date of return is not more than six months from when the date when the election petition was filed, and (c) substantial evidence does not exist establishing that the employee is not on bona fide workers' compensation leave or will not return from the workers' compensation leave as scheduled. A.A.C. R4-2-209(E).

305 FURTHER INVESTIGATION

The Board has the authority to conduct whatever investigation is necessary to determine whether there is reasonable cause to believe a question of representation exists. Continued investigation may be pursued via telephone, electronic communication, written inquiries, requests for documents, field investigations, or other steps the Board believes are necessary. A.R.S. § 23-1391; A.A.C. R4-2-204(C). Notes or memorandum reflecting the investigative steps taken and results of the investigation should be maintained in the case file.

306 CONFIDENTIALITY OF THE INVESTIGATION

The investigation should be conducted in a manner that protects the confidentiality of the agricultural employees in the proposed bargaining unit and the confidentiality of the investigation. The Board agent may not reveal the identity of employees who did or did not sign authorizations. In no case, except as required by law, may the Board or its agents disclose an investigation report, the identity of a person interviewed during the investigation, or the number of authorizations filed. A.A.C. R4-2-204(D) & (E). Documents, investigation notes, summaries, computation or showing of interest, reports, etc. should be maintained confidentially in the case file until the file is destroyed pursuant to the Board's Records Retention and Disposition Schedule (Section 801).

307 IF INVESTIGATION FINDS INSUFFICIENT SHOWING OF INTEREST

If after investigation and checking the authorizations against the payroll list and other information submitted by the employer, the Board determines that the showing is insufficient to create a question of representation (less than 30% of employees in proposed unit signed valid authorizations), the Board agent should notify the party filing the petition for election. The party may file additional authorizations with the Board within 2 business days. A.A.C. R4-2-205(B).

The additional authorizations must be signed and dated after the date the petition for election is filed and the employee signing the authorization must be an employee when signing the authorization and at any time during the eligibility period (the three pay periods directly prior to the filing of the petition for election). The Board may not accept additional authorizations signed prior to the date the Petition for Election was filed or from an employee not employed during the eligibility period. A.A.C. R4-2-205(B).

If the party does not submit additional authorizations, the Board should dismiss the petition for election. If the party does submit additional authorizations, they should be checked against the payroll list provided by the employer and added to the previously provided authorization to calculate the showing of interest.

308 CONCLUSION OF THE PRE-HEARING INVESTIGATION

308.1 Existence of a Question of Representation

A question of representation exists in the bargaining unit if a showing of interest of at least 30 percent is made in the final pay period of the eligibility period (the three pay periods immediately prior to the filing of a petition for election) and in either one of the other two pay periods of the eligibility period. A.A.C. R4-2-210. This means that of the three calculations described in Section 304.1, two, including the pay period immediately prior to the filing of the petition for election, must be over 30 percent.

A question of representation exists only if the bargaining unit or proposed bargaining unit is at peak during the eligibility period. A.A.C. R4-2-213(C). The bargaining unit is at peak when the number of employees in the unit is not less than $66 \frac{2}{3}$ percent of the maximum number of agricultural employees who have been or will be employed in the bargaining unit in the current crop growing season. A.A.C. R4-2-213(A). Although the issue of whether employment is at peak is an issue for the pre-election hearing, if it is clear from the petition for

election or supporting materials submitted by the employer or labor organization that the bargaining unit is not at peak, then there is no reasonable cause to believe a question of representation exists.

In considering whether the bargaining unit is at peak, the Board may consider, if available, the employer's previous peak employment figures, types of crop grown and acreage of farm, the number of employees at other farms of similar size with similar crops, and other relevant facts. A.A.C. R4-2-213(B).

The employer in a certification election and the labor organization in a decertification election have the burden to prove the collective bargaining unit is not at peak. A.A.C. R4-2-213(C). If there is a question regarding whether employment is at peak, the Board should allow the ALJ to hear evidence on the issue at a hearing and make a recommendation to the Board.

308.2 Dismiss Petition if No Reasonable Cause to Believe Question of Representation Exists

If after investigation the Board or its agent determines that there is no reasonable cause to believe a question of representation exists, the Board shall dismiss the petition for election. The Board shall inform all parties of the dismissal in writing.

308.3 Order a Hearing if Reasonable Cause to Believe Question of Representation Exists

If after investigation the Board determines that a question of representation exists, the Board should request a hearing from the Office of Administrative Hearings (OAH), using the Form prescribed by the OAH. (Appendix C). Once the hearing date, time, and location have been set, the Board or its agent shall issue a Notice of Hearing (A.A.C. R4-2-211(A)), using the Notice of Representation Hearing form (Form 106) or a substantially similar form. A notice of hearing should contain the names of the parties, the date, time and place of hearing, the name of the Administrative Law Judge conducting the hearing, and a notice that the parties can still enter into a consent agreement.

Issuance of a notice of hearing does not preclude the parties from entering into a consent election agreement. The notice of hearing should inform parties that they may still enter into a consent election agreement. Board approval of the consent election agreement revokes the notice of hearing. The Board should take the appropriate steps with the OAH to cancel the hearing.

If an individual not a party to the case has requested in writing to receive notice of the filing of a petition for election and related notice of hearing, the Board's agent should mail that individual a copy of the notice of hearing. A.A.C. R4-2-211(B).

400-404 PRE-ELECTION HEARING AND BOARD DETERMINATIONS

400 OFFICE OF ADMINISTRATIVE HEARINGS PRE-ELECTION HEARING

The pre-election hearing is conducted by the OAH pursuant to the uniform administrative hearing procedures of Arizona Revised Statutes Title 41, Chapter 6, Article 10. A.A.C. R4-2-401. The Board must request the hearing. (Section 308.3).

400.1 Intervention by a Subsequent Labor Organization

An Administrative Law Judge (ALJ) may allow a subsequent labor organization to intervene only at the initial session of the pre-election hearing on a petition filed by the first labor organization and may place the subsequent labor organization on the election ballot only if the ALJ finds that (a) the subsequent labor organization filed with the Board a petition for election together with a sufficient number of signed authorizations to meet the 30 percent showing of interest required to establish a question of representation, and (b) the subsequent labor organization filed its petition for election not later than seven business days before the scheduled start of the pre-election hearing. A.A.C. R4-2-212(A).

In determining the validity of an authorization filed by a subsequent labor organization, the Board must use the same authorization period as that of the original petitioner and the same eligibility period used of the original party filing the petition for election. A.A.C. R4-2-212(B).

401 CONSENT ELECTION AGREEMENT

401.1 Generally

At any time prior to the Board order setting an election and defining the appropriate bargaining unit, the employer may enter into an consent election agreement with one or more individuals or labor organizations that present to the employer a claim to be recognized as the representative of a designated bargaining unit. A.A.C. R4-2-218.

401.2 Contents of Agreement

The Consent Election Agreement must be submitted to the Board. It must contain a description of the appropriate bargaining unit, a proposed time and place for holding the election, and a statement specifying which agricultural employees within the appropriate bargaining unit are eligible to vote. A.A.C. R4-2-218. A consent election agreement may use the Consent Election Agreement (Form 107), which the Board may provide upon request or make available on the Internet at its website. Any form of agreement containing the required elements discussed in this section is sufficient.

401.3 Board Approval

The Board shall approve the consent election agreement if it is fair and non-collusive. A.A.C. R4-2-218. An election or collective bargaining unit that is contrary to the Agricultural Employment Relations Act and Board rules should not be approved.

401.4 Conducting Consent Elections

The Board uses the same methods and procedures to conduct a consent election as it does to conduct Board-ordered elections.

402 BOARD REVIEW AND ULTIMATE DETERMINATION OF EXISTENCE OF QUESTION OF REPRESENTATION

At the completion of the OAH hearing, the ALJ will make recommendations to the Board. The Board must review the recommendation of the ALJ and the record of the OAH hearings and decide two questions:

- (1) Does a question of representation exist?
- (2) What is the appropriate bargaining unit?

The questions may be decided in whichever order the Board determines appropriate. If the definition of the appropriate bargaining unit will affect whether a question of representation exists, the Board should decide the bargaining unit first.

403 PETITION DISMISSED AFTER HEARING BECAUSE NO QUESTION OF REPRESENTATION

If after reviewing the findings and recommendation of the ALJ the Board determines no question of representation exists, the Board must dismiss the petition for election. The Board should inform the party submitting the petition for election in writing of the dismissal and the reasons. The letter should inform the party how and when a request for review of the action can be filed with the Board.

Copies of the dismissal letter should be sent to the all other interested parties.

403.1 Pattern Dismissal Letter

Name and Address of Party Filing Petition for Election

Re: Case Name

Case Number

Dear Sir/Madam:

The above-captioned case petitioning for investigation and determination of a question of representation under the Arizona Agricultural Employment Relations Act has been carefully investigated, considered, and reviewed. As result of the investigation and hearing, the Board has found that an election is not warranted because a question of representation does not exist. Accordingly, the Board is dismissing the petition in this matter.

Pursuant to the Arizona Agricultural Employment Relations Board Rules, any party may obtain review or rehearing of this decision by filing a request for rehearing or review under

A.R.S. § 41.1092.09. The request for review must be filed within 30 days after you receive this letter.

Very Truly Yours,

Chairman of the Board

cc: Parties, Executive Secretary

403.2 Request for Review

The dismissal of a petition for election is a final administrative law decision subject to a petition for review or appeal to the Superior Court. Any party to the proceeding may petition for review of the decision that there is not a question of representation. *V.G.I. Harvesting Co. v. Arizona Agricultural Employment Relations Board*, 143 Ariz. 498, 694 P.2d 328 (App. 1985). A request for review must be filed in compliance with A.R.S. § 41.1092.09. A.A.C. R4-2-407.

404 POST HEARING DETERMINATION THAT QUESTION OF REPRESENTATION EXISTS

404.1 Determination of Appropriate Bargaining Unit

The Board must determine whether the bargaining unit proposed in the petition for election is an appropriate bargaining unit. The determination of the appropriate bargaining unit may affect whether a question of representation exists, and therefore may be decided before the Board determines that a question of representation exists.

The Board has the authority to determine whether the bargaining unit will consist of either all temporary agricultural employees or all permanent agricultural employees or both. In defining the appropriate bargaining unit, the existing organization of the employees or the extent to which employees desire representation should not be controlling. Just because the labor organization has involved both temporary and permanent workers in its campaign does not mean that the Board has to define the bargaining unit to include both segments of employees. Principal factors controlling the appropriate bargaining unit should be the community of interest between employees, the same hours, duties, compensation, the administrative structure of the employer, and the control of labor relations policies. A.R.S. § 23-1389(B).

An order directing an election must specify the bargaining unit covered by the order.

404.2 Direction of Election

If after reviewing the ALJ's findings and recommendation the Board determines a question of representation exists, the Board should direct an election, using the Direction of Election form (Form 108), and begin efforts to arrange election details as soon as possible. Copies of the order directing an election should be sent to the party submitting the petition for election, the employer or other respondent in the case, and any previously recognized collective bargaining representative of the employees in the collective bargaining unit defined by the Board.

The Board may not order an election in any bargaining unit in which there was held a valid election in the preceding twelve month period. A.R.S. § 23-1389(G).

The Board may not order an election during any period when the bargaining unit is not at peak. A.A.C. R4-2-213(D). (Section 308.1).

500-525 ELECTIONS

500 GENERALLY

Prompt resolution of representation questions is one primary objective of the Agricultural Employment Relations Act. Therefore, an election should be held as soon as practical. However, an election may only be held when a collective bargaining unit is at peak employment. A.A.C. R4-2-213(D).

Elections may be conducted pursuant to a consent election agreement or a Board order. However, the arrangements and voting procedures are the same in all elections.

501 ARRANGEMENTS FOR CONDUCTING AN ELECTION

501.1 Generally

Election arrangements involve conducting the election manually either at the employer's premises or at some other appropriate location away from the employer's premises. Elections arrangement may involve multiple voting sessions (Sections 517 & 518). However, multi-site or multi-day elections should be avoided when possible.

502 DATE, PLACE, AND HOURS

The date, place, and hours are ordinarily based upon the parties' voluntary meeting of the minds, with the Board's approval, as reflected in a consent election agreement or agreement reached after the order directing an election. The Board agent should endeavor to work out elections details mutually agreeable to the parties. If the parties cannot agree or leave the details to the Board, the following are suggested guidelines.

502.1 Selection of Date

An election should be held as early as practical. However, the Board may only hold an election when the bargaining unit is at peak. If peak does not occur during the remainder of the current growing season, the Board should hold the election at the beginning of the peak of the following growing season. A.A.C. R4-2-213(D). The Board should create electronic reminders to remind a Board agent to periodically review the level of employment with the employer, to ensure that the election is done as soon as possible after peak employment. (See Section 308.1 for factors in determining if the bargaining unit is at peak employment). Every effort should be made to conduct the election in the same growing season in which a petition for election is filed.

The date selected should be one that balances the desires of the parties and operational considerations, along with the desirability of facilitating employee participation and the prompt and timely conduct of the election.

Where there is a choice, the Board should avoid scheduling the election on dates on which there may be a high rate of absenteeism or on which many employees may be away from the farm. Days immediately preceding or following holidays should be avoided. An election may stretch over more than one day if necessary, e.g. where an entire shift of workers is off for

24 hours in a given work week. However, multi-day elections should be avoided unless completely necessary.

502.2 Selection of Place

The best place to hold an election is somewhere on the employer's premises. In the absence of good cause to the contrary, the election should be held there.

One circumstance indicating the possibility of an offsite election at a neutral location is when striking employees are involved. It may also be necessary to conduct an election off the employer's premises where there are unfair labor practices.

If an election is held away from the employer's premises, it should be held as close by as is appropriate and necessary in a public building, social hall, or hotel, motel, school, church, or garage. A van or truck may also be used, and may be particularly appropriate for holding elections near the fields where the agricultural employees are working.

The initial burden of suggesting available places should be placed on the party seeking that the election be held off the employer's property, but final arrangements should be made by the Board agent. Permission to use such property should be in writing.

Whether the election is held on or off the employer's premises, the actual polling place, if feasible, should be spatially and visually separated from the scene of any other activity during the voting period. The polling place should be accessible to all voters. Arrangements should also be made so that the polling place will be accessible to voters who may be off duty at the time they wish to vote.

502.3 Selection of Hours

The hours of election depend on the circumstances of each case. The voting period(s) should be adequate to permit all voters, at their option, to cast votes either on employer time or their own time, without making a special time to vote. It is better to err on the side of allowing too much time than too little.

However, when estimating the time necessary for an election, the Board or agent should take into account the effective utilization of the Board's personnel resources, as well as the goal of not disrupting production or occupying the time of Board agents and observers any more than necessary.

It is usually good practice for the polling period to extend into a pre or post-shift period.

502.4 Absentee Ballots Not Permitted

The Board does not permit absentee ballots.

503 ELECTION EQUIPMENT

503.1 Election Supply Checklist

A Board agent should bring to the election an election kit (to be augmented as necessary in any given situation) containing the following equipment:

- (a) 1 agent badge for each agent supervising the election
- (b) 6 window badges and blank inserts for badges to create observer badges
- (c) 2 voting place signs (Form 112, printed poster size)
- (d) 2 “warning” signs (Form 111, printed poster size)
- (e) Sufficient challenge envelopes, filled out if challenged employees have been identified (Form 115)
- (f) 2 ballot box labels (Form 114, printed on sticky label)
- (g) Cardboard ballot box
- (h) 12 blank Ballot Tally sheets (Form 116)
- (i) 3 large manila envelopes for sealing challenged, impounded ballots (Form 119)
- (j) 6 blank Tally of Ballots forms (Form 117)
- (k) Pencils in different colors – at least two colors for each party involved in the election
- (l) Note paper, masking tape, transparent tape, rubber bands, and felt tip markers
- (m) Portable voting booths (metal or cardboard)
- (n) Ballots (Form 110)
- (o) Notice of Election (Form 109)

503.2 Voting Booth

A voting booth may be either metal or cardboard and will normally be supplied by the Board’s main office. Usually, municipal or other governmental entities will readily cooperate in the loan of facilities; the NLRB will usually cooperate in loaning booths; or booths may be constructed. What is required is a compartment or cubicle that not only provides privacy but that also demonstrates the appearance of providing privacy, while maintaining a level of dignity appropriate to the election process.

503.3 Ballot Box

The Board agent will furnish the official ballot box, such as a sealable cardboard box. The Board should attach a label to the ballot box (Form 114) identifying the box.

503.4 Additional Equipment

In addition to the above equipment, there should be one or more checking tables and sufficient chairs for all Board agents and observers.

504 BALLOTS

504.1 Generally

The ballots, in all cases, are to be furnished by the Board. Before, during, and after an election, no one should be permitted to handle any ballot except a Board agent and the individual who votes that ballot. A sample ballot can be found at Form 110. Ballots should be $\frac{1}{4}$ to $\frac{1}{2}$ the size of a regular sheet of paper.

504.2 Question on Ballot

The question on the ballot should accord with the consent election agreement or the direction of election. The choices on the ballot, likewise, will be dictated by the basis of the election. In all elections, there must be a choice for “no union.” A.R.S. § 23-1389(D). A sample ballot can be found at Form 110.

504.3 Ballots on Multiunion Elections

Where more than one labor organization appears on the ballot, the places on the ballot should be based on agreement, if there is an agreement, or on chance if there is not. In all elections, there must be a choice for “no union.” A.R.S. § 23-1389(D). A sample ballot can be found at Form 110.

504.4 Instructions on the Ballot

Below the choices (boxes) on the ballot, the following language shall appear:

“DO NOT SIGN THIS BALLOT. Fold and drop ballot in box. If you spoil your ballot, (for example, signing the ballot, selecting more than one option on the ballot, or otherwise invalidating the ballot) return to the Board agent for a new one.”

505 BOARD PERSONNEL

The number and type of Board agents involved in an election will depend, among other things, on the size, complexity, and duration of the election. Generally speaking, one Board agent will be required for each checking table at each polling place. In addition, Board agents may be required for relief and for supervision. Due provision should be made for extended hours.

506 ELECTION OBSERVERS

506.1 Designation of Election Observers

Each party involved on an election may be represented at the election by two observers of their own choosing. A.A.C. R4-2-214(B). Parties should be requested to designate observers in advance of the election.

A labor organization cannot select an official of any labor organization as an observer. A.A.C. R4-2-214(B)(1).

An employer may not select a supervisor or company official as an observer. A.A.C. R4-2-214(B)(2).

If a claim is made that an observer is ineligible to act, the matter should be discussed and the parties made aware that the use of an ineligible observer may result in the election being set aside through the objections process. However, the Board agent should not attempt to determine the eligibility of an observer. Rather, unresolved issues should be left to the post-election objection process.

506.2 Role of Observers

The observers represent their parties, carrying out the important functions of challenging voters and generally monitoring the election process. They also assist the Board agent to conduct the election.

Nonparticipating labor organizations should not be permitted to have observers. Individuals contending they are representatives of “no union” groups should not be permitted to act as or select observers.

Observers should normally be given instructions at a conference immediately preceding the election. The Board should give observers an Instructions to Observers form (Form 113) as soon as the observers are identified.

506.3 Observer Identification

Observers should be required to wear official identification. The official badge to be worn by observers is the one provided by the Board. It is preferred, although not required, that no other insignia be worn or exhibited by the observers during their service as observers. This, of course, does not apply to regular employer identification badges, when the employer requires them to be worn.

507 VOTING ELIGIBILITY LIST

507.1 Eligible Voters

Only an individual who is an agricultural employee in the appropriate bargaining unit on the date of an election is eligible to vote in an election. A.A.C. R4-2-214(A).

507.2 List of Eligible Voters

The employer must provide the Board a list of agricultural employees eligible to vote in the election within 10 business days after the Board directs an election or approves a consent election agreement. A.R.S. § 23-1389(I). The Board should not grant an extension of time to provide the list absent extraordinary circumstances. Where the list is received, but late, e.g. the eleventh day, the Board should proceed with the election and allow the matter to be resolved through the post-election objections process.

Upon receiving the list of eligible voters, the Board must make the list available to the labor organization and other interested employees involved in the election. A.R.S. § 23-1389(I).

507.3 Employer's Refusal to Provide the List

If the employer refuses to provide a list of eligible voters, the Board should proceed with arrangements for the election and request an order from the Superior Court in the county in which the election will be held requiring the employer to provide the list of eligible voters. A.R.S. § 23-1391(B). The employer should not be allowed to prevent an election by refusing to provide a list of eligible voters. In addition, the Board agent should inform the employer that such refusal may be considered a Class I misdemeanor under A.R.S. § 23-1392.

507.4 Preelection Check of List

Once the Board has the list of eligible voters, the Board should have the parties check and approve the list promptly, to allow maximum time to resolve eligibility questions and thus reduce the number of challenges. Arrangements should be made for keeping the list(s) up to date, with a final check made at a preelection conference.

The Board may arrange a meeting of the parties to conduct a preelection check of the list of eligible voters. Alternatively, the parties can check the list and provide written feedback to the Board and other parties, identifying the employees they intend to challenge and the reason for the challenge. The parties should be encouraged to air and to talk out their questions. If agreement can be reached on questions of eligibility, the agreements should be put in writing, signed by the parties, and kept with the list of eligible voters. However, parties are not required to raise challenges or questions prior to the election.

The Board agent should retain custody of the original list and any agreements made concerning voter eligibility. Observers may bring to the election lists of employees they intend to challenge; alternatively, the parties may note on the eligibility list, at the preelection check, the persons they intend to challenge. Any marks made at the preelection check should be easily distinguishable from marks made by observers at the election, for example by using different color pencils for preelection checks than at the election.

Observers may not maintain a list of who did nor did not vote.

507.5 Ultimate Disposition of the List

At the election, the list of eligible voters serves as a prima facie roster of voters. After the election, it should be preserved as part of the file.

508 NOTICE OF ELECTION

The Board should provide notice of election as soon as practicable after the election details are finalized.

A standard Notice of Election (Form 109) is used to inform eligible voters of the balloting details.

508.1 Posting and Distribution

Employers should be required to post the notice of election 3 full working days prior to the day of the election. Failure to do so may be grounds for setting aside the election when proper and timely objections are filed.

The notices should be posted in conspicuous places at the workplace.

Notices should be distributed by mail or in person to eligible or disputed eligible voters if the Board thinks it advisable, for example, if the employer does not have a central posting area where all employees are likely to see the notice or if certain employees will not be working during the period the notice of election is posted.

508.2 Copies Required

When election details are arranged, the necessary number of copies of notices should be determined. There should be at least one copy for each location at the farm where notices to employees are customarily posted, one copy for each party and each legal representative, a reasonable additional number requested by any party, enough extra copies for use at the election and for the case file, and copies to be distributed to eligible voters if the Board feels it necessary.

508.3 Insertions Required

The Notice of Election (Form 109) should be poster size and all the print large enough to easily read. The notice should contain, at a minimum, the General Instructions, Employees Rights, and appropriate insertions in the sample ballot, description of the bargaining unit, the date, place, and hours of election and, in split-session or multiple-site elections, it should contain the date, time, and place where ballots will be mingled and counted. Additional insertions may be required to notify the parties if it is a run-off election.

508.4 Instructions to Voters

Appropriate additions may be inserted: e.g., “You will be notified at the time when you may go to vote;” or “If you wish, you may vote on your own time while the polls are open;” or “You may vote on employer time in accordance with the attached Schedule of Voting.”

508.5 Postponed or Cancelled Elections

If a scheduled election is postponed or cancelled after the notice of election has been distributed, the parties should be immediately advised via telephone or electronic communication, and the notice should be followed up in writing. The Board agent should

request the employer to post the Board's written notification next to the notice of election previously posted.

The Board should reschedule the election to be held as soon as possible after the postponed election. Elections should not be postponed without good cause.

509 FOREIGN LANGUAGE NOTICE OF ELECTION AND/OR BALLOTS

The use of foreign languages may be required in representation elections. The notice of election and inserts should be provided in both English and a foreign language, when appropriate considering the composition of the bargaining unit. Ballots may also need to be provided in the appropriate foreign language. As an alternative or supplement, foreign language interpreters may be provided at the polling site. However, if a large number of voters speak only a foreign language, it is more expeditious to provide the notice of election and ballot in the foreign language.

As an alternative to providing ballots in a foreign language, translated notices of election may be provided, while English-only ballots are provided to the voters at the election. In this case, the ballot appears on the notice of election, translated into the foreign language with the following notation above it:

“The sample ballot reproduced in this notice appears in [foreign language] and is a translation of the ballot you will receive in the election. However, the ballot you receive in the election will be printed in English.”

510 SIZE AND ARRANGEMENT OF POLLING PLACE

The size of a polling place and number of voting booths depends on the nature of the election. The number of voters and the extent of the period(s) within which they may be expected to vote are controlling here.

Preparations should be made for the peak load. With a well-prepared eligibility list (i.e., one that is prepared in such form that names can easily be found and one that contains a minimum of mistakes) and where there is a minimum of challenges, one checking table can process 250 voters per hour. Each checking table, under these circumstances, can accommodate voters using up to five voting booths. In elections involving fewer than 25 voters, no more than one booth and one checking table are necessary.

A polling place should be so arranged that the voters may, with a minimum of confusion, enter, stop at the checking table, proceed to a voting booth, go next to the ballot box, and then leave.

Enough space between the entrance and the checking table(s) should be provided so that a line (or lines) of voters may form without “scaring away” or alarming newcomers voters. The polling place should be laid out and directional signs used in a manner such that voters will easily understand what is expected of them.

511 PREELECTION CONFERENCE

The Board agent(s) and observers should assemble at the polling place from 30 to 45 minutes (depending on the complexity of the election) prior to the opening of the polls. In very large elections it may be prudent to hold the preelection conference on the preceding day.

Those present should identify themselves. Substitute observers should be secured for absent observers, if possible, in the event of absent observers. The parties, not Board agents, should obtain substitutes.

Board agent(s) should examine the polling place with the parties and check to see that all equipment is available and in place. “Voting Place” signs (Form 112) and “Warning” signs (Form 111) should be posted. Arrangements for the release of voters should be confirmed. Last-minute changes to the election eligibility list should be discussed.

The Board agent should post an extra notice of election in the polling place so that voters may refer to it if they have questions.

511.1 Distribution of Badges

Board agents should wear “Agent” badges. Observers’ badges should be distributed to the observers, with strict instructions as to their return. Observers are not permitted to wear observer badges when they are not acting as observers. The badge worn by the observers is provided by the Board.

511.2 Instructions to Observers

Procedures for designating observers are discussed in Section 506.1.

The Board agent should give a copy of the Instructions to Observers form (Form 113) to each observer at the preelection conference. The observers should be given the opportunity to read it and ask additional questions.

The following specific areas should be covered briefly:

- (a) prohibition on observers’ electioneering and unnecessary conversation with voters (Section 515.2);
- (b) prohibition on observers’ keeping lists of names of voters (Sec. 513.1);
- (c) procedure for checking voters’ names (Sec. 513.1) and for challenged voters (Section 520.2).

511.3 Representatives of Parties

During this preelection period, if not earlier, representatives of the parties should be permitted to inspect the polling place. Representatives may be present during the preparation of the ballot box. Their objections should be disposed of in accordance with their merit. Finally, *before* the polls are opened, they should be asked to leave.

In the rare case in which the employer on whose premises the election is being conducted refuses entrance to such representatives, the employer should be told that inspection of the polling place by representatives of the parties is customary and that, if the employer persists in its refusal, objections may be filed based on lack of opportunity to inspect the polls.

511.4 Sealing of Ballot Box

The sealing of the ballot box should be made a formal occasion. All observers should be asked to look into it while it is open and to affirm that it is empty. Then it should be closed and securely sealed. All present should be required to stand clear of the ballot box after it has been sealed.

511.5 Employees Who Arrive Before Opening of Polls

“Early-birds” should not be permitted to vote prior to the time scheduled. Those who arrive should not be sent away but should be asked to line up. If a person must leave, he/she should be informed of the voting hours.

512 OPENING OF POLLS

The polls should be opened at the time scheduled. The Board agent will select the official timepiece and so inform the observers.

If the polls open late, the Board agent in charge should note the time and the details, including whether and how many individuals have come to vote and have left without voting. If no one has left, the Board agent should secure the signatures of all observers on a statement to this effect.

513 PROGRESS OF VOTERS

On entering the polling place, the voter proceeds to the checking table. A voter entering a polling place will at least momentarily be unaware of the steps to be taken. Without preventive steps, there may be a “pileup” in this approach area. Affirmative steps should be taken to prevent confusion and direct voters. If possible, the checking table should be the most prominently visible object to an incoming person. If necessary, a directional sign should point to it. If more than one checking table is involved, informational signs (e.g., “Last names A–F vote here”) should be displayed. Finally, a set of observers may be assigned to act as ushers in this area.

If there are multiple checking tables, the lists at the checking tables should be so divided that a voter’s name will not be found at more than one table.

513.1 Procedure at the Checking Table

At the checking table are a set of observers, who sit behind the table, and a Board agent, who sits at one end. Before them is the part of the voting list applicable to that table. The Board Agent should provide the observer for each party with a different color pencil. The color for each party should be noted on the list.

Observers may not make lists of those who have or have not voted. The official eligibility list is the only record made and shows whether a person named thereon has voted. Observers may, however, maintain a list of voters they intend to challenge.

The approaching voters should be asked their names and identifying information if necessary. The parties should agree to acceptable forms of identification prior to the election. Once a voter's name has been located on the eligibility list, all observers are satisfied as to the voter's identity, and no one questions the voter's voting status, each observer at the checking table should make a mark beside the name. One party marks before the name and the other after the name, both using a straight line or check mark, each with a different colored pencil.

Once a voter has been identified using the form of identification agreed to by the parties prior to the election and checked off the voter eligibility list, the observers—or one of them designated by the others—should indicate this to the Board agent, who will then hand a ballot to the voter. The agent must look at each ballot to make sure that the ballot material has been photocopied completely onto the form and that there is no missing information, i.e. that all parties are listed and there is a place to cast a vote for each.

Only the Board agent handles unused ballots. They must remain in the agent's personal custody at all times.

It is at the checking table, normally, that challenges are made. Procedures for challenges are discussed in Sections 520 to 520.5

513.2 Voting Booth

The voter proceeds from the checking table to a voting booth. The Board agent should police the booth to see that there are no cross-conversations between occupants and that there is no more than one occupant per booth. The Board agent should also occasionally inspect the interior of the booth. Conversation near the voting booths should not be allowed if it is disruptive to voters. Section 515.3

513.3 Spoiled Ballots

A voter who spoils his or her ballot and returns it to the Board agent should be given a new ballot. On request, the Board agent should show the spoiled ballot to the observers, being careful not to reveal the voting preferences. Spoiled ballots should be preserved in case of later objections. Spoiled ballots should be placed in an envelope labeled with the election information and titled "spoiled ballots."

513.4 Ballot Box

The voter leaves the booth and drops his or her folded ballot into the ballot box. The observers at the ballot box should not insert the ballot for the voter. Observers should remain at least three feet away, and if the ballot "sticks" in the slot advise the voter to push it through.

The voter should immediately leave the polling place after voting. Voters should not be permitted to loiter or wait for other voters.

514 CLOSE OF POLLS

The polls should not be closed early even though it may appear that 100 percent of the eligible voters have voted.

The polls should be declared closed exactly at the scheduled time, as determined by the Board agent.

The closing time should not be extended just because the election opened late. Only in unusual cases may voting time be extended at the discretion of the Board agent or by written agreement of the parties with acquiescence of the agent.

All employees in the voting line at the time scheduled for closing should be permitted to vote, even if it extends beyond the scheduled closing time. For those who arrive and attempt to join the line thereafter, the Board agent should follow the same procedure as for voters who arrive after the polls have been declared closed (Section 514.1).

The slot in the ballot box should be sealed with tape at the close of the polls. After the ballot box is sealed, the Board agent should, until the count, maintain personal custody of the ballot box unless, by unanimous agreement, other arrangements are made.

514.1 Late-Arriving Employees

An employee who arrives at the polling place after the designated polling period has ended is not entitled to have his or her ballot counted, absent extraordinary circumstances, unless the parties agree not to challenge the ballot. The following procedure should be followed when a voter arrives after the designated polling period has ended: the Board agent should determine whether there is agreement of all the parties as to whether such voter should be allowed to cast a ballot; if no such agreement is reached, the Board agent should permit the voter to cast a ballot, then the Board agent should challenge ballot.

515 ELECTIONEERING

No electioneering should be permitted at or near the polling place during the hours of voting, nor should any conversation be allowed between an agent of the parties and the voters in the polling area or in the line of employees waiting to vote. Indeed, agents of the parties (other than observers) should not be allowed in the polling area during the election hours.

The Board agent should note in the file information as to all electioneering incidents.

515.1 Insignia Worn by Observers

It is required that all observers wear the official observer badge. It is preferred, but not required, that they wear no other insignia (Section 511.1). Observer badges must be collected at the end of the election.

515.2 Electioneering by Observers Prohibited

Election observers may not electioneer during their hours of observer duty, whether at or away from the polling place. In order to remove any possibilities of electioneering, an observer away from the polling place for any reason during the observer's duty hours should be accompanied by observers representing the other parties. Observers should not be permitted to engage in unnecessary conversation with incoming voters.

515.3 Voters

Voters may wear union or employer insignia. Conversation between voters does not need to be monitored or policed, unless their talk is loud enough to constitute a disturbance.

516 VOTING ON EMPLOYER TIME

Where it has been decided that eligible voters may vote during working hours, specific arrangements should be made in this respect. It should be noted that employees have a right to refrain from voting and no one should be ordered to go to the polling place.

Except where the number of employees is small, permitting them to leave their work at will and not by specific arrangement may result in (a) undue disruption of production and (b) upsetting of the regular voting flow.

516.1 Voting Schedule Preparation and Posting

Voters may be scheduled to vote alphabetically, by work unit, or any other reasonable method agreed by the parties that provides all eligible employees the ability to vote. In preparing a voting schedule, the time just before and just after a change of shifts should be left open for those who prefer to vote on their own time. The schedule should note that employees may vote on their own time during the hours the polls are open, if they prefer.

The voting schedule may be posted in advance, alongside the notice of election. The schedule should state whether voters may leave their work or will be released at the time indicated. The schedule of voting posted alongside the notice of election should instruct that "Voters may leave work to vote at the times indicated. However, in the event a voter is unable to do so, he or she may vote at any time the polls are open."

516.2 Method of Releasing Voters

The method of releasing voters must be made clear to all parties and should be resolved well in advance of the election. In many instances the parties will agree that employees may release themselves and go to vote in accordance with the posted notice. In other cases, releasing may be done via public address system or by a traveling crew of observers (one observer representing each party) who may or may not be accompanied by a Board agent. Release by supervisors should be avoided to the extent possible. Therefore, whenever possible, the releasing should be done by the releasing crew or other agreed upon method, not by a supervisor.

516.3 Off-Schedule Voters

At the polling place itself, the question of whether a voter presenting himself/herself is off-schedule should not be raised. The method of voting at a scheduled time is designed to eliminate confusion; a too-close scrutiny and policing of the execution of the schedule may result in confusion itself.

517 SPLIT-SESSION ELECTION

What has been said of opening and closing elections (Sections 512 & 514) applies equally to split-session elections. Polls should be opened and closed in accordance with the times designated in the notice of election.

At the close of a voting session that is not the last session, the ballot box slot should be securely sealed and observers should be encouraged to sign across the seals in order to assure themselves, upon resumption of voting, that the box has not been tampered with. The Board agent should collect the observer badges between sessions.

Between voting sessions, the Board agent is solely responsible for the custody of the ballot box. The box should be in the personal possession of the Board agent or securely locked up. These arrangements should be communicated to the parties when the election details are first determined. The Board agent need not inform the parties of exactly where the ballot box will be kept, but only that it will be in Board custody.

Preelection arrangements should also include agreement on the time and place ballots will be mingled and counted; this information becomes part of the notice of election. (Section 508.3).

518 MULTIPLE POLLING PLACES

Where more than one polling place is open, the procedures are basically the same as those applying to a single polling place. If the polling places are not open simultaneously, the same ballot box may be used at more than one polling place. The voting hours at each place, as well as the date, time, and place where ballots will be mingled and counted, should appear on the notice of election. If no two polling places are open simultaneously and only one eligibility list is used, voters may normally vote at any poll.

518.1 Polls Open Simultaneously

If multiple polling sites are open simultaneously, the emphasis should be on the prevention of duplicate voting. Separate eligibility lists should be used for each location. Care should be taken to ensure that all employees are aware of their polling site.

518.2 Traveling Election

In appropriate circumstances, the polls may move from place to place. The voting is conducted by a traveling Board agent. It is desirable, but not required, to have the same observer representing each party at all locations. The same eligibility list should be used the entire period.

520 CHALLENGED BALLOTS

520.1 Generally

The challenge procedure provides a method whereby a voter's eligibility to vote may be called into question, the ruling on the question may be at least temporarily reserved, and the questioned voter may vote in the event his or her vote becomes relevant, all without disrupting the regular flow of votes.

Any party's observer or a Board agent may challenge, for good cause, the eligibility of any individual to vote in the representation election. A.A.C. R4-2-214(c). The reason for the challenge should be stated at the time the challenge is made.

When voters are challenged pre-election, the Board may postpone determination of the eligibility of the challenged voter, allow him or her to vote and have the Board agent conducting the election impound the ballot, then the Board determines eligibility only if the challenged employee's vote would be determinative in the election.

520.2 Challenge Procedure

When a voter is challenged, a small "c" is placed beside his or her name by an observer for the challenging party. The other observer should make the usual check mark. (If the voter's name does not appear on the list, it should be added to the list, and the "c" inserted.) The Board agent should fill out the voter's name, job classification, employer, place and date of election, the reason given for the challenge, the identity of the challenger, and the agent's initials on the challenged ballot envelope (Form 115). If time permits, the agent may elicit specific information surrounding the voter's status, for insertion on the reverse side of the envelope, which should be initialed by the voter.

The Board agent should then give the voter a ballot and instruct the voter to enter the booth, mark the ballot, fold it so as to keep the mark secret and return to the checking table. The Board agent and the observers should make sure that when the challenged voter comes out of the booth, the voter goes to the checking table and does not drop the ballot in the box before placing it in the envelope. On return to the checking table, the voter should be required to display the ballot, without disclosing how it is marked. The voter is then given a challenged ballot envelope. The voter places the marked ballot in the challenged ballot envelope, seals the envelope and places the envelope in the ballot box. At the time of counting the ballots, the Board agent impounds all challenged ballots.

520.3 Proper Time to Challenge

Challenges should be handled as they come up, if feasible. Challenged voters should not be told to return later; however, they may be permitted to remain at the polling place awaiting a slack period.

In the Board agent's oral instructions to observers (Section 511.2), the Board agent should urge the observers to challenge as the voter comes up to the checking table. Normally, a challenge should be made before the questioned voter receives a ballot. However, a challenge voiced at any time before the ballot is dropped into the ballot box should be honored.

520.4 Merit of Challenge not to be Argued

Arguments on the merits of a challenge should not be permitted. The challenge steps outlined above should be taken quietly and quickly and impede the regular voting flow as little as possible. The Board agent should be prepared to explain to the voter the measures that will be taken to protect the secrecy of the challenged ballot. (Section 521.11).

521 COUNT OF THE BALLOTS

After the close of the election, the Board must issue a tally of ballots. A.A.C. R4-214(D). The count of ballots should take place as soon after the close of voting as possible.

521.1 Time and Place

If more than one polling place is involved, the count should begin after the ballot boxes from all polling places have been collected. If the voting hours have been long and arduous, if the count is expected to be time-consuming, and if the personnel participating in the count are the same as those who participated in the conduct of the election, a rest period or meal period before the count may be arranged. When there is any intervening period, care should be taken not only to preserve the integrity of the ballot box(es), but also to display this fact.

The count may take place at any central location. Typically, in the small election, the count is taken at the polling place. In a large election, if one of the polling places is large enough, the tally can take place there.

521.2 Persons Present at Count

The actual participants to the count are the Board agents and official observers, in the number necessary. The employer and labor organization(s) may have representatives at the count in order to resolve challenges to voters' eligibility. The Board may allow spectators and press as space allows.

521.3 Resolving Challenges

Representatives of the parties present at the count should be encouraged to resolve as many challenges as they can at the count. However, the Board agent should not urge resolution of challenges if there is reluctance by any party. The resolution of challenges should not be allowed to devolve into an argument on the merits that unduly delays the count.

521.3(a) Procedure on Resolved Challenges

Cleared challenges should be given the following treatment:

- (1) the details of the disposition should be noted on the reverse side of the envelope;
- (2) parties should signify their agreement by signing or initialing thereon;
- (3) the Board agent should retain the envelope to be preserved in the file; and
- (4) the ballot, still folded, should be dropped from the envelope into the ballot box with the other ballots.

Challenges may also be cleared after the ballots have initially been tallied but before the tally of ballots has been completed. In this event, every effort should be made to ensure the secrecy of the votes cast by employees whose challenged ballots are thus cleared.

Once the official tally of ballots has been completed and signed by the parties, further challenges should not be resolved until after Board investigation.

521.4 Mechanics of Counting

There are two methods of counting, informal and formal. The Board agent in charge of the election may elect which method to use, but with respect to large elections, or elections in which there are or have been strong feelings between the parties, the formal method is preferred.

With either method, the precount announcements are the same. They should be made at every election count. Their specificity assures that the employees and the parties present are fully informed as to the principles that will be observed during the count. They will also set the proper tone by emphasizing that the counting process to follow will be conducted by recognized rules.

The Board agent should announce the following to those present:

- (a) A majority of the valid votes cast will decide the election. A tie vote will mean the labor organization has not won, because it has not achieved a majority.
- (b) Any ballot that clearly reflects the intention of the voter will be counted in accordance with the apparent intention, even though the marking is unorthodox — for example, even though a checkmark is used; or the word “yes” is written in the yes box, or the word “no” in the no box; or the mark appears within the outer rather than the inner box; or there are erasures; or there are markings in more than one box.
- (c) If the intent of the ballot is not clear, it will be considered void.
- (d) A ballot that identifies the voter will be considered void.
- (e) Only a Board agent may touch any ballot, even if a ballot drops to the floor.

Then, the Board agent should instruct the participating representatives as to the method of tallying. See below for formal and informal methods. Only after these instructions have been fully announced should the ballot box(es) be opened. The contents should be thoroughly

intermixed before counting. If more than one Board agent is involved, the Board agents other than the instructing one may start unfolding ballots, placing them face down.

521.5 Informal Method

The Board agent(s), stationed alone on one side of a counting table, removes the ballots from the box, opens them one by one, calls out and displays the preference expressed and places them, face up, in piles according to the preferences expressed. On the other side of the table are witnesses representing all parties (and behind them are spectators, if any), who watch the proceedings. When the box is empty — parties' representatives should be allowed to inspect it at close range — a Board agent should count aloud the different piles, displaying each ballot to the witnesses as it is counted. Ballots should be packaged, according to preference, in groups, the number of which should be determined by the Board agent before the count (for example, if 200 ballots were cast in an election, it is reasonable to bind them in groups of 50 according to preference, after they are counted).

521.6 Formal Method

Here again, the Board agents are alone on one side of a table. All but one of them unfolds ballots, placing them face down; the other Board agent takes each ballot as it comes, calling out and displaying the vote and placing it, face up, on the pile representing that choice.

On the representatives' (and spectators') side of the counting table, there should be a separate Ballot Tally sheet (Form 116) for the votes received by each party. Seated at each tally sheet should be a representative of the other party. No party should be tallying its own votes. The representative of the opposing party tallies each of the votes (for example, *//// ///*) received by the other party as it is called out. Behind the representative, as a check, is a representative of the party whose votes are being tallied on that sheet. When a party's tally reaches 50 (or another number predetermined by the Board agent based on the size of the election), the calling is temporarily halted while the particular pack of 50 (or whatever number is predetermined by the Board) is recounted in view of the representatives and then packaged. The totals subsequently arrived at are checked against the packs. The tallier and checker must sign the completed tally sheets.

521.7 Interpretation of Ballots

The Board agent should rule on and count each ballot as it comes up; interpretation of other-than-normal ballots should not be postponed. If the voter's intention is clear despite unorthodox markings, extra markings or erasures, the ballot should be counted in accordance with the intention displayed. If the voter's name, number or other means of identification appears on the ballot, the ballot is void.

Void ballots should be counted as such and packaged separately.

NOTE: If *objections* are filed after the election concerning the interpretation or validity of voided ballots, see Sections 601-604.

521.7(a) Challenge of Board Agent Interpretation

If the intent of the voter is clear, the Board agent should not allow the ballot to be challenged. However, if a party's challenge to the interpretation of the ballot is based on good cause, the Board agent should segregate the ballot and the ballot should be listed on the tally as a challenged ballot. Should such ballots be determinative or be among determinative challenged ballots, they should be photocopied at the voting place, if possible, and copies given to the parties. Thereafter, the Board agent should place the questioned interpretation ballots in an envelope reserved exclusively for them. (Section 521.11). Because it may be necessary to examine such ballots during a postelection investigation, these ballots should be kept segregated from other challenged ballots, although they must be safeguarded in the same manner as other challenged ballots. During *any* examination of questioned interpretation ballots, including by Board personnel, during the postelection investigation, the parties should be given the opportunity to be present. (Section 554).

NOTE: If *objections* are filed after the election concerning the interpretation of ballots, see Sections 601-604.

521.8 Preparation of Tally of Ballots

Each copy of the Tally of Ballots (Form 117) should be completed in ink in the presence of the representatives of the parties in attendance.

On the Tally of Ballots, ensure that the appropriate type of election box has been checked. Item 1 — “Approximate number of eligible voters” — should be completed with the number originally appearing on the eligibility list plus those not originally on the list but who nevertheless cast a ballot under challenge.

The blank spaces in items 2–9 are self-explanatory. The “(not)” in item 10 concerning challenged ballots should be crossed out or underlined, whichever is applicable.

Challenges are not sufficient to affect the results, if, added to the presently trailing choice, they would not shift the majority; they are sufficient if they would shift the majority. In determining whether challenges might affect the results, it should be kept in mind that a union, to obtain a majority, must receive one vote more than 50 percent of the valid votes cast.

If the “(not)” in item 10 is crossed out (i.e., where the number of challenged votes is sufficient to affect the results), item 11 should be stricken in its entirety.

If the “(not)” in item 10 is underlined (i.e., where the number of challenged votes is not sufficient to affect the results), the Board agent's action with respect to item 11 may take any one of a number of forms:

In a one-union election, the “(not)” should be crossed out or underlined, whichever is applicable and the name of the union should finish out the sentence.

In a multiunion situation, if any union or “Neither” or “None” received a majority of the valid plus challenged votes, the “(not)” should be crossed out and the name of the winning choice should fill out the line.

If none of the choices on the ballot received a majority of the valid votes plus challenged ballots, the word “(not)” should be underlined and the sentence “A MAJORITY OF THE VALID VOTES COUNTED PLUS CHALLENGED BALLOTS HAS (NOT) BEEN CAST FOR:” should be filled out with “any of the choices on the ballot.”

521.9 Storage of Nondeterminative Challenged and Voided Ballots

Where challenges are not determinative, unopened individual challenged ballot envelopes and voided ballots should be securely bound together and preserved in the file.

521.10 Postelection Objections to Interpretation or Validity of Ballots

If objections are filed after the election that concern the interpretation or validity of any ballot, including voided ballots, those ballots should then be stored in a similar manner as challenged ballots. Section 521.11.

521.11 Securing Determinative Challenged & Questioned Interpretation Ballots at the Conclusion of Election

In the event there are determinative challenged voters and/or questioned interpretation ballots the following steps should be part of the tally process.

Information regarding determinative challenged voters or questioned interpretation ballots should be listed on the front of a large manila envelope designed for this purpose. (Form 119). The case name and number, the election date, a description of the contents of the envelope, the total number of large envelopes when more than one is used, and the name of the Board agent who is to seal the envelope(s) should be included on the face of the envelope. The determinative challenged ballot envelopes and/or the questioned interpretation ballot envelopes should then be placed, in the presence of the parties’ representatives, into the labeled manila envelope(s). Note that separate envelopes should be established for determinative challenged ballot envelopes and/or the questioned interpretation ballot envelopes. After sealing the envelope(s), the Board agent and the parties’ representatives should sign their names across the flap. The flap should then be secured with transparent tape in such a manner as to ensure against accidental opening.

See Section 523 concerning handling of determinative challenged and/or questioned interpretation ballots upon return to the Board office.

521.12 Execution of Tally of Ballots

The Board agent should sign at the place indicated on the tally. Representatives of the parties should also sign at the appropriate places on the tally.

Should a party be absent or decline or fail to sign the tally, the Board agent should insert the words "No representative present" or "Declined to sign" (whichever is applicable) on the appropriate line.

521.13 Distribution of Tally of Ballots

As soon as the tally of ballots has been prepared, a copy should be provided to a representative of each party. A.A.C. R4-2-214(D).

If, at the time the tally is made available, one of the parties has no representative present, a copy of the tally should be mailed to that party as a courtesy. A party's absence or refusal to accept the tally at the time it is made available does not affect the time for filing objections.

522 CLOSING CHECKLIST

The file, at the close of an election, should contain a signed copy of the tally of ballots, tally sheets, if they were used, the voting list, and memos respecting unusual occurrences. Marked ballots, in the bundles in which they were bundled after the count, should be preserved until the case is finally closed. The Board agent should carry away and then destroy unmarked ballots.

Voting equipment, including signs, should be collected. The appreciation of the Board should be extended for whatever cooperation was rendered by the parties.

523 STORAGE OF DETERMINATIVE CHALLENGED AND QUESTIONED INTERPRETATION BALLOTS

The Board must take special steps to protect the integrity of uncounted determinative challenged ballots. See Section 521.11 for the procedure for collecting such ballots at the ballot count. Once the Board agent returns to the Board office after the count, the envelope containing challenged ballots or questioned interpretation ballots should promptly be stored in the office safe or a secured, limited access, locked filing cabinet.

The Board should appoint a Board agent as the custodian of the uncounted ballots. They are not to be removed from the area where they are stored without consent of the Board agent that is the custodian of the ballots. Challenged ballots that have been counted should be maintained in the case file, separate from unchallenged votes, until the case has been closed and time for all appeals expired.

A photocopy of the face of the envelope(s) containing the challenged ballots or questioned interpretation ballots and a memorandum stating where the ballots have been stored should be placed in the case file.

524 INVESTIGATION OF CHALLENGED BALLOTS

As soon as practicable, the Board or Board agent must investigate the challenges, issue a revised tally, and serve the revised tally upon all parties.

524.1 Count of Challenged Ballots

The counting of challenged ballots, challenges to which have been overruled, should take place as soon as possible at a time and place determined by the Board agent conducting the investigation of challenged ballots. Ordinarily the count of the ballots of overruled challenges will take place at the Board's office. In unusual circumstances, the Board may approve the request of one or more of the parties to count the ballots where the original count took place.

At the count, parties may be represented by observers; normally, one per party is adequate, but the count should not be postponed because of the absence of representatives. The challenged envelope of each voter whose ballot is to be counted should be displayed to the observers. A further challenge of the same voter should not be accepted. The ballot should be removed from the envelope, still folded. Each envelope should be saved and preserved in the file. After the ballots thus taken from the challenged envelopes are thoroughly mixed with each other, they should be unfolded and counted.

524.2 Revised Tally of Ballots

The Board agent may issue a revised tally of ballots by using Form 118, Revised Tally of Ballots. A copy of the revised tally should be provided to each party. A.A.C. R4-2-214(E).

525 RUN-OFF ELECTIONS

525.1 Occasion for Run-Off Election

If an election ballot provides a choice between at least two labor organizations and "no union," and none of the choices receives a majority of the valid votes cast, the election is inconclusive and the Board must conduct a run-off election. A.A.C. R4-2-217(A).

525.2 Time of Run-Off

The run-off election should be held as soon as practicable. However, it should not be held during the period in which objections to the original election may be filed (Section 601.1) unless all parties, in writing, waive their rights to file objections. If objections to the original election are timely filed, the Board should hold off conducting a run-off election until such objections have been resolved.

525.3 Eligible Voters in Run-Off

The only employees eligible to vote in a run-off election are those in the appropriate bargaining unit on the day of the run-off election. A.A.C. R4-2-217(B). The eligibility list used in the original election may be updated and used in the run-off election. Parties to the election should be provided the updated voter eligibility list and the same preelection procedures followed as in the original election. (Section 507.4).

525.4 Notice of Run-Off Election

The standard notice of election should be modified to state the election is a run-off election and the description of the voting unit should be modified to make clear that employees who have quit or been discharged since the original election and not rehired prior to the run-off election are not eligible to vote. The notice of election should contain all the inserts included in a notice of election. (Section 508.3).

525.5 Ballot in a Run-Off Election

The ballot in a run-off election should provide a choice between the labor organization receiving the highest number of votes in the original election and “no union.” A.A.C. R4-2-217(c).

525.6 Conducting a Run-Off Election

The run-off election is conducted in the same manner as the original election. A.A.C. R4-2-217(D). It is subject to the same ballot challenges and objections to the election as the original election.

600-605 POST-ELECTION OBJECTIONS

600 GENERALLY

Any party to the election may file with the Board an objection to the conduct of the election or conduct affecting the result of the election. A.A.C. R4-2-215(A). If objections are timely filed, a Board agent conducts an administrative investigation and makes the initial determination regarding whether there are substantial and material issues surrounding the objection that warrant a hearing. The objection is thereafter dismissed or processed through a hearing by the OAH. The Board makes the final decision regarding objections. A.A.C. R4-2-216.

601 REQUIREMENTS FOR AN OBJECTION TO ELECTION

601.1 Timing of Filing an Objection

A party must file an objection to the conduct of an election within 7 business days after the Board issues the tally of the ballots. A.A.C. R4-2-215(A). An objection is considered filed on the date it is received by the Board. A.A.C. R4-2-103(C). A Board agent should docket receipt of an objection to the election. If the objection is not filed within 7 business days, the Board may not act on the objection, and should certify the election results if the outcome has been determined and a run-off election is not required. A.A.C. R4-2-215(C).

If a revised tally of ballots is issued due to determinative challenged ballots, the time for filing an objection begins when the Board issues the revised tally.

If the Board receives an objection that is not timely, it should notify the parties in writing that it will not take any action on the objection because the objection was not timely filed. A.A.C. R4-2-215(B). The notice should include the date the objections were due and the date on which the Board received them.

601.2 Contents of Objection

An objection to an election must set forth each fact and allegation in support of the party's objection. A.A.C. R4-2-215(A). The facts and allegation should be specific, not conclusory. Non-specific objections, such as "by these and other acts," are insufficient and should not be considered.

Objections may not be based on issues that could have been raised as a challenge to the petition or issues that could have been raised in the preelection hearing. A.A.C. R4-2-215(A).

If an objection does not contain specific facts and allegations or raises issues that could have been raised in a challenge to the petition or at the preelection hearing, then the objection does not comply with A.A.C. R4-2-215(A) and the Board should not take any further action on the objection. The Board should notify all the parties in writing that it will take no further action on the objection because it does not comply with the specificity requirements of A.A.C. R4-2-215(A) or contains issues that could have been raised prior to the election. A.A.C. R4-2-215(B).

601.3 Service of Objections

The party filing an objection to election must simultaneously serve a copy of the objection on all other parties to the election and file a statement of service with the Board. A.A.C. R4-2-215(A). The Board should not act on an objection that has not been served on all the parties to an election, as evidenced by the statement of service filed with the Board. The Board should inform the parties in writing that it is not acting on the objection because the party filing the objection failed to follow the service requirements of A.A.C. R4-2-215(A). A.A.C. R4-2-215(B).

602 OBJECTION TO A RUN-OFF ELECTION

A run-off election is subject to the same objections and procedures for the processing objections as the original election. However, conduct that can be considered in connection with objections to run-off elections is limited to conduct occurring after the original election. If the party could have objected to the conduct in an objection to the original election, it cannot be the subject of an objection to a run-off election. A.A.C. R4-2-215(A).

603 INVESTIGATION OF OBJECTIONS TO ELECTION

The Board or a Board agent must conduct an administrative investigation of the objections to the election, if the objections satisfy the time, content, and service requirements of A.A.C. R4-2-215(A). A.A.C. R4-2-216(A). (Sections 601-601.3).

603.1 Nature and Scope of Investigation

The investigation of objections is nonadversarial, insofar as the Board is concerned, because it is part of the investigation of a representation question. This means that the role of the Board agent is completely nonpartisan; the Board agent is responsible for determining all relevant facts. However, the party bringing the objection ultimately has the burden of supporting the objection.

The party bringing the objection has the duty to offer full cooperation to the Board investigator. If it fails to provide evidence, the Board investigator should find that there are no substantial and material issues requiring an OAH hearing, and dismiss the objections.

603.2 Circumstances Warranting an OAH Hearing

The purpose of the administrative investigation is to determine if the objections create substantial and material factual issues regarding the conduct of the election or conduct affecting the election. Under this standard, substantial credibility issues should be resolved at a hearing and not on the basis of the administrative investigation. However, if credibility conflicts can be resolved on the basis of objective factors or objections can be determined without the need to resolve disputed fact, the Board investigator should do so, and a hearing is not required.

604 INVESTIGATION WHEN UNFAIR LABOR PRACTICE CHARGE ALSO INVOLVED

604.1 Generally

In the event there are determinative challenged voters who are also involved in a related unfair labor practice charge, or who are also alleged discriminatees in an unfair labor practice charge, or if there are objections to an election and an unfair labor practice charge that involve the same conduct, then the investigation of the challenges and/or objections and the charge should be coordinated.

A variety of circumstances may be presented by a combination of challenges/objections and unfair labor practice charge cases. Thus, unfair labor practice allegations filed before the election may already be under investigation. Alternatively, the unfair labor practice allegations may be filed around the time of the election's determinative challenges and/or with objections. An initial investigation of each should be started. The Board should review each set of circumstances carefully, from the perspective of the most prompt and efficient overall processing thereof, and select among the options available.

604.2 Options

(a) Objecting Party Withdraws Charge to Expedite Processing of Objections

A notice of hearing on challenges or objections requires merely a finding that there are substantial and material factual or legal issues, whereas a determination as to the merit of an unfair labor practice charge requires a complete administrative investigation. Under appropriate circumstances, a charging party may prefer to withdraw its unfair labor practice charge in order to permit the processing of the challenges and/or objections to proceed more quickly, including if warranted directly to a hearing.

(b) Objecting Party Does Not Withdraw Charge

If the charging party chooses not to withdraw the unfair labor practice charge, the Board nonetheless may decide it is appropriate and more expeditious to hold the charge in abeyance and process the challenges and/or objections. Agreement of the parties is not required. This alternative procedure could be used where the unfair labor practice allegations and the challenges and/or objections are coextensive or related, and the resolution of the challenges and/or objections in the representation case, after Board review, is likely to provide an appropriate basis for resolving the unfair labor practice case. For example, if objections were overruled after a hearing, the record in the objections proceeding may provide a basis for dismissal of the charge which was held in abeyance.

The situations described herein are not exhaustive. There may be other circumstances in which the procedures discussed above may be appropriate. There may be circumstances where they are not appropriate. The Board should use its discretion in coordinating the processing a simultaneous objection to election and unfair labor practice investigation.

605 CONCLUSION OF INVESTIGATION AND NOTICE TO PARTIES

605.1 Report of Investigation

The Board agent investigating the objections should write a report summarizing his or her investigation and conclusions, including identifying and summarizing the documents reviewed and individuals interviewed. All documents and notes from the investigation should be included in the case file.

605.2 Dismissal of Objection

If, after conducting an investigation, the Board agent determines that the objections are not valid and that no substantial or material issues exist regarding the election that would require an OAH hearing, the Board must dismiss the objections and certify the results of the election. A.A.C. R4-2-216(A).

If the Board dismissed the objection after an administrative investigation, it should notify all parties in writing. The notice should include the statement, "You have 30 days after receiving this dismissal notice in which to appeal the Board's dismissal of your objection. The appeal should be made pursuant to Arizona Revised Statutes Title 41, Chapter 6, Article 10. The Board may extend the time for appeal for good cause shown." A.A.C. R4-2-216(B).

605.3 Ordering a Hearing

If, after an administrative investigation, the Board determines that substantial and material facts exist that warrant a hearing, the Board shall order a hearing. The hearing will be conducted by the OAH.

A Board agent should submit a Request for Hearing to the OAH, using the form prescribed by the OAH (Appendix C).

After the OAH sets the date, time and location of the hearing, the Board shall issue a Notice of Hearing on Objections to Election (Form 120) to all parties.

605.4 OAH Hearing and ALJ Findings

After the OAH hearing, the ALJ issues an order directing appropriate action. If the ALJ order is not challenged, then the ALJ decision becomes final. The Board should then take the appropriate action regarding certifying the election results.

Any challenge to the ALJ decision must be done pursuant to the uniform administrative hearing procedures of the Arizona Revised Statutes, Title 41, Chapter 6, Article 10. A.A.C. R4-2-216(B); A.A.C. R4-2-401. The Board should review the entire record relating to the objection to the conduct of the election or conduct affecting the election and issue a written decision and appropriate order, either certifying the election results, invalidating the election, or making whatever order is necessary to remedy the wrong.

605.5 Rehearing

The party adversely affected by the Board's decision may file a motion for rehearing under A.R.S. § 41.1092.09. A.A.C. R4-2-407(A). The motion must be filed within 30 days after the party receives the Board's decision. A Board agent should docket receipt of the motion. The Board should grant the motion for rehearing if:

1. The decision is not justified by the evidence or is contrary to law;
2. There is newly discovered material evidence that could not have been discovered and produced at the original hearing;
3. One or more of the following has deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the Board, the ALJ, or the prevailing party; or
 - c. Accident or surprise that could not have been prevented with ordinary prudence; or
4. Excessive or insufficient sanction.

A.A.C. R4-2-407(B). The Board may grant rehearing to any party, and the rehearing may cover all or part of the issues. An order granting a rehearing or review must identify the grounds for the rehearing and the issues covered, and only those grounds will be reviewed. A.A.C. R4-2-407(C).

700-703 CERTIFICATION OF ELECTION

700 GENERALLY

The ultimate product of the representation election is a certification. In a certification election, if a labor organization has received a majority of the valid votes, the Board should certify the labor organization as the collective bargaining representative of the bargaining unit in the election. If a labor organization has not received a majority of the valid votes, the Board should certify that no labor organization was selected. A.A.C. R4-2-215(C).

If the election was for decertification, the Board should certify either that the labor organization remains the collective bargaining representative of the bargaining unit or that the bargaining unit has chosen to have no collective bargaining representative. A.A.C. R4-2-215(C).

701 TIMING OF CERTIFICATION

The Board should issue a certification of the results of an election on the eighth business day after the election, if:

1. No objections are filed within seven business days after the Board issues a tally of ballots;
2. The number of challenged ballots are insufficient to affect the election results; and
3. No run-off election is required.

A.A.C. R4-2-215(C).

If objections to the election are filed, the Board should certify the election results as soon as the objections are resolved, either by dismissal after administrative investigation or after hearing, and the period for appealing the resolution has expired (30 days).

If the number of challenged ballots is enough to affect the election results, the Board should certify the election results after the challenges are resolved, the Board issues a revised tally of votes, and the time for objecting to the Board's resolution of the challenged votes has expired.

702 FORM OF CERTIFICATION

Although a determination of the election outcome may appear at the end of a report, in an ALJ decision, a Board decision, or other document, the certification of election results should be a separate document that indicates the certification or decertification of the collective bargaining representative, as appropriate. (Forms 121 & 122).

In all cases, the certification should contain a description of the collective bargaining unit for which the representative was certified or decertified.

703 FILE OF CERTIFICATIONS

The Board should maintain a permanent file of certifications issued in their cases. The file should be arranged alphabetically or by case number and should contain all certifications of representative and all certifications of results issued by the Board.

800-802 CASE FILES AND DOCUMENTARY EVIDENCE

800 CASE FILES

The case file should reflect all action taken in the investigation and be kept up to date. It must be sufficiently complete and current to permit appropriate supervisory review on an ongoing basis and, if necessary, to allow another Board agent to continue the investigation with a minimum of duplication. If the investigation is being conducted at other than the Board's central office in Phoenix, it is preferable that the central office keep originals of all documents filed with the Board. Notations should be made in the central file regarding documents kept in other offices. At the conclusion of the election and all objections, all files regarding an election should be consolidated in the Board's central office.

800.1 Organization of Files

Files should be so organized that specific material can be easily found. No special sectional breakdown is required, as each case may require different documents. The need for organization will often depend on the case, but a desirable breakdown would consist of sections devoted to (1) formal (public) documents, (2) memos and correspondence, (3) affidavits and statements, (4) showing of interest and employee lists, and (5) other documents. Affidavits and statements should be arranged alphabetically and other documents chronologically.

800.2 File Should Contain Complete History of the Case

There should be no gaps in the case file. Where an item inserted in the files speaks for itself, it is unnecessary to recite the surrounding facts for a memo, but, for example, an unsuccessful interview attempt should be documented in a memo; in this way, the file will show that that point has not been overlooked.

From time to time, if the case is long and involved, the Board agent assigned should, by memo, bring the circumstances up to date and signify further steps to be taken.

801 RETENTION OF FILES

The AERB has a Records Retention and Disposition Schedule regulating how long case files and election materials should be retained. The schedule may be modified pursuant to changing state rules. The Board administrator will have available the records retention and disposition schedule. The Board will appoint a custodian of the records who will be responsible for record retention and disposition.

802 TRADE SECRETS, CONFIDENTIAL, OR PROPRIETARY INFORMATION

Parties producing documents must designate confidential, trade secret, or proprietary information as such, and request the appropriate designation be placed on the documents. The General Counsel shall not release to any party information marked proprietary, confidential or trade secret, unless an appropriate protective order is in place or the General Counsel receives consent of the parties. The General Counsel should also consider whether the information is part of the investigative file that should remain confidential under A.A.C. R4-2-204(D) & (E). (Section 903).

900-905 MISCELLANEOUS PROCEDURES

900 SUBPOENAS

900.1 Generally/Authority of Board

Arizona Revised Statutes § 23-1391(A) provides that the Board or any member may issue subpoenas calling for attendance and testimony of witnesses or the production of evidence in any investigation or proceeding.

Any party to a proceeding or investigation before the Board or on behalf of the Board may apply for a subpoena to require the attendance of witnesses or the production of documentary evidence.

900.2 Relevance of Subpoenaed Information

The testimony or documentary evidence sought by a subpoena must be relevant to the matter under investigation or in question before the Board. “For purposes of an administrative subpoena, the notion of relevancy is a broad one So long as the material requested ‘touches a matter under investigation,’ an administrative subpoena will survive a challenge that the material is not relevant.” *Sandsend Financial Consultants, Ltd. v. Federal Home Loan Bank Board*, 878 F.2d 875, 882 (5th Cir. 1989) (citation omitted) and cases cited therein.

900.3 Types of Subpoenas

900.3(a) Subpoenas Ad Testificandum

A subpoena ad testificandum requires the subpoenaed party to appear and give testimony. It should specifically state the time and place of the required testimony or deposition. The subpoena should identify the party taking the deposition or requiring the testimony.

900.3(b) Subpoenas Duces Tecum

A subpoena duces tecum seeks production of documents by the subpoenaed party. It should seek relevant evidence and should be drafted as narrowly and specifically as is practicable. The use of the word “all” in the description of records should be avoided wherever possible.

The subpoena duces tecum should be addressed to the entity with control of the records sought, whether the entity is a corporation, partnership, or labor organization. Subpoenas directed to a sole proprietorship or individual should be addressed to that individual.

Where the same person has control and knowledge of the records, the subpoena duces tecum may be addressed to the entity, attention to that person. Where the agent who can explain the records is unknown, a subpoena duces tecum should be addressed to the entity itself and a subpoena ad testificandum should be served on a person who is known or believed to be familiar with the records.

900.4 Service of Subpoena

A person serving a subpoena must do so in compliance with A.R.S. § 23-1391(C). A.A.C. R4-2-104. Service may be accomplished personally, by registered or certified mail, by telegraph, or by leaving a copy of the subpoena at the principal office, principal place of business, or residence of the person or organization being served. A.R.S. § 23-1391(C). The Board should retain an affidavit or other record of service. The affidavit of service of the person making personal service or leaving the subpoena at the principal office, place or business, or residence of person being served or the return postal receipt or telegraph receipt may serve as record of service. A.R.S. § 23-1391(C).

900.5 Witness Fees

Witnesses subpoenaed by the Board should be paid the same fees and mileage that paid to witnesses in the Superior Courts in the State of Arizona. Persons taking depositions should be paid the same fees paid to persons taking depositions for the Superior Court. A.R.S. § 23-1391(C).

901 PETITION TO REVOKE SUBPOENA

Any person subpoenaed by the Board may, within five business days after service of the subpoena on the person, file a petition with the Board to revoke the subpoena. A.R.S. § 23-1391(A).

Petitions to revoke may be based on the ground that the subpoena does not relate to any matter under investigation or at issue in a hearing, does not describe the evidence sought with sufficient particularity, or for any other reason sufficient in law the subpoena is otherwise invalid. A.R.S. § 23-1391(A).

902 ENFORCEMENT OF SUBPOENA

If a party refuses to comply with a subpoena issued by the Board, the Board, through its General Counsel, should apply to the Superior Court in the county where the person is refusing to comply with the subpoena for an order enforcing the subpoena. A.R.S. § 23-1391(B). Refusal to comply with the court order is contempt of court.

903 DISCLOSURE OF AGENCY DOCUMENTS

It is the policy of the General Counsel to preserve the confidentiality of statements and materials contained in Board investigatory files. Any investigative reports, notes, memos, statements, or other information or work product prepared or obtained by the General Counsel or other Board agent during a labor election petition investigation is confidential. It may not be disclosed except as required by law. A.A.C. R4-2-204 (D) & (E). If information is a trade secret or confidential or proprietary information of a party, see Section 802.

904 FILING, TIMING, AND SERVICE OF DOCUMENTS

904.1 Filing of Documents

Documents filed with the Board must be filed at the Board's central office, located at 1688 W. Adams, Phoenix, Arizona, 85007, between the hours of 8:00 a.m. and 5:00 p.m., Monday to Friday, except for Arizona legal holidays. Documents may also be filed by mail. A.A.C. R4-2-103(C).

A document is considered filed when it is received by the Board, rather than the day it is mailed. A.A.C. R4-2-103(C).

Any document filed with the Board must be signed by the party representative or attorney. A signature certifies that the signer has read the document, has a good-faith basis for filing it, and it has not been filed for the purpose of harassment or delay. A.A.C. R4-2-103(B).

904.2 Computation of Period of Time

When computing time periods provided for in the Board's statutes or rules, the day of the act or event triggering the time limitation is not included. If the time limit is 10 days or anything less than 10 days, do not include weekends or legal holidays. If the time period allowed by statute or rules is 11 days or greater, count weekends and holidays. The last day of the time period is included, unless it is a weekend or legal holiday, in which case the time period ends on the next business day. A.A.C. R4-2-105.

For example, a petition to revoke a subpoena must be filed within five days after service of the subpoena. A.R.S. § 23-1391(A). If the subpoena is served on Monday, July 3, the petition to revoke must be filed by Tuesday, July 11. Monday, July 3, is the day of the event triggering the time limit, therefore it is not counted. The time limit is less than 11 days, therefore holidays and weekends are not counted. So Tuesday, July 4, would not be counted. Wednesday, July 5 would be day one; Thursday would be day two; Friday would be day three; Monday would be day four; and thus Tuesday would be day five and the petition would be due by the end of the day on Tuesday.

904.3 Service of Documents

Complaints, orders, and other papers of the Board must be served in compliance with A.R.S. § 23-1391(C). Service may be accomplished personally, by registered or certified mail, by telegraph, or by leaving a copy of the document at the principal office, principal place of business, or residence of the person or organization being served. A.R.S. § 23-1391(C). If the party being served is represented by an attorney, service may be made on the attorney by the same methods of service. A.A.C. R4-2-104(B).

The Board should retain an affidavit or other record of service. The affidavit of service of the person making personal service or leaving the document at the principal office, place or business, or residence of person being served or the return postal receipt or telegraph receipt may serve as record of service. A.R.S. § 23-1391(C).

If a party other than the Board serves documents required for processing a case or complaint before the Board, the party must comply with A.R.S. § 23-1391(C).

905 COMMUNICATIONS WITH PARTIES

Except as set forth below, all communications, both oral and written, including e-mail, should be with or through only the attorney or representative of the party. However, whenever an attorney or representative requests that copies of all written communications be sent to the party or has authorized that a party or person be contacted directly, such request and/or authorization may be honored.

906 ENGLISH AS THE OFFICIAL LANGUAGE

All documents and forms other than internal documents will be disseminated in English only with a bilingual statement that the document is available in Spanish upon request. Spanish documents will be disseminated either as a separate document or together with the English version. All internal documents will be produced in English only.