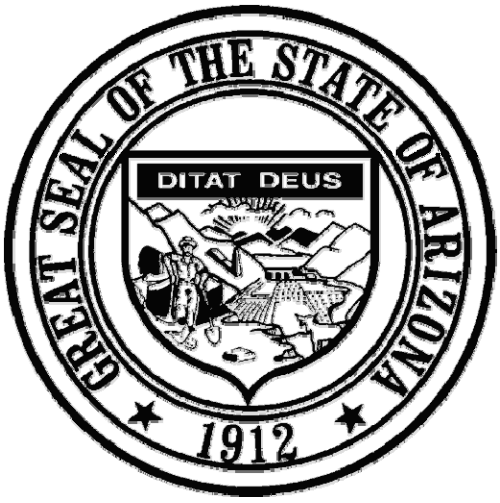

Agricultural Employment Relations Board

UNFAIR LABOR PRACTICE PROCEEDINGS

A PROCEDURE MANUAL FOR CONDUCTING UNFAIR LABOR PRACTICE INVESTIGATIONS AND HEARINGS

November 2006

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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 unfair labor practices charges and making decisions related thereto 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 policy and procedure as of the date of its preparation, such policies and procedures may be modified from time to time, in the discretion of the Board.

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 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 an unfair labor practice charge, as well as a checklist and flowchart outlining the unfair labor practice charge handling process. The forms, checklist, and flowchart should be used in conjunction with the Manual to ensure the proper processing of unfair labor practice charges.

100-101 JURISDICTION OF THE BOARD

100 JURISDICTION OVER UNFAIR LABOR PRACTICE CHARGES

The Board has authority to receive and process charges of unfair labor practices by agricultural employers or agricultural labor organizations. It may take the actions necessary to investigate a charge of an unfair labor practice. A.R.S. § 23-1387. The Board may issue a complaint and conduct a hearing to determine whether an unfair labor practice has occurred or is occurring. It has the authority to take a range of actions to prevent or remedy an unfair labor practice, including cease and desist orders, orders to reinstate employees who have been discharged, and orders requiring back pay for employees that have been discharged.. A.R.S. § 23-1390.

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 unfair labor practice charge.

101 UNFAIR LABOR PRACTICES DEFINED

The Board has jurisdiction only to remedy unfair labor practices defined in the Arizona Agricultural Employment Relations Act. It cannot remedy every type of mistreatment or employment complaint by an agricultural employee or agricultural employer. The Act defines seven unfair labor practices that can be committed by agricultural employers and thirteen unfair labor practices that can be committed by agricultural labor organizations. Unfair labor practices are defined at A.R.S. § 23-1385. See Appendix A.

The Board has no jurisdiction over employment practices that are not defined by the Act as unfair labor practices. If the Board receives reports or questions regarding employment issues outside its jurisdiction, it should refer the party to the proper agency. See Appendix H for a list of agencies to which to refer individuals for employment issues outside the Board's jurisdiction.

200-204 INITIATION OF CASES

200 GENERALLY

The Board can investigate unfair labor practice allegations only upon the filing of an appropriate charge.

201 RESPONDING TO PREFILING INQUIRIES

Staff and agents of the AERB may provide information to individuals, labor organizations, or employers seeking to file a charge of an unfair labor practice. 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 is strictly limited to providing forms (Form 201, Charge Against Employer or Form 202, Charge Against Labor Organization), providing directions for how to complete forms, and general information on the processes and procedures of the Board. The Board may also provide parties with Form 204, Unfair Labor Practices Procedures, which describes some of the rights of the parties and procedures of the Board.

201.1 Information as Contrasted with Advice

Board agents should answer public inquiries regarding the Act and the Board accurately, completely, and as concisely as possible. Board agents may not give legal advice and should explain that they cannot do so. Answers to inquiries should include such statements as, "We cannot, of course, give legal advice," "We cannot predict a result, as it depends on a variety of factors," or other such disclaimers where appropriate.

An agent should not offer an opinion as to whether any specific conduct violates the Act. Rather, the Board agent may describe the types of conduct which, depending on all of the surrounding circumstances, may constitute a violation of the Act. If the individual seeking advice persistently seeks legal guidance, the Board agent should suggest the person find legal counsel, but may 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 a caller provides details of a situation and asks, "Should I file a charge? Was that an unfair labor practice?" the Board agent should not suggest either filing or not filing a charge. The Board agent should not start asking questions about the caller's specific situation and then help the caller decide what to identify on the complaint as the unfair labor practice. 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

201.2 Situation Not Covered by the Act

If an individual presents a situation that is clearly not covered by the Act, the Board agent should explain that the Act does not apply and discourage the filing of a charge. The individual should be informed that he or she still has the right to file a charge, and it will be processed as any other charge until it is determined that the Board does not have jurisdiction. Refer the individual to A.R.S. § 23-1385 for the definition of unfair labor practices.

If the individual describes a situation that appears to come within the purview of other laws, the Board agent should direct the individual to the appropriate agency. See Appendix H for a list of Arizona agencies to which to refer employment problems that are not within the Board's jurisdiction. The Board agent should be familiar with the various actions defined by statute that constitute unfair labor practices, in order to understand when a situation may not be covered by the Act.

For example, if an individual calls and complains about unsafe working conditions or improper tools, the issue is probably a safety issue best addressed by the Department of Occupational Health and Safety, and not an unfair labor practice. If an individual states that he was terminated because he was 60 and the employer just hired a group of 20-year-olds, this is an age discrimination complaint that should be handled by the Equal Employment Opportunity Commission. If the employee was injured at work and seeking assistance with medical bills or has other questions about being compensated for his injury and his employment rights while injured, the inquiry is probably best handled by the Workers Compensation Division of the Arizona Industrial Commission.

202 CHARGE OF AN UNFAIR LABOR PRACTICE

202.1 Who May File

Any person or organization may file a charge of an unfair labor practice. A.A.C. R4-2-301. Care should be taken that the charge sets forth the proper identity and correct legal names of the charging party and of the charged party.

202.2 Where to File/Docketing Receipt

The charge of unfair labor practice must be filed at the Board's central office, located at 1688 W. Adams, Phoenix, Arizona 85007. The charge may be filed at 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 charge may also be filed by mailing it to the Board's central office. A.A.C. R4-2-103(C).

The charge is considered filed on the date it is received by the Board. A.A.C. R4-2-103(C). As soon as the Board receives a charge, a Board agent should docket receipt of the charge, assign a case number, and create a case file. The original charge should be maintained in the file. The Board agent should provide the Board's General Counsel (or other agent assigned to investigate the charge) a copy of the charge and any documents filed in support of the charge.

202.3 Contents Unfair Labor Practices Charge

The Board may provide a party seeking to file an unfair labor practice charge with a charge form, either Form 201, Charge Against Employer or Form 202, Charge Against Labor Organization. The Board may also make the form available on the Internet.

The charge form is self-explanatory with respect to the information requested. Information on the form with an asterisks is requested for the Board's convenience and is not required by Board rules. All other information is required by Board rules and must be completed before the Board may accept and process an unfair labor practice charge. If the party does not use the form provided by the Board, the Board may accept any charge that contains the elements required by A.A.C. R4-2-302(A) & (B).

The charge must be in writing. The party making the charge must sign under penalty of perjury that its contents are true and correct to the best of the party's knowledge, information, and belief. A.A.C. R4-2-302(B).

The Board may not accept a charge that does not contain the required elements or is not signed under penalty of perjury. A.A.C. R4-2-302(C). Board rules (A.A.C. R4-2-302(A)) require that charges contain the following:

A. Charges against Employers:

1. The full name and address of the agricultural employer against whom the charge is being made;

2. The full name, address, and telephone number of the individual or labor organization making the charge, and, if the charge is filed by a labor organization, the full name and address of any national or international organization of which it is an affiliate or constituent unit; and

3. A clear and concise statement of the facts constituting the alleged unfair labor practice.

B. Charges against Labor Organizations:

1. The full name and address of the labor organization against whom a charge is being made;

2. The full name, address, and telephone number of the individual or agricultural employer making the charge; and

3. A clear and concise statement of facts constituting the alleged unfair labor practice.

202.4 Defects in an Unfair Labor Charge

Upon receiving a charge, a Board agent should review the charge to ensure it contains the necessary elements (Section 202.3). If the Board receives a charge that is facially deficient, a Board agent should promptly contact the charging party to inform the charging party of the defect. The Board should explain what elements of the charge are missing and provide other information as requested by the charging party. (Section 201). Because the Board may not accept a charge that does not contain the required elements (Section 202.3), docketing should be delayed until the charging party remedies the defect in the charge. If it is near the six-months statute of limitations, extra care should be taken to have the defect in the charge remedied prior to the expiration of the statute of limitations.

203 INITIAL NOTICE TO PARTIES UPON FILING OF CHARGE

203.1 Service of Charge on Charged Party

The Board must serve a copy of the filed charge on the person or organization against whom the charge is made. A.A.C. R4-2-303(A). A Board agent should arrange service and ensure proof of service is placed in the file.

The charge may be served personally, by registered or certified mail, by telegraph, or by leaving a copy of the charge 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 complaint 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).

203.2 Acknowledgment of Receipt

Immediately upon receiving a copy of the charge, the General Counsel should send a written acknowledgment of the filing to the charging party and inform the party that the General Counsel will be conducting an investigation. The General Counsel should include a copy of Form 204, Unfair Labor Practices Procedure, with the letter.

203.3 Obtaining Facts from Charging Party

The General Counsel's initial letter should request that the charging party promptly submit a complete written account of all the facts and circumstances on which the charge is based, copies of all relevant contracts and/or other documents, and the names and addresses of witnesses.

203.4 Initial Letter to Charged Party

Upon docketing, the Board agent serves a copy of the charge on the charged party. (Section 203.1). The General Counsel should send to the charged party a letter advising the charged party that he or she is initiating an investigation, advising the party of the right to counsel, and inviting full cooperation.

The letter should specifically request that the charged party submit a statement regarding the facts and circumstances that form the basis of the charge and should advise the charged party that full and complete cooperation includes, where relevant, timely providing all material witnesses under its control to the General Counsel agent so that witnesses' statements can be reduced to affidavit form and providing all relevant documentary evidence requested by the General Counsel.

The General Counsel should include a copy of Form 204, Unfair Labor Practices Procedure, with the letter.

203.5 Notification to Potential Parties in Interest

In addition to the initial contacts with the charging party and the charged party, a copy of the charge should be served by certified or registered mail on potential parties in interest, as soon as their identity becomes known, with the return postal receipt retained in the file. A.R.S. § 23-1391(C). The parties in interest should be advised of the right to be represented.

Examples of potential parties in interest include but are not limited to:

1. Any labor organization alleged to be dominated or assisted under A.R.S. § 23-1385(A)(2); or

2. In a case under A.R.S. § 23-1385(B)(5)(d), any employer whom the charged union is allegedly causing or attempting to cause to discriminate on the basis of union membership in violation of A.R.S. § 23-1385(A)(3).

If appropriate, the General Counsel should also send a letter to such parties in interest requesting a written account of the pertinent facts and circumstances. The General Counsel should include a copy of Form 204, Unfair Labor Practices Procedure, with the letter.

204 WITHDRAWAL OF CHARGE

A party filing an unfair labor practice charge may withdraw the charge at any time before a hearing on the charge. The party may withdraw the charge after the beginning of the hearing with the consent of the Administrative Law Judge conducting the hearing. If the General Counsel has issued a complaint, the Board may dismiss the complaint on the advice of the general counsel. A.A.C. R4-2-301.

300-305 THE INVESTIGATION

300 OBJECTIVE OF THE INVESTIGATION AND ROLE OF GENERAL COUNSEL

The purpose of the investigation is to ascertain, analyze, and apply the relevant facts and law in order to arrive at the proper disposition of the case. The investigation of an unfair labor practice charge must be initiated immediately and be given priority over other cases, except like cases in the same office. A.R.S. § 23-1390(K).

The Board's General Counsel or other designated agent shall conduct the preliminary investigation of the unfair labor practice complaint. A.A.C. R4-2-303(A); A.R.S. § 1390(K). This Manual speaks in terms of the General Counsel conducting the investigation. The Board has the authority to appoint another agent to conduct the investigation. However, the General Counsel must be the one to determine whether to issue an unfair labor practice complaint, and the General Counsel must conduct the investigation. If an agent other than the General Counsel conducts the investigation, the agent must conform and comply with the Arizona Attorneys' Rules of Professional Conduct. Arizona Rules of Supreme Court, Rule 42.

As an impartial investigator, the General Counsel should identify himself/herself as an agent of the Board to all witnesses and parties, should explain the purpose of the investigation, and should avoid conveying a prosecutorial image during the investigation.

301 PRELIMINARY REVIEW AND CONTACTS

301.1 Initial Review of Charge and Preparation for Investigation

Upon receipt of an unfair labor practice charge, the General Counsel should follow the procedures set forth below.

- Review the charge form to assure that it is correct on its face, i.e., that the charge contains the correct and full name of the parties and all elements required by rules (Section 202.3);
- Review Board records to determine whether there is any relevant history of charges or petitions involving the parties;
- Initially consider whether the Board has jurisdiction over the dispute giving rise to the charge; and
- Perform preliminary legal research on issues raised in the charge to become familiar with the appropriate areas of the law.

301.2 Statute of Limitations – A.R.S. § 23-1390(B)

The General Counsel must make an initial assessment as to whether the charge is filed in a timely manner. Under A.R.S. § 23-1390(B), a charge must be filed and served within six months after the alleged unfair labor practice, unless the charging party is prevented from filing because of service in the armed forces, in which case the charge must be filed within 6 months after the individual is discharged from the military. Although Arizona Law provides no direct guidance, the General Counsel should consider NLRB guidance in applying the statute of limitations.

- NLRB decision have applied the "discovery rule" to unfair labor practice charges. See, e.g., *Concourse Nursing Home*, 328 NLRB 692, 693–694 (1999); *R. G. Burns Electric*, 326 NLRB 440, 441 (1998). Under the discovery rule, the 6-month statute of limitations does not begin to run until the aggrieved party has received actual or constructive notice of the conduct that constitutes the alleged unfair labor practice, unless the aggrieved party has failed to exercise "reasonable diligence" that would have led to the discovery of the unfair labor practice.

- Under NLRB guidance "closely related" amendments to a charge relate back to the initial statute of limitations period. *Ross Stores*, 329 NLRB 573 (1999). *Redd-I, Inc.*, 290 NLRB 1115, 1118 (1988).

301.3 Initial Telephone Contact with Charging Parties

At the earliest possible date, the General Counsel should determine the appropriate charging party representative to contact and contact the charging party or, if appropriate, the charging party representative by telephone and inquire about the allegations of the charge, the background, the facts and the names of witnesses. Such a conversation should be sufficiently detailed to permit the General Counsel to gain a preliminary understanding of the case.

The General Counsel should at that time schedule an appointment to obtain an affidavit from the charging party and/or its witnesses. The General Counsel should emphasize that it is imperative for the charging party to bring all relevant documents to the interview and should assist the charging party in identifying those documents. The General Counsel should also ask the charging party to assist in scheduling other witnesses in a manner which will allow adequate time to conduct the interviews.

The General Counsel should make a detailed memorandum of the conversation for the case file.

301.4 Initial Contact with Charged Parties

The General Counsel's initial contact with the charged party is in the form of a letter requesting the charged party's response to the charge. (Section 203.4). After obtaining a preliminary understanding of the case from the initial contact with the charging party, it may be helpful for the General Counsel to follow up the letter with a telephone call to the appropriate charged party representative to make certain inquiries. The General Counsel should broadly describe the allegations of the charge and solicit the charged party's position. Sufficient details regarding such position should be sought to enable the General Counsel to question the charging party regarding the charged party's position. In an appropriate case, the Board agent should seek to schedule an interview with the charged party's witnesses.

The General Counsel should make a detailed memorandum of the conversation for the case file.

301.5 Strategy for Investigation

Following the initial contacts with the parties, the General Counsel should develop a strategy for the investigation, which normally would include:

- Identification of specific allegations and issues;
- The theory of the case;
- Areas of inquiry;
- Areas of legal research;
- A list of witnesses to contact;
- A list of documents to obtain;
- Approaches to reluctant witnesses;
- Appropriate remedies, including consideration of injunctive relief;
- A schedule in which the above tasks will be completed.

The strategy should be reviewed and revised on an ongoing basis in order to adjust to developments in the investigation.

301.6 Injunctive Relief Under A.R.S. § 23-1390(K)

As part of the initial review of the case, the Board agent should be alert to the possible appropriateness of injunctive relief under A.R.S. § 23-1390(K). See Section 505.

302 THE INVESTIGATION

Because the investigation serves as the basis for all action eventually taken in a case, it must reveal the totality of the circumstances, including relevant background information. The initial investigation should focus on interviews with the charging party and with witnesses offered by the charging party.

It is the responsibility of the General Counsel to take steps necessary to ascertain the truth of the allegations of a charge and all promising leads should be followed. The General Counsel should make pertinent inquiries to ascertain the truth of the allegations.

Throughout the investigation, the General Counsel should maintain a current record in the case file of the General Counsel's activities and contacts.

The preferred method of investigation is interviews with, and obtaining affidavits (sworn statements) from, potential witnesses.

302.1 Interactions with the Charging Party

It is the responsibility of the charging party to fully cooperate with the Board's investigation and comply with the General Counsel's requests for meetings, documents, and information and all other requests reasonably necessary to complete the investigation. If the charging party is an employer or labor organization, the charging party is responsible for making available witnesses within their control to the General Counsel for purposes of taking affidavits.

302.1(a) Affidavits from the Charging Party

The preferred method of obtaining affidavits is through a face-to-face meeting. The affidavit could include the relevant topics set forth below and may be developed in the following order:

- Information related to the identity of the witness the employer and the union if appropriate;
- Job information;
- Background information;
- Chronological account of the events;
- Other evidence, i.e., alleged disparate treatment, facts concerning disputed supervisory status of individuals, etc.;
- Charging party's response to charged party's expected defenses; and
- Backpay and/or remedy information.

During the course of the interview, the General Counsel should probe the testimony of the witness as to statements which appear to be unreliable, improbable, or contrived and seek documentation which would support or refute assertions made by the witness. Indeed, all relevant and available documents, tape recordings, video, audio, or any other form of evidence should be obtained from the witness during the interview. If necessary, specific arrangements should be made for submission of such documents immediately following the interview.

The General Counsel should also review with the witness the identity of other witnesses, the degree of anticipated cooperation from them, when and where to reach the additional witnesses, and other information that may be helpful to develop an approach to achieve cooperation of the witnesses. Such information should not be contained in the affidavit but rather memorialized in a file memorandum.

302.1(b) Backpay and Other Remedy Information

During the initial investigation, unless the case is clearly nonmeritorious, the General Counsel should inquire of each alleged individual who may have been subject to discrimination information about interim earnings and the individual's search for work and should place this information in the file for use in settlement or enforcement efforts. Further, the General Counsel should obtain for the file the address, telephone number, fax number, e-mail, and other means of communicating with each individual who may have been subject to discrimination.

302.2 Third-Party Witnesses

Witnesses who are not parties to the case or whose testimony cannot bind a party are often critical and necessary sources of information. These may include but are not limited to: other employees, contractors, customers and suppliers of the employer,

representatives of other labor organizations, and representatives of other Government agencies.

If witnesses offered by the charged party are not supervisors or agents, the General Counsel should exercise caution in evaluating the appropriate location for interview so that the witnesses are comfortable and do not feel intimidated.

Third-party witnesses also have a right to be represented by their individual attorney or other representative but normally should not be interviewed in the presence of a representative of a party to the case.

302.3 Interactions and Interview with the Charged Party

If consideration of the charging party's evidence and the preliminary information from the charged party suggests a prima facie case, the appropriate charged party representative should be contacted to provide additional and more complete evidence. The General Counsel should seek a meeting with the charged party in order to take affidavit testimony from individuals identified by the General Counsel and from supervisors or agents offered by the charged party in support of its position.

When communicating with the appropriate charged party representative to obtain evidence, the General Counsel should relate the basic contentions that have been advanced with regard to all violations alleged, such information as the general nature of the conduct, the general locale, the identity of the supervisor involved, and the date of the conduct, etc. Because the identity of a witness should be protected, the General Counsel should, whenever possible, avoid providing details that would likely disclose the identity of the witness.

302.4 Contacts with Represented Parties and Witnesses

All parties and witnesses are entitled to be represented by attorneys or other representatives.

The General Counsel must comply with the Arizona Rules of Professional Conduct, including E.R. 4.2, which prohibits contact with a person whom an attorney knows to be represented by an attorney in the unfair labor practice case without the prior consent of that attorney. As a matter of policy, all Board agents conducting an unfair labor practice investigation will be held to the same standards as attorneys.

302.4(a) Supervisors/Agents of Parties Represented by Attorneys

The following policies apply to contacts by Board agents, whether attorneys or others, with supervisors or agents of a party represented by an attorney. For situations where a party is not represented by an attorney, i.e., where E.R. 4.2 does not apply, see Section 302.5.

(1) *Current Supervisors/Agents of Party:* Where the Board has been advised that a party is represented by an attorney, the General Counsel must

contact and obtain consent from the party's attorney before initiating contact with or interviewing a current supervisor or agent, except for the circumstances described in (2), (3), and (5) below.

(2) *Current Supervisors/Agents Who Come Forward Voluntarily:* If current supervisors or agents come forward voluntarily and indicate that they do not wish to have the party's attorney present, the General Counsel should consult with the Board before interviewing or taking a statement from such a witness.

(3) *Uncertain Supervisory/Agency Status:* In cases involving individuals whose supervisory or agency status is initially uncertain, the General Counsel should inquire about the individual's status prior to conducting a substantive interview and proceed as follows:

- If it becomes clear that the individual is a supervisor or an agent of a party, the General Counsel should not proceed with the interview without affording the party's attorney the opportunity to be present if such party is cooperating.

- If, on the other hand, it becomes clear that the individual is not a supervisor or agent of a party, the General Counsel may conduct the substantive interview of the witness without informing the party or its attorney.

(4) *Former Supervisors/Agents*: The General Counsel must contact and obtain consent from the party's attorney before initiating contact with or interviewing a former supervisor or agent, except for the circumstances described in (2), (3), and (5).

(5) *Supervisors/Agents as Charging Parties and Alleged Discriminatees:* When current or former supervisors or agents of the charged party are charging parties or alleged discriminatees named in a charge, the General Counsel may contact and interview them about matters relating to their claim without contacting or obtaining consent from the charged party's attorney.

302.5 Supervisors/Agents of Parties Not Represented by Attorneys

The following policies apply to contacts by Board agents with supervisors or agents of a party either not represented or represented by a nonattorney. For situations where a party is represented by an attorney, i.e., where E.R. 4.2 applies, see Section 302.4(a).

(1) *Current Supervisors/Agents:* Where the party is not represented by an attorney and cooperation is being extended to the Board in its investigation, the party's representative should be contacted and afforded

the opportunity to make available for interview any current supervisor or agent of the party.

(2) *Uncertain Supervisory/Agency Status:* Where the party is not represented by an attorney and a witness' supervisory or agency status is initially uncertain, the General Counsel should inquire about the individual's status prior to conducting a substantive interview and proceed as follows:

- If it becomes clear that the individual is a supervisor or an agent of a party, the General Counsel should not proceed with the interview without affording the party's representative the opportunity to be present if such party is cooperating.

- If, on the other hand, it becomes clear that the individual is not a supervisor or agent of a party, the General Counsel may conduct the substantive interview of the witness without informing the party or its non-attorney representative.

(3) *Former Supervisors/Agents of Parties:* The General Counsel may initiate contact with former supervisors and agents of parties who are not represented by an attorney and obtain affidavits from such individuals without informing the party or its representative, if permitted by the Arizona attorney ethics rules. The rules may require consent of the appropriate party representative. Where the party is represented by an attorney, see Section 302.4(a)(4).

302.6 Third-Party Witness and Attorney

Witnesses who are not supervisors or agents of a party (herein third-party witnesses) have a right to be represented in Board investigation interviews.

The attorney or other representative of a party to the case will generally not be allowed to be present at an interview of a witness who is not a supervisor or agent of that party, because Board rules require that the work product of the investigation remain confidential, unless consent is provided by the General Counsel to reveal the information. A.A.C. R4-2-303(C). If the witness insists on the party attorney or representative being present, the General Counsel should exercise discretion whether to proceed with such an interview. If the General Counsel declines to proceed with the interview of the witness in the presence of such attorney or other representative, the General Counsel may use its subpoena power or other authority to compel the witness's cooperation without notice to the party's attorney or representative. Alternatively, the General Counsel may permit the witness to submit documentary evidence or a written statement.

If it is asserted that an attorney of a party to a case also represents a third-party witness as an individual, both the attorney and the witness should be directed to provide written notice that the attorney represents the witness. If the General Counsel is satisfied that there is a consensual attorney-client relationship, that the attorney has not violated

the employee witness's rights, and that the presence of the attorney would not impede the investigation, then the General Counsel, in its discretion, may decide to interview the witness, but it may do so only with the attorney present.

303 THE AFFIDAVIT

The face-to-face affidavit taken by the General Counsel is the "keystone" of the investigation and is the preferred method of taking evidence from witnesses. Affidavits set forth exactly what each witness recalls and provide a permanent record of the testimony, which can be relied upon in making a decision regarding the case. In taking an affidavit, the General Counsel should record the testimony of the witness as accurately and in as much detail as is possible and appropriate.

303.1 Avoid Group Interviews

Even though a number of witnesses might have knowledge of the same incident, group interviews and mass affidavits should be avoided.

303.2 Site of Interview

The General Counsel should select interview sites that maximizes privacy, enhances cooperation, and provides a safe and appropriate environment for the General Counsel and witness. The General Counsel should avoid conducting interviews of charging parties or employees at the facilities of the charged party.

303.3 Assurances of Confidentiality

Where the witness has particular concerns about the consequences of providing an affidavit, the General Counsel should explain that the Agricultural Employment Relations Act proscribes retaliation against witnesses by either employers or labor organizations. The General Counsel should not tell a witness that it will never be necessary to testify or that the Board could provide "protection" under all circumstances. However, the General Counsel can assure the individual that the General Counsel's notes and statements taken or prepared by the General Counsel are confidential work product. A.A.C. R4-2-303(C).

303.4 Testimony Reduced to Writing

The testimony should be reduced to writing at an appropriate time during the interview. Affidavits should be written in the first person. Although they need not be verbatim, they should, to the degree possible, contain language used by the witness.

The witness should sign the affidavit under oath or declaration, such as "I state under penalty of perjury that the foregoing is true and correct. Dated _____."

303.5 Translation/Certification of Affidavits Taken in a Foreign Language

When an affidavit is taken in a foreign language and the Board has it translated into English, the translator should add the following certification at the end of the affidavit:

> I hereby certify that I am fluent in English and [insert name of foreign language being translated] and that the attached English language translation is an accurate translation of the attached [insert name of foreign language that was translated] language original affidavit.
>
> _____
> Date Name of translator

303.6 Telephone Affidavits

Although face-to-face interviews are the preferred method for obtaining an affidavit, in certain circumstances, a telephone affidavit is appropriate. When a telephone affidavit is taken, the General Counsel interviews the witness by telephone, prepares a written affidavit and then sends the affidavit by mail or facsimile to the witness for reading, correction, and signature. When transmitting the affidavit to the witness, the General Counsel should instruct the witness to (1) read the affidavit carefully; (2) make any necessary corrections; (3) initial all changes and each page; (4) sign and date the affidavit; and (5) return the affidavit to the Board promptly. The witness should sign, date, and state, "I state under penalty of perjury that the foregoing is true and correct."

304 AMENDMENTS TO THE CHARGE

304.1 Preparation

A charge is amended by typing "Amended'' before the word "Charge'' on the regular charge form and by rewriting the contents of the charge to include the desired changes.

304.2 Service of Copies

Copies of amended charges must be served on the charged party and other interested parties and appropriate counsel. Service should be affected in the same manner as service of the original charge. The Board should retain an affidavit or other record of service. (Section 203.1).

304.3 Role of Board Agents

The charging party, prior to Board action, may file an amended charge. Board agents should, upon request, provide charging parties with information regarding the filing of such amendments. A Board agent should provide the same type of assistance with the amended charge as with the initial charge, being careful to provide only information, not advice or suggestions. (Section 201).

304.4 Filed after Dismissal

An amendment received after dismissal of a charge should be docketed as a new charge and assigned a new number. The charge must be timely, i.e. within the six-month requirements of A.R.S. § 23-1390(B).

304.5 Allegations not Contained in Charge

Where the investigation uncovers evidence of unfair labor practices not specified in a charge, the General Counsel must determine whether the charge is sufficient to support complaint allegations covering the apparent unfair labor practices found. If the allegations of the charge are too narrow, not sufficiently specific, or otherwise flawed, the charging party or its representative should be apprised of the potential deficiency in the existing charge and given the opportunity to file an amended charge. The charging party should also be advised that failure to file the amended charge may affect the Board's determination of the case and that any complaint can cover only matters closely related to the allegations of the charge.

305 CONCLUSION OF INVESTIGATION

At the conclusion of the initial investigation, the General Counsel should review the records made and ensure the file is complete and ready for review and processing if a complaint is issued. If a Board agent other than the General Counsel conducts the investigation, the investigator must ensure a complete and accurate file, as the General Counsel's decision to issue or not issue a complaint will be based on the case file.

After the initial investigation, the General Counsel may, in his or her discretion,

1. Refuse to issue a complaint (Section 402); or

2. Issue a complaint and seek appropriate injunctive relief against the charged party if the General Counsel believes that the charged party may have committed an unfair labor practice. (Sections 500-505).

A.A.C. R4-2-303(B). The General Counsel has final authority on behalf of the Board to issue or not issue an unfair labor practice complaint. A.R.S. § 23-1386(D).

305.1 Confidentiality of Investigation

Any investigative reports, notes, memoranda, oral or written statements, tape recordings, or other information collected by or prepared by the General Counsel (or other Board agent conducting the investigation) is confidential and not subject to the subpoena powers of the Agricultural Employment Relations Act. No person may disclose the information gathered during the investigation without consent of the General Counsel, unless otherwise required by law. A.A.C. R4-2-303(C).

400-402 DEFERRALS, WITHDRAWALS, OR REFUSAL TO ISSUE A COMPLAINT

400 DEFERRALS

Investigation and determination of unfair labor practice charges is a priority to the Board. A.R.S. § 23-1390(K). However, under certain circumstances, it may be appropriate for the Board to defer making a determination on the merits of a charge pending the outcome of proceedings on related matters. Such matters may be pending in the parties' contractual grievance procedure or before the Board or other Federal, State, or local agencies or courts. Whenever the Board decides to defer action on a case, all parties should be notified of that decision and the basis for it.

401 WITHDRAWALS

A charging party may withdraw an unfair labor practice charge or any portion thereof at any time prior to the hearing on the unfair labor practice alleged in the charge. A.A.C. R4-2-301. A charging party may withdraw an unfair labor practice charge after the hearing begins only with the consent of the Administrative Law Judge conducting the hearing. A.A.C. R4-2-301. However, if the General Counsel has already issued a complaint, the Board is not required to withdraw the complaint, even if the charging party seeks to withdraw the charge. The Board may dismiss the complaint on the advice of the General Counsel. A.A.C. R4-2-301.

401.1 Refiling of Same Allegation

A closing of an unfair labor practice case pursuant to a withdrawal request constitutes a disposition of the issues without prejudice to filing a new charge over the same matter. The filing of a new charge does not constitute a reopening of the withdrawn charge. Moreover, the 6-month time limit for filing and serving a charge, A.R.S. § 23-1390(B), will apply with respect to any refiling of the same allegations. Therefore, refilling of the same charges must occur within 6 months after the alleged unfair labor practice occurred.

401.2 Notification to Parties

If a charge is withdrawn after it has been served, the Board must notify all parties by letter, sent certified or registered mail, that the charge, or a portion thereof, has been withdrawn. No reasons for the withdrawal must be given in the notification.

On the other hand, if the charging party withdraws the charge before service of the charge, the Board may withdraw the charge without service or any other notification to the parties.

402 REFUSAL TO ISSUE A COMPLAINT

At the conclusion of the initial investigation, the General Counsel may refuse to issue a complaint and dismiss the charge. A.A.C. R4-2-303(B)(1).

402.1 Notification/Dismissal Letter

The General Counsel should issue a dismissal letter by certified or registered mail to the charging party, with a copy to the charged party and other interested parties, providing notification of the determination not to issue complaint. The return mail receipt should be retained in the case file. The dismissal letter should contain a detailed explanation of the grounds for refusing to issue complaint. A.A.C. R4-2-305(A). A dismissal letter should not be merely a statement of the ultimate conclusion. Dismissal letters may follow the patterns in Appendix E.

The particular reason(s) for refusing to issue a complaint should be set forth. The material element of the charge that was found unsupported should be clearly identified, such as lack of evidence of disparate treatment or knowledge of union activity. When there are alternatives or multiple bases for disposition, they should all be listed, e.g., the alleged unilateral change was not material and substantial and, moreover, the union had waived its right to bargain over the issue.

402.2 Request for Reconsideration

Within 10 business days after the charging party receives the General Counsel's notification that the General Counsel is refusing to issue a complaint (or refusing to reissue a complaint after withdrawing it), the charging party may file a request for reconsideration with the General Counsel. A.A.C. R4-2-305(A). The charging party must simultaneously serve all other parties with a copy of the request for reconsideration. A.A.C. R4-2-305(A).

The General Counsel must file any response to the request within seven days. The General Counsel should send a letter, via registered or certified mail, to the charging party, with a copy to the charged party and other interested parties, advising all parties of the General Counsel's decision, within seven days after he or she makes the decision. A.A.C. R4-2-305(A). The notification may follow the pattern of the letter in Appendix E. Proof of service of the letter should be placed in the case file.

Additionally, a charging party may file a request for reconsideration with the General Counsel if new evidence is discovered that could not have been discovered with reasonable diligence at the time the original charge was filed. The request must be filed immediately upon discovery of the evidence. A.A.C. R4-2-305(B).

402.3 Appeal Rights

The General Counsel has the final authority on behalf of the Board with respect to the issuance of unfair labor practice complaints. A.R.S. § 23-1386(D). The General

Counsel's decision not to issue a complaint is entirely within his or her discretion, and the charging party may not appeal the General Counsel's decision to the court. *United Farmworkers of America, AFL-CIO v. Arizona Agricultural Employment Relations Board*, 138 Ariz. 57, 61, 672 P.2d 1327, 1331 (1983).

402.4 Partial Dismissal

Where the General Counsel determines that only a portion of the charge lacks merit, the nonmeritorious allegations should be dismissed. In such situations, the partial dismissal letter should clearly identify those allegations being dismissed and provide the usual opportunity to request reconsideration. This letter must also state that the remaining allegations are being retained for such further disposition as may be appropriate.

402.5 Reopening Charges where General Counsel Refused to Issue a Complaint

Pursuant to the General Counsel's authority under A.R.S. § 23-1386(D) and A.A.C. R4-2-305(C), the General Counsel may issue a complaint after a notice of intent not to issue a complaint. The General Counsel may reissue a complaint after withdrawal of the complaint. A.A.C. R4-2-305(C). However, if the complaint was dismissed or withdrawn on the General Counsel's own motion, the General Counsel may not reissue the complaint more than six months after the date of the withdrawal or dismissal of the original complaint. A.A.C. R4-2-305(D).

500-505 THE COMPLAINT

500 GENERALLY

If the General Counsel believes that the charged party may have committed an unfair labor practice, the General Counsel may issue a complaint. A.A.C. R4-2-303(B)(2). A complaint must be well founded in all respects since it constitutes the exercise of the General Counsel's final authority.

500.1 Cases Involving Monetary Remedy

After the General Counsel determines to issue a complaint, the General Counsel should ensure that the file contains a list of the names, addresses, phone numbers, and social security numbers of the alleged discriminatees. In preparing this list, information previously gathered during the course of the investigation will be vital.

The Board may not order the reinstatement or payment of backpay to an agricultural employee if the employee was suspended or discharged for cause. A.R.S. § 23-1390(C). Therefore, the list of alleged discriminatees should briefly outline the reason provided by the employer regarding the employee's discharge or suspension, and the Board or ALJ must make a determination regarding the reason for discharge before they can order reinstatement or backpay.

501 CONTENTS OF COMPLAINT

501.1 Conformity of Charges and Complaints

Normally, the complaint should conform to all allegations of the last amended charge that have not been disposed of by other means.

501.2 Particularity of Complaint

The complaint must contain a clear and concise statement of the facts upon which assertion of the Board's jurisdiction is based and a clear and concise description of the act that is claimed to constitute an unfair labor practice. A.A.C. R4-2-304(A). The complaint must be specific enough to allow the charged party to respond to the complaint.

501.3 Additional Parties

In drafting complaints, the General Counsel should be aware of circumstances in which it may be necessary to name additional parties in the caption of the complaint and serve such parties with all formal documents. Where the remedy sought would affect an entity not otherwise set forth in the complaint, that entity should be named as a party in interest. Examples include:

- A party to a collective-bargaining agreement;

- A party to an allegedly unlawful bargaining relationship;
- An allegedly assisted or dominated labor organization or a labor organization involved in a jurisdictional dispute;
- An employer not otherwise named if reinstatement or backpay is sought as a remedy.

502 FORM AND SERVICE OF COMPLAINT

502.1 Form of Complaint

The complaint is a formal document issued for the Board by the General Counsel. Bearing the case caption, it sets forth the facts underlying the assertion of jurisdiction and the facts relating to the alleged violations by the respondent(s). Where appropriate the complaint should identify the request for relief.

502.2 Notice of Hearing

The General Counsel must include a Notice of Hearing (Form 203) with the complaint when it is served on the parties. The General Counsel or a Board Agent should request a hearing from the OAH, using the form prescribed by the OAH. (Appendix C).

502.3 Service of Complaint

The Complaint and Notice of Hearing should be served on the charged party, charging party, and parties in interest, personally, by certified or registered mail, by telegraph, or by leaving a copy of the complaint at the principal office, place of business or residence of the person or organization to be served. The Board should retain an affidavit of service or other record of service. A.R.S. § 23-1391(C). The affidavit of service of the person making personal service or leaving the complaint at the principal office, place or business, or residence of person being served or the return postal receipt or telepgraph receipt may serve as record of service. A.R.S. § 23-1391(C).

Service must be accomplished at least five days prior to the date of the hearing. A.R.S. § 23-1390(B). Service on a party's attorney counts as service on the party. A.A.C. R4-2-104(B).

503 AMENDMENTS TO COMPLAINT

The General Counsel may amend the complaint prior to the issuance of a Board order based on the complaint. A.R.S. § 23-1390(B). The General Counsel may not amend the complaint after the hearing date is set unless he or she files a motion to amend with the Administrative Law Judge conducting the hearing and the ALJ grants the

request. A.A.C. R4-2-304(B). The charged party must be provided an opportunity to respond to the amended complaint.

503.1 Service of Amended Complaint

Copies of an amended complaint should be served on the parties in the same manner as the complaint. Section 502.3. Service at hearings should be in-person and should be noted and acknowledged on the record.

504 ANSWER

The charged party has the right to file an answer to an original or amended complaint. The Arizona Agricultural Employment Relations Act does not provide a time requirement for filing an answer. The NLRB regulations provide 14 calendar days for the charged party to file an answer. The Notice of Hearing (Form 203) should include a date by which the answer should be filed.

505 INJUNCTIVE RELIEF

If after preliminary investigation the General Counsel has reasonable cause to believe that an unfair labor practice charge is true and the General Counsel issues a complaint, the General Counsel shall seek appropriate injunctive relief, pending final Board adjudication of the complaint. A.R.S. § 23-1390(K).

Injunctive relief is sought by filing a petition with the Superior Court in the county in which the unfair labor practice allegedly occurred or where the person or organization allegedly committing an unfair labor practice resides or transacts business. A.R.S. § 23-1390(K). The Court has authority to issue appropriate injunctive relief after notice and a hearing in which the charging party and charged party may present evidence. A temporary restraining order may be issued without notice and a hearing only if the petition alleges substantial and irreparable harm to the charging party without the order. A temporary restraining order is valid for five days only. A.R.S. § 23-1390(K).

600-607 SETTLEMENTS

600 BOARD AND NON-BOARD SETTLEMENTS

Unfair labor practice cases may be resolved through Board settlement agreements or through non-Board settlements. Board settlement agreements carry with them the Board's authority, are negotiated with the assistance of the General Counsel or another Board agent, and approved by the General Counsel. Non-Board agreements are agreements between the parties without Board involvement that result in the withdrawal of the charge. See Section 607.

Statute and rules do not require settlement discussions prior to hearing, but the Board may request parties to participate in a settlement hearing. The goal of the Board is to prevent and remedy unfair labor practices. Therefore, settlement should be encouraged at all phases of the process.

601 SCOPE OF REMEDY

The General Counsel should seek a settlement agreement that substantially remedies all unfair labor practices in the charge that the General Counsel believes have merit. The proposed remedy, however, must not exceed the remedy that the Board could award at the conclusion of the formal hearing process. Moreover, practical considerations, such as the quality of the evidence regarding certain allegations or the desires of the charging party, may result in the approval of a settlement agreement with a lesser remedy if it will effectuate the policies of the Act to do so.

Settlement efforts may occur at all stages of the proceedings both before and after issuance of a complaint. At all stages of settlement negotiation, the General Counsel should remain objective and professional.

602 LIMITATION OF DISCLOSURE DURING SETTLEMENT DISCUSSIONS

In attempting to settle a meritorious case, the General Counsel must reveal only enough information to demonstrate the merits of the Board's position, but must not endanger successful prosecution of the case should settlement negotiations fail. The General Counsel may not reveal names of witnesses or other confidential sources of information or statements of such witnesses. A.A.C. R4-2-303(C). In sum, the General Counsel should focus on the complaint allegations and indicate in general terms the nature of the evidence that supports those allegations.

603 SETTLEMENT MEETINGS

603.1 Meeting with the Charged Party

Absent unusual circumstances, the initial settlement meeting should include only the charged party and its representatives. Since it is necessary to convince both the

charged party and its representative of the benefits of settlement, it may be appropriate to request through the representative that both the party and its representative be present during settlement discussions.

The General Counsel should begin with a summary of the scope of the allegations he or she deems have merit, the theory of the case, and a brief description of the facts and the law supporting the Board's position.

The General Counsel should explain the substance of the settlement and listen carefully to the charged party's position and consider whether any accommodation can be made to address objections raised to the proposal.

603.2 Factors Favoring Settlement

No matter how experienced the representatives of the charged party are, the advantages of settling versus the risk of litigation should almost always be frankly discussed. Certain common factors which may be discussed are set forth below:

- The cost of litigation is often significant and it is appropriate to ask the charged party to estimate for itself such cost;
- Prompt settlement allows the parties to put the dispute behind them, avoids ongoing disruption to the parties' operations and relationship, and provides certainty in terms of timing and outcome;
- It is advantageous to the charged party to "voluntarily" post a notice to employees pursuant to a settlement agreement, rather than posting a notice to employees pursuant to a Board Order or a Court Judgment;
- Settlement avoids the emotional impact of a trial on all participants;
- The charged party should be invited to assess the impact on it if the testimony of top officials is discredited or if an adverse decision is rendered;
- Most often, the amount of the backpay is substantially less at the settlement stage than following protracted litigation;
- Prompt settlement will allow a charged party to take advantage of current circumstances and cut off future liability, e.g., an alleged discriminatee employed elsewhere may be subsequently laid off, causing backpay liability to resume.

603.3 Contact with Charging Party Regarding Settlement

The General Counsel should keep the charging party apprised of the status of settlement efforts. The General Counsel should also inform the charging party of the advantages of settlement as well as other factors.

- The General Counsel's representative should discuss with the charging party the scope of the allegations deemed meritorious and the theory and the strengths and weaknesses of the case. It is particularly important that the charging party understands the scope and the limitations of the remedies to be sought in litigation.

- Alleged discriminatees should be encouraged to provide full, complete, and accurate interim earnings information.

- An individual entitled to reinstatement under the General Counsel's theory of the case should not be pressured in any way to waive reinstatement, since reinstatement is one of the most effective remedies available. Of course, for a variety of reasons, individuals may elect to waive reinstatement in response to a settlement offer from a charged party.

603.4 Contact with Other Necessary Parties to Settlement

The General Counsel should identify other necessary parties to the settlement, if any (Section 605.3), and meet and discuss settlement with those parties. The General Counsel should begin with a summary of the scope of the allegations he or she deems have merit, the theory of the case, and a brief description of the facts and the law supporting the Board's position.

The General Counsel should explain the substance of the settlement and listen carefully to the charged party's position and consider whether any accommodation can be made to address objections raised to the proposal.

The General Counsel should discuss with the party the factors favoring settlement identified in Section 603.2.

604 NATURE AND CONTENTS OF SETTLEMENT AGREEMENT

604.1 Generally

A Board settlement agreement is a Board document providing that the charged party will take certain action to remedy the unfair labor practice in the charge that the General Counsel has deemed meritorious. A Board settlement requires the approval of the General Counsel. A Board settlement may be made either before or after the General Counsel issues a complaint regarding an unfair labor practice.

604.2 Contents of Settlement Agreement

A settlement agreement should be comprehensive and not award more than a favorable outcome of the hearing would award. It should accurately reflect the facts as found during the investigation or stipulated by the parties. The settlement should contain a stipulation of facts.

The settlement agreement should set forth the remedy for the unfair labor practice in detail. If backpay is ordered, the settlement agreement should define the formula for calculating backpay and interest.

The settlement agreement should require the charged party to post notices to employees and union members of the settlement and of their rights under the settlement. The language of the notice should be readily understandable to employees. Although the posting may state that the charged party will conform in the future to the requirements of the Agricultural Employment Relations Act, it should not require an admission of past guilt, either directly (e.g. "We violated the law when we discharged Joe Smith.") or by implication (e.g. "We will not discharge anyone for union activity *again*.").

605 PARTIES TO BOARD SETTLEMENTS

605.1 Charged Party

The charged party is a necessary party to any settlement.

605.2 Charging Party

It is desirable to have the charging party enter into the settlement agreement, because bilateral settlement reflects mutual satisfaction with the resolution of the dispute and avoids delay in the implementation of the settlement resulting from dismissal of the charge and possible appeal.

If the charging party refuses to enter into settlement, the General Counsel may nonetheless accept a settlement agreed to by the charged party. However, the General Counsel should enter into a unilateral settlement only after consulting the Board and considering the objections of the charging party.

605.3 Other Necessary Parties to Settlement

In cases in which the remedy requires involvement of a party other than the charged party, such as when the charge involves allegation of an employer dominating or interfering with a labor organization (A.R.S. § 23-1385(A)(2)), the other party is a necessary party to the agreement and should execute the settlement as a party in interest.

If a necessary party refuses to sign a settlement agreement, the General Counsel and Board should not approve a settlement unless the party in interest files a document with the Board stating that it has knowledge of the contemplated settlement and waives any right to be party to the proceedings or to the content of the settlement.

606 APPROVAL OF SETTLEMENT

Prior to the hearing on the unfair labor practice complaint, the General Counsel has the authority to accept a settlement and dismiss an unfair labor practice charge or complaint. Pursuant to Board rules, after an unfair labor practice hearing has started, the General Counsel may only withdraw the complaint upon motion and with consent of the ALJ, A.A.C. R4-2-304(C), which in effect gives the ALJ authority to reject a settlement by denying the General Counsel's motion to withdraw the complaint. However, because A.R.S. § 23-1386(D) provides that the General Counsel has final authority with respect to issuance and prosecution of complaints, there may a legal question as to the validity of the rules requiring ALJ approval to withdraw a complaint.

If the General Counsel has not issued a complaint prior to approving a settlement, the charging party shall withdraw the charge and no further action needs to taken by the Board or General Counsel. If the General Counsel has issued a complaint prior to approving a settlement, the General Counsel shall dismiss the complaint and no further action needs to be taken by the Board.

607 NON-BOARD SETTLEMENTS

In addition to Board settlements, unfair labor practice charges may be resolved through specific agreement between the parties or as a result of unilateral action taken by the charged party which satisfies the charging party. Non-Board settlements result in the withdrawal of the charge or, if a complaint has been issued, dismissal of the complaint if the settlement meets the General Counsel's approval.

607.1 Processing of Non-Board Settlements

Upon being notified of a charging party's desire to withdraw a charge based on a non-Board settlement, the General Counsel should obtain the terms of the settlement. Prior to the unfair labor practice hearing, the party has the right to withdraw the charge without consent of the Board. After the beginning of the unfair labor practice hearing, the party may withdraw a charge only with the consent of the ALJ. A.A.C. R4-2-301.

Even if the party withdraws a charge, once the General Counsel issues a complaint the Board may dismiss the Complaint only with the approval of the General Counsel. A.A.C. R4-2-301. The General Counsel should approve the dismissal of the unfair labor practice complaint only if he or she is satisfied with the non-Board settlement between the parties. In those situations where alleged discriminatees are not represented by counsel, caution should be exercised to ensure that advantage has not been taken of an unrepresented individual in the private settlement negotiations.

700-710 FORMAL HEARING

700 GENERALLY

Unfair labor practice hearings are conducted on behalf of the Board by the Office of Administrative Hearings (OAH). An ALJ with the OAH makes findings of fact and conclusions of law and recommends an order to the Board. If no objections are filed to the recommendation of the ALJ, the decision becomes final and the Board enters the appropriate order. If objections or motions for rehearing are filed, the Board considers the objections and orders the appropriate action. See Sections 706 & 707.

701 PROCUREMENT OF HEARING DATE/NOTICE OF HEARING

If after investigation of the unfair labor practice charge the General Counsel determines to issue a complaint, the Board, either the General Counsel or a Board Agent, should request a hearing from OAH, using the form prescribed by the OAH. (Appendix C). Once the hearing date, time, and location have been set, the General Counsel must issue a Notice of Hearing (Form 203). The Notice of Hearing must accompany the complaint. A.A.C. R4-2-304(A).

702 GENERAL COUNSEL'S HEARING PREPARATION

702.1 General Preparation

Appropriate preparation is critical to successful prosecution of a case. The Board's General Counsel represents the Board and the people of the State of Arizona in the unfair labor practice hearing and generally prosecutes the case set forth in the Complaint. The General Counsel represents the public's interest by presenting evidence and arguments in support of the Complaint.

702.2 Analysis of Pleadings

The General Counsel must carefully analyze the complaint and answer(s), if submitted, to determine what has been admitted and what must be proved at hearing. Additionally, such review will enable the General Counsel to organize pretrial preparation and plan the introduction of evidence and arguments to be made at hearing.

702.3 Examination of Documents

The General Counsel should review all documents that could be introduced at trial and give consideration to the most effective manner in which the documents can assist in examining witnesses.

702.4 Interview of Witnesses

The General Counsel should interview each prospective witness intensively and as frequently as is necessary in order to properly prepare for trial.

The necessity for re-interviews will be determined by the nature of the case and the ability of the witness.

Preparing non-English speaking witnesses often requires additional time. The General Counsel should also be sensitive to any special problems that need to be addressed during the interview.

702.5 Affidavits from Additional Witnesses

Whether the General Counsel should take an affidavit from a prospective witness who did not give a prior affidavit will depend upon an assessment of various circumstances, including:

- Whether the witness' testimony relates to a new issue not currently in the complaint or merely corroborates an existing allegation;
- The relative significance of the testimony in relationship to the overall case; and
- An evaluation of the likely reliability and cooperation of the witness at trial.

702.6 Charged Party's Ability to Comply with Remedy

At all postcomplaint stages, the General Counsel should assess the charged party's current and, when possible, future ability to comply with the remedy sought by the Board. The General Counsel should be alert to evidence from the charging party, the witnesses, and charged party as appropriate. Any indication that charged party has rendered or will render itself unable to comply should be fully investigated and appropriate action taken. Consideration should again be given to the appropriateness of injunctive relief. See Section 505.

702.7 File Memos

The General Counsel should prepare memos to the file and keep the file organized as he or she prepares for hearing. Another attorney should be able take over the case and prosecute the hearing with a minimum of overlapping preparation after reading the file.

702.8 Preparation of Exhibits

Documents or records expected to be introduced in evidence should be reproduced in advance, so that sufficient copies are available for introduction into evidence and for the Administrative Law Judge and all other parties. Where only a part of a document or record will be offered and is reproduced, the whole should be kept available for inspection. No informal markings should be inserted on documents or records that are to be introduced. A copy of the documents to be used as exhibits should be placed in the file marked as exhibits.

703 ROLE AND CONDUCT OF GENERAL COUNSEL AT HEARING

The General Counsel is an advocate who prosecutes the case as set forth in the complaint on behalf of the Board. The General Counsel represents the public's interests by presenting evidence and arguments in support of the complaint with honesty and integrity.

As counsel for the Board, the General Counsel must protect the record and, where appropriate, raise objections or submit offers of proof.

703.1 Conduct Toward the Parties

The General Counsel is an officer of the court and a public servant whose dealings with others, including all parties, should be courteous and marked by integrity and common sense. The General Counsel should maintain a professional relationship with the charging party, respondent, their counsel and any representatives, and maintain an appropriate independence from the interests of any party.

703.2 Responsibility for Prosecution of the Case

As counsel for the Board, the General Counsel represents the public's interests by prosecuting the complaint on behalf of the Board. Although the interests of the charging party will, in most instances, be in harmony with such prosecution, the General Counsel does not represent the charging party. During preparation and the course of the hearing, the charging party or its counsel may make suggestions or give advice about the prosecution of the case. The General Counsel must be cautious in determining which suggestions to adopt or resist and be courteous but firm in maintaining control of the presentation of the case. The charging party, on its own behalf upon entering an appearance and obtaining consent of the ALJ, is entitled to examine witnesses and introduce additional evidence, as well as to argue for additional remedies. However, the General Counsel should oppose anything that will jeopardize the prosecution of the complaint or that is unnecessarily cumulative.

Hearings are conducted by the OAH pursuant to the Administrative Law Procedures Act and related rules. The General Counsel should be thoroughly familiar with the procedures prior to the unfair labor practices hearing.

The charged party has the right to be present and present evidence. A.R.S. § 23-1390(A). At the discretion of the ALJ, any other person may intervene and give testimony. A.R.S. § 23-1390(A).

704 CLOSE OF HEARING

The General Counsel should ensure all matters have been handled before the close of hearing. Regarding exhibits, the General Counsel should make sure:

- All exhibits intended to be offered in the General Counsel's case were offered and received or otherwise ruled upon;

- All copies of exhibits were supplied;

- The reporter has two copies of all the General Counsel's exhibits, joint and other exhibits the General Counsel is relying on; and

- All parties understand the arrangements, if any, for submission of exhibits after the close of hearing

General Counsel should review the exhibits and record completed to this point to ensure accuracy and completeness.

705 POST-HEARING CORRECTION OF THE TRANSCRIPT

Because all further proceedings are based on the record established at the hearing, the General Counsel should ensure that the testimony of witnesses and the statements of counsel and the Administrative Law Judge are accurately set forth in the transcript. The General Counsel should request and carefully read the hearing transcript. Further, the General Counsel should note all material inaccuracies and take necessary steps to correct or supplement the record, following the requirements of the Administrative Procedures Act.

706 ADMINISTRATIVE LAW JUDGE'S DECISION

The ALJ must make a decision within 20 days after the close of the hearing. The ALJ issues a decision that sets forth findings of fact, legal conclusions, and recommended order. The General Counsel should review the ALJ's decision, including the factual findings, conclusions of law, and any remedy, to enable the General Counsel to determine whether any objections to the ALJ's decision should be filed. The General Counsel should also request and review the entire transcript of the hearing.

The ALJ's decision should be served on the charged party, charging party, and any other interested parties that participated in the hearing. For proper methods of service, see Section 904.3. The Board should include a letter or notice with the ALJ's decision informing parties of the right to file objections within 10 days after service of the decision pursuant to A.R.S. § 23-1390(C), and the right to file a response to filed objections within 15 days after the objections are filed.

706.1 Compliance with Administrative Law Judge's Decision

If no party files an objection to the ALJ's decision within 10 business days after service of the ALJ's opinion, the ALJ's decision becomes final. The Board should issue the appropriate order and, if necessary, seek a judgment from the Superior Court compelling compliance. See Sections 707 & 710.

706.2 Filing of Objections

Any party, including the General Counsel, may file written objections and a brief in support of those objections, contending that a material part(s) of the ALJ's decision and recommended order is erroneous and should not be adopted by the Board. Any other party to the hearing may file a response to the filed objections.

Upon receipt of objections to the ALJ decision, the Board agent should docket the receipt and provide copies to the Board members.

706.2(a) Time for Filing Objections

Objections must be filed within 10 business days after service of the order transferring the case to the Board, unless an extension of time is granted. A.R.S. § 23-1390(C).

A.A.C. R4-2-103 to -105 govern time computations and other service and filing requirements and must be strictly followed.

706.3 Responses to Objections

Any party involved in the hearing may file a response to objections filed by another party. Upon receipt of a response, the Board agent should docket receipt of the response and provide copies to the Board members. Board rules do not specify the time period allowed for a response. However, the Administrative Procedures Act allows 15 days for a party to file a response to a motion for review or rehearing, A.R.S. § 41.1092.09. Therefore, parties should be given 15 days from the date the objections are filed to file a response.

Because rules are not specific, the Board should notify the parties in a letter or notice accompanying service of the ALJ decision of their right to file objections within 10 days after receipt of the decision and the right to file a response to objections in writing within 15 days after the date the objections are filed.

The Administrative Procedures Act and Board rules do not make provisions for the party filing the objections to file a reply to the other party's response.

707 ISSUANCE OF BOARD ORDER

If no party files an objection to the ALJ's decision within 10 days after service of the decision, the ALJ's decision becomes final. The Board will issue an order adopting the ALJ's findings, conclusions, and recommendations. If necessary, the Board should seek a judgment from the Superior Court compelling compliance. See Section 710.2.

Upon the filing of objections and responses, the Board should review the ALJ's decision, the objections, and the response(s). The Board may decide the matter on the record made before the ALJ. Alternatively, the Board may order additional hearings before the OAH (and make a request for hearing to the OAH, using the form prescribed by the OAH (Appendix C)) to enhance the record with further evidence before making an

appropriate disposition of the case. The Board may affirm the ALJ decision and issue the appropriate order. The Board may overrule the ALJ decision and issue the appropriate order. The Board may modify the ALJ decision and issue the appropriate order.

The order should be served on all parties. For service requirements, see Section 904.3.

707.1 Contents of Board Order

If no party files an objection to the ALJ's decision, the Board's order should conform to the ALJ's proposed order. The order must include findings of fact, conclusions of law, and a remedy for the unfair labor practice.

The Board has the authority to order the charged party to cease and desist from the unfair labor practice and order affirmative remedies. The Board may require the charged party to report from time to time on its compliance efforts. The Board may order reinstatement and/or backpay to employees whose rights were violated. However, the Board may not order the reinstatement of or backpay to an employee discharged for cause. A.R.S. § 23-1390(C).

708 MOTION FOR REHEARING PURSUANT TO A.A.C. R4-2-407

After the Board issues an order, the Board order is considered a final administrative decision and a party may file a motion for rehearing or review under A.R.S. § 41-1092.09. A.A.C. R4-2-407. The party must file the request for rehearing within 30 days after service of the Board order. The opposing party may file a response within 15 days after the date the motion for rehearing is filed. A.R.S. § 41.1092.09.

Upon receiving a motion for rehearing or reconsideration or a response thereto, the Board agent should docket receipt and provide copies to the Board members.

The Board should grant the motion for rehearing if:

A. The decision is not justified by the evidence or is contrary to law;

B. There is newly discovered material evidence that could not have been discovered and produced at the original hearing;

C. One or more of the following has deprived the party of a fair hearing:

(1) Irregularity or abuse of discretion in the conduct of the proceeding;

(2) Misconduct of the Board, the ALJ, or the prevailing party; or

(3) Accident or surprise that could not have been prevented with ordinary prudence; or

D. 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).

709 JUDICIAL REVIEW

Final decisions of the Board are subject to judicial review pursuant to Arizona Revised Statutes, Title 12, Chapter 7, Article 6. A.R.S. § 23-1390(F). Filing of an appeal does not act as a stay of the Board's order, unless the Court orders a stay. A.R.S. § 23-1390(H). Therefore, parties must follow the Board's order pending the outcome of appeal to the Court.

710 ENFORCEMENT OR MODIFICATION OF ORDER

710.1 Modification of Order by the Board

At any time prior to the record of the unfair labor practice case and the Board order being filed with the Superior Court, the Board may modify or set aside an order. The Board must provide reasonable notice to all involved parties that the order is being modified or set aside. Such notice should be in writing. A.R.S. § 23-1390(D).

710.2 Superior Court Jurisdiction

After issuing an order, the Board, through the General Counsel, may file a petition for enforcement with the Superior Court in the county in which the unfair labor practice occurred or where the charged party resides or conducts business. The Board may petition for a restraining order or other temporary relief as necessary. A.R.S. § 23-1390(E). The General Counsel should ensure that the petition complies with A.R.S. § 23-1390(G).

Upon receiving the Board's petition, the Court notifies the parties and thereafter has jurisdiction over the unfair labor practice proceeding. The Court may enforce, modify, or set aside the Board's order in whole or in part. A.R.S. § 23-1390(E). However, the filing of a petition for enforcement by the Board does not act as a stay of the Board's order unless the Court so orders. A.R.S. § 23-1390(H). Therefore, parties must follow the Board's order while the Superior Court case is pending unless the Court orders otherwise.

800-803 CASE FILES AND DOCUMENTARY EVIDENCE

800 CASE FILES

The case file should reflect all action taken in the investigation and hearing 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 attorney to continue the investigation or prosecution of the case with a minimum of duplication.

800.1 Organization of Files

Files should be organized so that specific material may be easily found. No special sectional breakdown is required. The need for organization will often depend on the case and on the extent of the work already done, but a desirable breakdown would consist of sections devoted to the (1) formal (public) documents, (2) memos and correspondence, (3) affidavits and statements, and (4) other documents. Normally, the affidavits and statements should be arranged alphabetically and other documents chronologically.

800.2 File Should Contain Complete History of Case

There should be no gaps in the case file. Where an item inserted in the file speaks for itself, it is unnecessary to recite the surrounding facts in a memo, but, for example, an unsuccessful interview attempt should be documented in a memo; in this way, the file will show the 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 DOCUMENTARY EVIDENCE

The term documentary evidence means any paper whether in written, printed, graphic, or other visual form, containing facts germane to the case that might be necessary to introduce at a hearing. Documentary evidence includes correspondence to the Board or any agents, other letters, records, charts, pictures, affidavits, and other signed statements.

All documentary evidence should be retained in the original form if possible; otherwise, such evidence should be photocopied.

Unless the source and circumstances of receipts of a document are self-explanatory, they should be recited in a file memorandum.

No marks should be made on documentary evidence. Notes, questions, remarks, or instructions should be inserted on separate sheets and not on the face of the document. This is particularly applicable to the practice that sometimes exists of writing on the

document the name(s) of the person(s) in the Board to whom it is to be routed; separate routing slips should be used for this purpose.

802 RETENTION OF FILES

The AERB has a Records Retention and Disposition Schedule regulating how long case files and documentary evidence 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 and will be custodian of the records.

803 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. R4-2-303(C). (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 an unfair labor practice investigation is confidential. It may not be subpoenaed by a party under A.R.S. § 23-1391(A). The General Counsel or investigator may not reveal the information without consent of the General Counsel, unless otherwise required by law. A.A.C. R4-2-303(C).

The General Counsel should have good reason to disclose investigative materials and should make a memo to the file explaining his or her reasons. If information is a trade secret or confidential or proprietary information of a party, see Section 803.

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.