AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

for dismissal or other administrative sanctions deemed appropriate by the Panel.

§ 269b.240 The investigation.

(a) The purpose of the investigation is (1) to ascertain, analyze, and apply the relevant facts in order to determine whether or not formal proceedings are warranted and (2) to assist, by mediation and other appropriate means, the parties to reach a mutually satisfactory resolution of the issues as an alternative to the hearing process. In so doing, the investigator is not limited to the allegations set forth in the charge and may advise the charging party to amend his charge. In addition, he should adduce facts pertaining to the remedy as well as to the alleged violation. Investigation should also adduce facts pertaining to the jurisdiction of the panel and the timeliness of the charge. If the charge is untimely on its face, no investigation shall be required except to determine whether or not attending circumstances warrant waiving the time requirements, set forth in §269b.110. The investigator may request the appearance of parties and witnesses, may cause, the production of relevant document, and may take or cause depositions to be taken.

(b) When the investigation has been completed, the Center shall issue a written determination whether the charging party has established a prima facie case, whether the charge was timely filed, and whether the charge is within the jurisdiction of the panel, and reasons therefor. This determination shall be served upon the panel and all parties. The panel shall receive also the complete report of the investigator.

APPEAL FROM THE CENTER'S DETERMINATION

§ 269b.310 Appeal rights.

Where the investigator has found that a prima facie case does not exist, a party, including an intervenor but excluding the respondent or other parties having the same interest as the respondent, within 5 days after receiving the Center's determination may petition the panel to set aside the determination and to cause formal proceedings, set forth in §269b.410, to be invoked. The panel may grant such petition only on grounds that the Center or its agents were arbitrary, capricious, or acted contrary to law or the policy, or that the investigator's determination is clearly erroneous. The filing requirements for such a petition shall be the same as that for the filing of a charge, as set forth in §269b.111.

§ 269b.320 Proceedings before the panel.

The panel shall issue its decision within 15 days after the receipt of the petition provided for in §269b.310 or by the end of that period shall announce that it will require briefs by the parties. Such announcement shall specify the requirements as to contents of the briefs, and the time for submission, which shall vary to meet the circumstances of the matter appealed. The panel, at such time, may also require oral argument or the production of evidence or may so order oral argument and/or the production of evidence after examination of the briefs. The panel shall issue its final decision within 20 days after briefs have been filed, evidence has been produced, or oral argument has been conducted.

FORMAL PROCEEDINGS

§ 269b.410 Notice of hearing.

If formal proceedings are found to be needed under the above procedures, and if no satisfactory settlement has been reached within 5 days after finding that a prima facie case exists, the Secretary of the panel, unless there is cause for granting an extension of time, shall issue and cause to be served upon the parties a notice of hearing. The panel shall appoint, pursuant to §269b.420, a hearing officer to hold a hearing and issue a report to the panel containing findings of fact, conclusions of law, and recommendations including, where appropriate, remedial action to be taken and notices to be posted. The Secretary shall furnish to the hearing officer the investigator's report and all other relevant information in the panel's possession.

§269b.420 Designation of hearing officer.

(a) The panel, absent special circumstances, shall employ the center to select the hearing officer to conduct the hearing at a site most convenient to the parties and witnesses. The individual who performed the investigation, pursuant to §269b.210, shall be barred from acting as a hearing officer on the same matter, unless all parties in interest agree to his participation. The selection of the hearing officer, to the extent practicable, shall be done with the concurrence of the parties.

(b) Any party may request the hearing officer, at any time following his designation and before the filing of his decision, to withdraw on grounds of previously demonstrated personal bias, conflict of interest, or prejudice by filing with him promptly upon the discovery of the alleged facts a timely affidavit setting forth in detail the matters alleged to constitute grounds for disqualification. If, in the opinion of the hearing officer, such affidavit is filed with due diligence and is sufficient on its face, he shall forthwith disqualify himself and withdraw from the proceeding. If he does not so withdraw, he shall so rule upon the record, stating the grounds for his ruling and proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision, and his ruling shall be subject to the same review by the panel that is given to the rest of his decision.

(c) The costs of conducting the hearing and of the hearing officer shall be borne by the panel. Witness fees and expenses shall be paid by the party at whose instance the witnesses appear.

§269b.430 Contents of notice of hearing.

The notice of hearing shall include:

(a) A copy of the charge;

(b) A statement of the time of the hearing which shall be not less than 10 days after service of the notice of hearing, except in extraordinary circumstances. All charges involving a ''refusal to bargain'' allegation and all charges, if sustained, that would require the setting aside of an election, or the conducting of a new election shall be given first priority;

(c) A statement of the place and nature of hearing;

(d) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(e) A reference to the particular section of the policy and rules and regulations of this chapter involved;

(f) A copy of the determination, if any, made causing the invocation of these formal proceedings.

§269b.440 Conduct of hearing.

(a) Hearing shall be public unless otherwise ordered by the hearing officer or the panel. An official reporter shall make the only official transcript of such proceedings.

(b) Copies of the official transcript will not be provided to the parties, but may be purchased by arrangement with the official reporter or with such costs as the panel may otherwise assess, or may be examined in the offices of the panel and/or the hearing officer subject to such conditions as the panel may prescribe.

(c) A charging party in asserting that an unfair labor practice has been committed within the meaning of the policy, shall have the burden of proving the allegations of the charge, or the amended charge, by a preponderance of the evidence.

(d) The parties shall not be bound by the technical rules of evidence, but the hearing officer, may, in his discretion, exclude any evidence or offer of proof if he finds that its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion.

§269b.441 Rights of parties.

(a) Any party shall have the right to appear at such hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses as may be required for a full and true disclosure of the facts, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing officer. Five copies of such documentary evidence shall be submitted

unless the hearing officer permits a reduced number for good cause shown.

(b) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing.

(c) Any party shall be entitled to file a brief to the hearing officer within 10 days after the close of the hearing, but no reply brief may be filed except upon special permission of the hearing officer. A party filing a brief must file the original and one copy with the hearing officer along with proof of service of a copy of such brief to all parties. Requests for extension of time to file briefs must be made to the hearing officer who must receive the request at least 3 days prior to the expiration of time fixed for filing of briefs and notice of the request shall be served simultaneously on all other parties, and proof of service shall be furnished. If a request for extension of time is based on the need for a copy of the transcript prior to filing a brief, such request must be made to the hearing officer before the hearing is closed and must be ruled on prior to the close of the hearing.

§ 269b.442 Duties and powers of the hearing officer.

The hearing officer shall inquire fully into the facts as to whether the respondent has engaged or is engaging in an unfair labor practice as set forth in the charge or the amended charge. The hearing officer shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the panel, subject to the rules and regulations in this subchapter, to:

(a) Grant requests for attendance of witnesses and production of documents;

(b) Rule upon petitions to quash requests made pursuant to paragraph (a) of this section;

(c) Call, examine, and cross-examine parties and witnesses as may be required for a full and true disclosure of the facts and to introduce into the record documentary or other evidence;

(d) Rule upon offers of proof and receive relevant evidence;

(e) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(f) Limit lines of questioning or testimony which are repetitive, cumulative, or irrelevant;

(g) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper question;

(h) Hold such prehearing conferences as may be necessary to expedite proceedings and hold such other conferences for the settlement or simplification of the issues by consent of the parties or upon his own motion;

(i) Dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions referred to the hearing officer by the panel, and motions to amend pleadings, also to recommend dismissal of cases or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of the hearing officer's report and recommendations;

(j) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(k) Require the parties, if necessary, to file written briefs in support of their positions;

(l) Take any other action necessary under the foregoing and authorized by the rules and regulations in this subchapter.

In the event the hearing officer designated to conduct the hearing becomes unavailable, the panel may designate another hearing officer for the purpose of further hearing or issuance of a report and recommendation on the record as made, or both.

§ 269b.443 Motions before or after a hearing.

All motions (including motions for intervention), other than those made during a hearing, shall be made in writing to the Secretary of the panel, shall briefly state the relief sought, shall set forth the grounds for such motion, and shall be accompanied 3 days thereafter

by proof of service on all parties. Answering statements, if any, must be served on all parties and the original thereof, together with two copies and statement of service, shall be filed with the Secretary within 5 days after service of the moving papers, unless the Secretary directs otherwise. Motions may be referred to the hearing officer whose ruling shall be made upon the record or the motion may be stayed until such time as the panel reviews the hearing officer's report and recommendations.

§ 269b.444 Objection to conduct of hearing; other motions during hearing.

Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, or any other motion during the course of the hearing, including a request to allow intervention, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing and such objection shall not stay the conduct of the hearing. Automatic exceptions will be allowed to all adverse rulings and shall be considered by the panel upon its review of the hearing officer's report and recommendations, if exception to the ruling is included in a statement of exceptions submitted to the panel after the close of the hearing, subject to the requirements of § 269b.520.

§ 269b.450 Submission of hearing officer's report to the panel.

After the close of the hearing, and the receipt of briefs, if any, the hearing officer shall prepare a report and recommendations, containing findings of fact, conclusions of law, including judgments as to the credibility of witnesses where appropriate, and the reasons or basis therefor, and recommendations as to the disposition of the case, and, where appropriate, including the remedial action and notices to be posted. After he has caused his report and recommendations to be served promptly on all parties to the proceeding, he shall transfer the case to the panel including his report and recommendations and the complete record. Such submission shall be made within 20 days after the close of the hearing and the receipt of briefs, if any, unless otherwise extended by the panel. The record shall include the charge, notice of hearing, service sheet, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, documentary evidence, exhibits, and any briefs or other documents submitted to the parties.

Panel Review of Hearing Officer's Report and Recommended Decision

§ 269b.510 Review by panel.

The panel shall review the report and recommendations of each hearing officer, the record of the hearing, and such other documents as enumerated in § 269b.450, whether or not any party files an appeal, unless the parties file with the panel a settlement agreement within 10 days after service of the hearing officer's report upon them. In the course of such review, the panel may require oral argument or written briefs on any relevant issue within such time limits as the panel may prescribe, and may reopen the record in any case and receive further evidence.

§ 269b.520 Exceptions to hearing officer's report.

(a) Any party may file with the panel exceptions to the hearing officer's report and recommendations, and any ruling contained therein, if made within 10 days after service of the report and recommendations. The Panel may, for good cause shown, extend the time for filing such exceptions upon written request, with copies served simultaneously on the other parties, received not later than 3 days before the date exceptions are due. Requests for oral argument will not be considered unless filed with exceptions.

(b) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived, although the panel may on its own motion rule upon any matter in the report and recommendations.