OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 20-07 June 1, 2020

TO: All Regional Directors, Officers-in-Charge, and Resident Officers

FROM: Peter B. Robb, General Counsel

SUBJECT: Guidance Memorandum on Representation Case Procedure Changes

I. INTRODUCTION

On December 13, 2019, the Board announced a set of modifications to its Rules and Regulations governing the processing of representation cases. This 2019 final rule amendments followed significant revisions of long-standing practices and procedures promulgated by the Board in 2014, which imposed a variety of new procedural requirements on the parties and significantly contracted the timeline between the filing of a petition and the election. The 2014 revisions raised concerns among some stakeholders that the timeframe prior to the pre-election hearing was too truncated to allow the parties to prepare for the hearing and meet its regulatory obligations, including the filing of the Statement of Position and development of the employee list. The Board designed the 2019 amendments, which are applicable to all petitions filed on or after May 31, 2020,[1] to address many of those concerns. Rather than rescinding the 2014 Rules in their entirety, the 2019 amendments incorporated "targeted revisions designed to address specific, identified concerns and problems."[2]

The most significant changes are as follows:[3]

- **Pre-Election Hearings**: Pre-election hearings will generally be scheduled 14 business days (rather than the 8 calendar days under the 2014 Rules) from notice of the hearing, and Regional Directors will have greater discretion to postpone hearings.

[1] See 85 Fed. Reg. 17500 (Mar. 30, 2020).
[2] 84 Fed. Reg. 69527.
[3] On May 30, 2020, Judge Ketanji Brown Jackson of the United States District Court for the District of Columbia issued an order in *AFL-CIO v. NLRB*, Civ. No. 20-CV-0675, enjoining implementation of five aspects of the 2019 Amendments. Those sections, which cannot be implemented while the injunction is in place, include changes that (1) gave parties the right to litigate most voter eligibility and inclusion issues prior to the election (sec. 102.64(a)); (2) instructed that the Regional Director normally will not schedule an election before the 20th business day after the date of the direction of election (sec. 102.67(b)); (3) mandated that employers furnish the required voter list to the Regional Director and other parties within five business days (rather than the two business days under the 2014 Rules) following the issuance of a direction of election (sec. 102.67(l)); (4) limited a party's selection of election observers to individuals who are current members of the voting unit whenever possible (sec. 102.69(a)(5)); and, (5) instructed that the Regional Director will no longer issue certifications following elections if a request for review is pending or before the time has passed during which a request for review could be filed (sec. 102.69(b) and (c)). This Memorandum therefore does not discuss implementation of these aspects of the 2019 Amendments.

- **Notice of Petition for Election**: Employers must post and distribute the Notice of Petition for Election within five business days after service of the notice of hearing (rather than two calendar days under the 2014 Rules).

- **Non-Petitioning Party's Statement of Position**: Non-petitioning parties must file a Statement of Position within eight business days after service of the notice of hearing (rather than seven calendar days), and Regional Directors will have greater discretion to grant extensions.

- **Petitioning Party's Statement of Position**: Petitioners must file a Statement of Position responding to the issues raised in any non-petitioning party's Statement of Position. This Responsive Statement of Position is due at noon three business days before the hearing. Currently, petitioners must respond to the Statement of Position on the record at a pre-election hearing, but not in writing.

- **Post-Hearing Briefs**: Parties are permitted once again to file post-hearing briefs with the Regional Director following pre-election hearings (rather than only upon special permission of the Regional Director). Post-hearing briefs will be permitted for post-election hearings as well. Such briefs are due within 5 business days, and Hearing Officers may grant an extension of up to 10 business days for good cause.

- **Notice of Election**: The Board emphasized a Regional Director's discretion to issue a direction of election that may or may not contain a Notice of Election.

- **Requests for Review**:
  - **Filed within 10 Business Days after Direction of Election**: If the Board either does not rule on a request for review or grants the request before the election, ballots will be impounded and remain unopened pending a decision by the Board.
  - **Filed more than 10 Business Days after Direction of Election**: Parties may still file a request for review of a direction of election more than 10 business days after the direction, but the pendency of such a request for review will not require impoundment of the ballots or postponement of issuing a Tally of Ballots.
  - **Post-Election**: Consistent with the practice, parties may wait to file a request for review of a direction of election until after the election has been conducted and the ballots counted.

- **Oppositions to Requests for Review**: Oppositions are explicitly permitted in response to all types of requests for review, and the practice of permitting replies to oppositions and briefs on review only upon special leave of the Board has been codified.

- **Business Day Calculation**: All time periods applicable to the election rule are calculated based on business days as opposed to calendar days. Under the 2014 Rules, there was a lack of consistency on the calculation of days. The 2019 Amendments also defines how business days are calculated, including clarification that only weekend days and federal holidays are not designated business days in time period calculations.

The guidance provided in this memorandum is an effort apply the modifications set forth in the 2019 Amendments within the context of current procedures.

II. TIME REQUIREMENTS FOR FILINGS WITH THE AGENCY

All time periods applicable to the 2019 Amendments are calculated based on business days as opposed to calendar days. Under the 2014 Rules, there was a lack of consistency on the calculation of days. The new amendments also define how business days are calculated, including clarification in §102.1(i) that only federal holidays are not designated business days in time period calculations. The specific changes are addressed below.[4]

III. INITIAL PROCESSING OF THE PETITION

A. 2019 Amendments to Initial Processing Procedures

The 2019 Amendments make the following changes to the initial processing of petitions:

- §102.61(f) clarifies that original signatures required for evidence in support of RC, RD and RM petitions for elections that were initially filed by facsimile or electronically be provided within two *business* days rather than two days.
- §102.63(a)(1) provides pre-election hearings will generally be scheduled 14 business days from notice of the hearing, and Regional Directors will have greater discretion to postpone hearings. In most cases, under the 2014 Rules, pre-election hearings were scheduled eight calendar days from the notice of hearing.
- §102.63(a)(2) requires that employers must post and distribute the Notice of Petition for Election within five business days after service of the notice of hearing. Existing rules require posting and distribution within two business days.
- §102.63(b) requires that non-petitioning parties (most commonly employers) must file a Statement of Position within eight business days after service of the notice of hearing unless an extension is granted. Under the 2014 Rules, non-petitioning parties' Statement of Position usually must be filed one day before the opening of the pre-election hearing (typically seven calendar days after service of the notice of hearing).

[4] Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). Parties must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of a submission. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). Although petitions, copies of showing of interest, and certifications of service may be e-filed, they may also be mailed, delivered, or sent by facsimile.

- §102.63(b) provides that petitioning parties must file a Statement of Position responding to the issues raised in any non-petitioning party's Statement of Position. This Responsive Statement of Position is due at noon three business days before the hearing. The 2014 Rules did not require pre-hearing statements of position from petitioning parties in RC or RD cases.[5]

B. Pre-Election Notices of Hearing and Requests for Postponement - § 102.63(a)(1)

Under the 2019 Amendments, procedures for docketing and service of documents upon the filing of a petition, including the issuance of a Notice of Hearing, remain the same as described in GC 15-06 except that pre-election hearings will generally be scheduled 14 business days from notice of the hearing. Previously, except in cases presenting unusually complex issues, pre-election hearings were scheduled for eight calendar days after service of the Notice of Hearing, excluding any weekends and intervening holidays. The 2019 Amendments give discretion to Regional Directors to approve postponements for good cause, where previously parties could only request a two business-day postponement for special circumstances and any additional days required a party to demonstrate extraordinary circumstances. Hearings will still continue from day to day unless there are extraordinary circumstances that would warrant otherwise.

C. Statements of Position, Responsive Statements of Position, and Requests for Extensions to File Statements of Position - § 102.63(b)

The requirements for non-petitioning parties to file and serve initial Statements of Position remain the same as under the 2014 Rules, except that initial Statements of Position must be filed and served on the other parties within eight business days after the service of the Notice of Hearing.[6] Previously, such Statements of Position were due by noon the business day before the opening of the hearing, which was typically seven calendar days after the service of the Notice of Hearing, unless an extension to the Statement of Position due date was granted in conjunction with a postponement of a hearing.

In RC cases, an initial Statement of Position must be filed by the employer. In RD cases, the employer and incumbent union must file initial Statements of Position. The 2019 Amendments provide that in RM cases, an initial Statement of Position must be filed by the union and, as discussed below, a Responsive Statement of Position must subsequently be filed by the employer-petitioner. Previously, in RM cases the union and employer-petitioner were required to file and serve their Statements of Position simultaneously. Regional directors retain discretion as to whether an intervenor will be required to file and serve a Statement of Position in any type of representation case.

The 2019 Amendments require petitioning parties, including employers filing RM petitions, to file with the Regional Director and to serve on the other parties Responsive Statements

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[5] Employer-petitioners in RM cases were already required to file a pre-hearing Statement of Position under the 2014 Rules but did not require employer-petitioners to respond to the issues raised in other parties' Statements of Position.

[6] The substantive contents of the initial Statement of Position of an employer or a certified or recognized representative, as well as the content of the list of employees supplied therewith, have not changed from those set forth in the 2014 Rules.

of Position by no later than noon three business days before the scheduled hearing whenever a non-petitioning party timely files and serves the required initial Statement of Position.[7] In RC and RD cases, a petitioner's response to issues raised in a Statement of Position had previously only been presented orally at a hearing. As applicable to non-petitioning parties when filing initial Statements of Position, and consistent with existing practice in §102.66(d) of the Rules, a petitioner will, with limited exceptions, be precluded from raising any issue, presenting any evidence relating to any issue, cross examining any witness concerning any issue, and presenting argument concerning any issues that the Responsive Statement of Position failed to place in dispute in response to another party's Statement of Position.[8]

Responsive Statements of Position do not have to be extensive but must address all issues that are raised. A Responsive Statement of Position form, along with a due date, will be provided to the petitioner by the Region once a petition is docketed. After reviewing a non-petitioning party's Statement of Position, a petitioner must, at a minimum, address each area that it takes issue with and clarify its position for each area. There may be times that a petitioner is not able to provide a meaningful response to issues raised due to a lack of information or knowledge, but the petitioner should at least so state in writing so it will be apparent which issues are, or may be, in dispute. Any party that has a question about completing a Statement of Position should contact the assigned Board agent to discuss well in advance of the filing due date.

The written Responsive Statement of Position will now be received early enough so that parties, with the assistance of the Board agent, may understand the areas of dispute that should either enable the parties to reach election agreements or at least focus the issues to be litigated at a hearing. Previously, the requirement that petitioners and other parties merely state their responses to the issues raised in Statements of Position at a hearing did not assist the parties in avoiding a hearing in the first place. §102.66(b) provides that the Regional Director may permit any initial or Responsive Statement of Position to be amended for good cause. Statements of Position that are confusing may be grounds for permitting a party to amend its Statement of Position. Thus, a good-faith misunderstanding of another party's position may be a sufficient basis to permit amendment of a Statement of Position. If a hearing is necessary, the initial and responsive Statements of Position, and any amended Statements, will be introduced into the record by the Hearing Officer.

Section102.63(b) of the 2019 Amendments also changes the standard for granting postponements for the filing of Statements of Position. A Regional Director has discretion to grant a postponement to file a Statement of Position upon a showing of good cause, although postponements are not to be routinely granted.[9] The length of any postponement is left to the discretion of the Regional Director. Previously, §102.63(b) provided that a Regional Director could only grant a postponement of the time for the filing and service of a Statement of Position for up to two business days if a party could show special circumstances, and any additional days required a party to demonstrate extraordinary circumstances.

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[7] The Responsive Statement of Position filed by an Employer-Petitioner in an RM case must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. Sec. 102.63(b)(2)(iii).

[8] See 84 Fed. Reg. 69536.

[9] As with an initial Statement of Position, a Regional Director will also be permitted to postpone the due date for a Responsive Statement of Position for good cause. See 84 Fed. Reg. 69534.

D. Notice of Petition for Election - § 102.63(a)(2)

As under the 2014 Rules, employers are required to post the Notice of Petition for Election in conspicuous places where notices to employees are customarily posted, and to distribute them electronically if the employer customarily communicates with employees in that manner. Employers will now have up to five business days to post and electronically distribute the Notice of Petition for Election, where previously employers had only two business days. The 2019 Amendments also clarify that where an employer customarily communicates with employees electronically, it must distribute the Notice of Petition for Election only to employees in the petitioned-for unit rather than to all employees of the employer. If the employer customarily communicates with *all* employees in the petitioned-for unit through electronic means, it must distribute the Notice of Petition for Election to the entire petitioned-for unit. However, if the employer only communicates electronically with some of the petitioned-for employees, it only needs to distribute the Notice of Petition for Election to those employees.

An employer continues to be required to maintain the posting of the Notice of Petition for Election until the petition is withdrawn or dismissed or, if an election is scheduled, until a Notice of Election replaces the Notice of Petition for Election. Failure to properly post or distribute the Notice of Petition for Election may be grounds for setting aside the election whenever proper and timely objections are filed.

IV. ELECTION AGREEMENTS

Parties can avoid the time and expense of participating in a pre-election hearing by entering into an election agreement. The three types of agreements available to resolve representation issues are: (1) a consent election agreement, which provides that the Regional Director's rulings on challenged ballots and election objections are final and binding; (2) a full consent agreement, which is utilized when the parties proceed to a hearing and provides for final Regional Director determination of both pre-election and post-election disputes; and (3) a stipulated election agreement, under which the Regional Director will resolve any post-election disputes subject to discretionary Board review. Historically, election agreements have specified the appropriate unit, the payroll period to be used in determining which employees in the appropriate unit are eligible to vote, and the type, place, date, and hours of voting, along with any special eligibility formulas.

Consistent with practice, the Board agent will contact the parties shortly after the petition is filed to explore the possibility of entering into an election agreement[10] and narrowing the issues if a hearing is held. The 14 business days before a scheduled hearing now affords the parties sufficient time to fully consider the issues to determine if an election agreement can be reached. If an election agreement is reached and approved before an initial or Responsive Statement of Position is due, the Statement(s) of Position need not be filed. Even if an election agreement is not reached, the Board agent should seek the parties' positions and explore agreement on issues, thereby narrowing issues for hearing.

[10] Elections scheduled pursuant to election agreements will continue to be scheduled for the earliest date practicable following the approval of the agreement, taking into account employee participation. Thus, the dates selected for the election should be those that enhance the opportunity for employees to vote. Labor organizations and RD petitioners may continue to waive having the voter list for some or all of the 10 days prior to an election in order to secure an earlier election date.

V. HEARING PREPARATION

Under the 2014 Rules, Regions were encouraged, where appropriate, to conduct a pre-hearing conference with the parties at the Regional Office or by conference call for the purpose of exploring the possibility of entering into an election agreement or narrowing the issues. In practice, this was difficult to achieve because the non-petitioning party's position statement was not usually required until noon the day before the scheduled hearing, leaving little time to schedule a conference to discuss disputed issues before a hearing. With 14 business days between the issuance of a Notice of Hearing and the scheduled hearing, and the submission of initial and responsive Statements of Position by the parties, it is expected that a conference will be accomplished in almost all cases. The Region may schedule this conference to be in person, by video conference or by telephone conference at its discretion. To ensure that such conferences will occur, docket letters will specify that the Board agent will normally schedule a conference with the parties no later than the close of business the day following receipt of the of the responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary.

During a pre-hearing conference, the Hearing Officer should explore all issues raised in the initial Statement of Position, including reviewing the attached lists of employees submitted by the employer. If the Responsive Statement of Position has been received, those responses should be also be reviewed with the parties during the conference in order to determine if an election agreement can be reached. Even if that is not possible, the parties should be encouraged to enter into an agreement over the areas that are not in dispute, including an agreement as to classifications that should be included or excluded from any unit found appropriate. If it is likely that a hearing will be necessary, the parties should be asked if they will enter into a full consent agreement providing for final Regional Director determination of both pre-election and post-election disputes. If the issues raised by the parties involve a presumption, the Hearing Officer should discuss the burdens that may be associated with such positions. Finally, if a party raises statutory exclusions, such as § 2(11) supervisors, independent contractors, or agricultural workers, or exclusions based on policy considerations, such as managerial employees or confidential employees, the Hearing Officer should remind the parties that the party seeking to exclude employees on these bases bears the burden of proof at hearing. Moreover, statutory issues, such as jurisdiction, professional status if there is possibly a mixed professional/nonprofessional unit, or units including both guards and nonguards, should be litigated regardless of the contents of an initial or Responsive Statement of Position.

VI. HEARINGS

A. 2019 Amendments to Hearing Procedures

The 2019 Amendments regarding pre-election hearings include:

- §102.66(a) provides that parties have the right to introduce evidence at hearing relevant to the existence of a question of representation and other issues in the case that are properly raised.

- §102.66(c) provides that a Hearing Officer may solicit offers of proof and that if the Regional Director determines that the offer of proof is not sufficient to sustain the party's position, the evidence will not be received. The 2019 Amendments adds that a party may not be precluded from introducing relevant evidence that is otherwise consistent with §§102.64(a) and 102.66(a).

- §102.66(h) provides that any party desiring to submit a brief to the Regional Director may do so within 5 business days after the close of the hearing and that the Hearing Officer may grant an extension to file a brief not to exceed 10 business days upon a showing of good cause.

B. Issues to be Litigated in a Pre-Election Hearing and Offers of Proof – §§102.66(a) and 102.66(c)

In §102.66(a), the 2019 Amendments provide that parties have the right to call, examine and cross-examine witnesses and introduce into the record evidence that is relevant to the existence of a question concerning representation *and the other issues in the case that have been properly raised*. The parties must raise issues in a timely-filed initial Statement of Position or in response to a Statement of Position. Thus, §102.66(d) is unchanged in the 2019 final rule and it precludes a party from raising any issue, presenting any argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response. If a Regional Director determines that a party will be precluded from litigating an issue, such determinations are noted on the record by the Hearing Officer. Preclusion under §102.66(d), however, does not preclude the receipt of evidence concerning jurisdiction over the employer or limit a Regional Director's discretion to direct the receipt of evidence on any issue.[11]

Most aspects of pre-election hearings remain the same, including that it is the Regional Director who will determine which issues will be litigated, and will decide whether to allow intervention by a party and amendments to the petition or a Statement of Position.[12] The Regional Director will also determine whether to grant postponements or continuances of the hearing.

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[11] See §102.66(b), under the 2014 Rules.

[12] Some issues must be litigated and resolved by the Regional Director before an election may be directed, including jurisdiction, labor organization status, bars to an election, appropriateness of a unit, multi-facility and multi-employer

Hearing officers retain the discretion to use, and the Regional Director to rule on, offers of proof to ensure that the record is not burdened by the introduction of irrelevant evidence. An offer of proof will be used to determine if a party has evidence to introduce that will support its position. The Board has clarified that Regional Directors may require offers of proof in order to police the hearing against burdening of the record.[13]

C. Filing of Briefs - §§ 102.66(h) and 102.69(1)(iii)

The 2019 Amendments, under §102.66(h), restore the right of parties to file post-hearing briefs with the Regional Director following the close of a pre-election hearing, in addition to the right to present written argument, points and authorities, and oral argument prior to the close of the record. An amendment to §102.69(c)(l)(iii) creates uniformity by allowing parties to submit post-hearing briefs to the Hearing Officer following the closure of hearings on challenges and objections. Hearing Officers will ask if parties are willing to waive the filing of briefs prior to closing the record.

Briefs will be due within 5 business days following the hearing, although prior to the closure of the record the Hearing Officer may grant up to an additional 10 business days for good cause. Extensions for such a period will not be routinely granted, however. Previously, under the 2014 Rules, parties were only afforded the right to submit written argument prior to the close of hearing or to argue orally, and were only allowed to submit post-hearing briefs upon special permission by the Regional Director (pre-election hearings) or the Hearing Officer (post-election hearings). Further, under the prior rule the time for filing briefs and the subjects covered were determined by the Regional Director (pre-election) or the Hearing Officer (post-election).

VII. PRE-ELECTION DECISIONS

A. 2019 Amendments for Pre-Election Decisions

The Amendments make the following changes to the contents of a pre-election decision:

- **Requests for Review and Impoundment of Ballots.** §102.67(c) provides for the automatic impoundment of all ballots if a request for review of a pre-election decision is filed within 10 days of the direction of election and remains unresolved when the election is conducted. A party retains the right to file a request for review more than 10 business days after issuance of a pre-election decision, including after

issues, expanding or contracting unit issues, employee status issues involving the entire unit, seasonal operations, professional employees and guards, eligibility formulas, and craft and health-care units. See GC 15-06, pp. 13-18.

[13] See 84 Fed. Reg. 69542.

the election itself, but the pendency of such a request for review will not trigger the automatic impoundment of ballots.

- **Reply Briefs to Oppositions to Requests for Review.** §102.67(f) provides that no reply briefs to oppositions to a request for review shall be accepted, except upon special leave of the Board.

- **Election Details.** §102.67(b) provides that the Regional Director "may" specify election details in a pre-election decision, but nevertheless retains the discretion to continue to investigate these details and announce an election schedule in a subsequently-issued Notice of Election.

B. Expediting Pre-Election Decisions

Regional Offices should continue the longstanding practice of ensuring that pre-election decisions are issued promptly. Regions will utilize the Agency's consolidated decision-drafting program, which will ensure that agents assigned to draft pre-election decisions are working only on drafting decisions. Regions should coordinate assignment of the decision-drafter through the appropriate centralized decision-drafting program manager at the earliest possible opportunity, generally before the hearing opens. This early assignment permits the centralized program manager the ability to efficiently make decision-drafting assignments without delay.

C. Direction of Election - §102.67(b)

The 2019 Amendments maintain the expectation that the Regional Director ordinarily will specify election details in the Decision and Direction of Election, rather than through a separate Notice of Election issued at a later date. However, the rule specifically acknowledges the director's discretion to determine whether there may be circumstances in which it is preferable to issue the Notice of Election separately from the Direction of Election, without satisfying a heightened standard of persuasion.

The 2019 Amendments also clarify an apparent imprecision in the 2014 Rule's construction of electronic distribution of the Notice of Election. At §102.67(k), the 2019 Amendments provide that, if the employer customarily communicated with employees in the unit electronically, that electronic distribution of the notice is limited only to eligible voters, rather than to all employees regardless of their inclusion in the voting unit.

D. Pre-Election Requests for Review and Impoundment of Ballots - §102.67(c) – (j)

The 2019 Amendments modify §102.67(c) to provide for automatic impoundment of ballots where a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision if the Board has not ruled on the request. Impoundment until the Board rules on the request for review has the advantage of guaranteeing that Regional Offices will, for the most part, count all votes at the same time, issuing a single tally of ballots in most circumstances. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots. Thus, the 2019 Amendments require a party to promptly choose either to seek automatic impoundment and concomitant resolution of pre-election

challenges prior to voting, or to wait to seek review, including after the election to see if a request for review is even necessary in the first place. A party filling for review after 10 business days from the direction of election may still request the Board to order impoundment of ballots as a form of extraordinary relief under §102.67(j). However, extraordinary relief is "very rarely granted," and only upon a "clear showing that it is necessary under the particular circumstances of the case."[14]

The Board has established an interlocking set of requirements pertaining to treatment of the request for review. As under the 2014 Rules, a request for review of a pre-election decision may be combined with a request for review of the decision on objections/challenged ballots. However, under §102.67(i)(1), the Board will reject any party's attempt to raise different issues pertaining to a single action through successive requests for review. The 2019 Amendments retain a party's right to file an opposition to the request for review, but, in §102.67(f), the 2019 Amendments specifically deny parties the right to file a reply brief to the opposition, except upon "special leave" of the Board. Under §102.67(i)(3), requests for extensions of time to file a request for review, statements in opposition to a request for review, or supporting briefs are governed by the procedures set forth generally in §102.2(c), including the mandate that requests for extensions of time filed within three days of the due date must be grounded upon "circumstances not reasonably foreseeable in advance." The 2019 Amendments further clarify that requests for extensions of time will not be entertained for the purpose of extending the 10 business day period required for automatic impoundment of ballots.

The 2019 Amendments maintain the option for Regional Directors to treat requests for review as motions for reconsideration. Therefore, Regional Directors should keep in mind that they can supplement their decisions and directions of elections after receiving and reviewing requests for review.

E. Scheduling of Election - §102.67(b)

As before, the Region should issue the Notice of Election as soon as possible after the issuance of the Decision and Direction of Election. The Notice of Election will continue to include language describing the composition of the unit and who will be permitted to vote, as well as whether certain individuals will vote subject to challenge. The 2019 Amendments do not envision any change to the method or burden on the parties of making challenges. Rather, the Amendments maintain the previous instruction that Directors should schedule the election for the "earliest practicable date" after issuance of the Decision and Direction of Election. The 2019 Amendments further provide that the direction of election "may" include election details, but emphasizes that the Regional Director retains the discretion to continue to investigate the time, place and manner of election even after issuance of the decision and without having to justify the bifurcated action on the existence of "unusual circumstances." Although agreement between the parties is the goal, consensus on election details is not required.[15]

[14] 84 Fed. Reg. 69547, fn.97
[15] 84 Fed. Reg. 69544 and fn.82.

VIII. CONCLUSION

It is my sincere belief that this guideline memorandum will effectuate the goal of assuring the public of a fair election result within a reasonable period of time from the filing of the petition.

If you have questions related to this memorandum, please direct them to your Assistant General Counsel or Deputy.

/s/

P.B.R.