**Section 1001.770 Conduct of Protest Hearing**

a) These hearings shall be held in Chicago or Springfield at a location determined by the Secretary, taking into consideration the location and/or request of the complainant.

b) The hearing officer does not represent any party at the proceeding, but merely facilitates the hearing by presiding over it and performing the following duties in addition to those set forth in the Act:

1) Inform the parties of the relevant issues to be decided;

2) Rule on motions, the admissibility of evidence and all other legal issues raised;

3) Prepare a proposed decision and submit it to the Chairperson and have the Secretary serve it upon the parties to the proceeding.

c) The hearing shall proceed in the following manner:

1) The hearing officer will identify the parties and set forth the violations of the Act alleged by the complainant.

2) The party bearing the burden of proof as set forth in Sections 4 or 29 of the Act shall then present evidence in the form of documents and/or testimony relevant to the alleged violation of the Act. If Section 4 or 29 of the Act does not specify which party has the burden of proof for a particular violation of the Act, the burden of proof shall be on the respondent to show that there is good cause for its action or inaction.

3) The other party to the proceeding shall then be allowed to present its evidence.

4) The hearing officer may ask questions as deemed necessary.

5) At the conclusion of the taking of evidence, each party shall be allowed to make a closing statement.

6) The hearing officer will then advise the parties that in accordance with Section 30 of the Act all expenses incurred by the Board in conducting the hearing shall be paid by the parties equally and further that if the complainant substantially prevails it will be awarded attorney's fees and costs in accordance with Section 13 of the Act. The hearing officer may also advise the complainant that, in the event that complainant may substantially prevail, it should submit as soon as possible a detailed billing setting forth the cost allowed under Section 1001.790(b) it incurred in the hearing process.

7) The hearing officer shall then take the matter under advisement, review the evidence and make a written recommendation to the Board by submitting it to the Secretary who shall then forward it to the Board members and serve it upon the parties.

d) The monitor shall review the recommendation, any exceptions and briefs submitted, and make a recommendation to the Board.

e) The Board shall then review the case file, the recommendation of the hearing officer, any exceptions and briefs, and the recommendation of the monitor. The Board shall then issue a final order. The final order shall be forwarded to the Secretary who shall then serve it upon the parties.

1) If the final order is such that the complainant does not substantially prevail, the final order shall include the amount of Board expenses payable by each party.

2) If the final order is such that the complainant substantially prevails and is based upon a hearing officer's written recommendation that includes an award of attorney's fees and costs as allowed under Section 1001.790(b), it shall include an award of attorney's fees and costs.

3) If the final order is such that the complainant substantially prevails and is based upon a hearing officer's written recommendation that does not include an award of attorney's fees and costs as allowed under Section 1001.790(b):

A) The complainant shall be allowed to submit to the hearing officer within 10 days after receipt of the final order a detailed motion requesting the payment of the costs allowed under Section 1001.790(b) that it incurred in the hearing process. A copy of the motion shall also be sent to the respondent and 3 copies to the Secretary. If the complainant fails to submit the motion in a timely manner, the complainant will be deemed to have waived its right to an award of such costs.

B) The respondent shall have 10 days from receipt of the motion to file an answer with the hearing officer. A copy shall also be sent to the complainant and 3 copies to the Secretary.

C) The hearing officer may, if he/she deems it necessary, set a hearing on the motion requesting the payment of costs.

D) The hearing officer shall then take the motion under advisement and make a written recommendation to the Board on the award of attorney's fees and costs by submitting it to the Secretary who shall then forward it to the Board members and serve it upon the parties.

E) The monitor shall review the recommendation, the pleadings filed, any exceptions and briefs submitted, and make a recommendation to the Board.

F) The Board shall than review the recommendation of the hearing officer, the pleading filed, any exceptions and briefs, and the recommendation of the monitor. The Board shall then issue a final order assessing the Board's expenses and awarding attorney's fees and costs to the complainant. The final order shall be forwarded to the Secretary who shall then serve it upon the parties.

(Source: Amended at 23 Ill. Reg. 692, effective January 15, 1999)