

## Employment and Training Administration, Labor

## § 658.711

hearing on the matter and shall advise the parties that:

(1) They may be represented at the hearing;

(2) They may present oral and documentary evidence at the hearing;

(3) They may cross-examine opposing witnesses at the hearing; and

(4) They may request rescheduling of the hearing if the time, place, or date set are inconvenient.

(b) The Solicitor of Labor or the Solicitor's designee shall represent the Department at the hearing.

### § 658.709 Conduct of hearings.

(a) Hearings shall be conducted in accordance with sections 5-8 of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.*

(b) Technical rules of evidence shall not apply, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, shall be applied if necessary by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties. Opportunity shall be given to refute facts and arguments advanced on either side of the issue. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) The general provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Court, title V, 28 U.S.C., rules 26 through 37, may be made applicable to the extent that the Administrative Law Judge concludes that their use would promote the proper advancement of the hearing.

(d) When a public officer is a respondent in a hearing in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties shall be dis-

regarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

### § 658.710 Decision of the Administrative Law Judge.

(a) The Administrative Law Judge shall have jurisdiction to decide all issues of fact and related issues of law and to grant or deny appropriate motions, but shall not have jurisdiction to decide upon the validity of Federal statutes or regulations.

(b) The decision of the Administrative Law Judge shall be based on the hearing record, shall be in writing and shall state the factual and legal basis of the decision. Notice of the decision shall be published in the FEDERAL REGISTER and the Administrative Law Judge's decision shall be available for public inspection and copying.

(c) Except when the case involves the decertification of a State agency, the decision of the Administrative Law Judge shall be the final decision of the Secretary.

(d) If the case involves the decertification of an appeal to the State agency, the decision of the Administrative Law Judge shall contain a notice stating that, within 30 calendar days of the decision, the State agency or the Administrator may appeal to the Administrative Review Board, United States Department of Labor, by sending by registered mail, return receipt requested, a written appeal to the Administrative Review Board, in care of the Administrative Law Judge who made the decision.

[45 FR 39468, June 10, 1980, as amended at 61 FR 19983, May 3, 1996]

### § 658.711 Decision of the Administrative Review Board.

(a) Upon the receipt of an appeal to the Administrative Review Board, United States Department of Labor, the Administrative Law Judge shall certify the record in the case to the Administrative Review Board, which shall make a decision to decertify or not on the basis of the hearing record.

(b) The decision of the Administrative Review Board shall be final, shall be in writing, and shall set forth the factual and legal basis for the decision.