OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 91- 64 August 1, 1991

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

FROM: Joseph E. DeSio, Associate General Counsel

SUBJECT: Proof of Claim in Bankruptcy Proceedings

It has come to our attention that some Regions are not consistently following the procedures in CHM 10642 regarding bankruptcy proceedings. We wish to emphasize, as stated in Section 10642, that the Board has the sole authority to liquidate its backpay award. Therefore, it is very important that the Region file a proof of claim even in those cases where another party has already filed its proof of claim which included the backpay due under the Board's order. This is also necessary because the proof of claim allows the Region to control the Agency's settlement posture and no other party has authority to settle the Board's backpay order.

In filing the proof of claim the Region should clearly break down the amount of backpay by each priority as set forth in CHM 10642.1. For example, in a situation where the backpay period extends from January 1 to December 31 and the respondent files for bankruptcy on November 15, the first priority would be the backpay due from November 15 to December 31. The amounts due for that period would have to be specifically identified as first priority and listed as such on the proof of claim. Claims under the second priority applies only to involuntary bankruptcy and covers the period from the filing of the petition to the appointment of a trustee or the issuance of an order of relief. Claims under the second priority would also have to be specifically listed. The third priority covers wages which occur within 90 days prior to the filing of the petition (i.e., August 15) up to a maximum of $2000 per employee. This must also be specifically listed. The fourth priority involves contributions to employee benefit plans for the period 180 days prior to filing which when added to the third priority does not exceed the $2000 limit. Again these must be specified. All other claims, such as wages from January 1 to August 15, and amounts above $2000 for 90-day wages and 180-day benefits would go into general unsecured claims. The point is that the proof of claim must be specific and a general statement such as "we claim priority to the extent permitted by law" will not suffice.

The Special Litigation Branch has a great deal of expertise in the bankruptcy area and is available to assist in these cases. Accordingly, if you have any questions in these areas, please contact Special Litigation. See CHM 10642.8 and 10642.9.

If you have any questions concerning this memorandum, please call your Assistant General Counsel.

J. H. D.

cc: NLRBU