

50 OBJECTIONS TO THE ELECTION:

- 50.1 Filing objections to the election:** Section 2422.26 states that objections to the procedural conduct of the election or to conduct that may have improperly affected the results of the election may be filed by any party. The objections must be supported by clear and concise reasons. An original and two (2) copies of the objections must be filed with the Regional Director.
- 50.2 Action where no objections are filed but the Regional Director believes that significant procedural irregularities exist:** A determination by the Regional Director that there have been significant procedural irregularities renders the election results inconclusive [§ 2422.29(a)(4)]. Procedural irregularities are not processed as objections unless an objection is filed by a party alleging conduct that is also considered a procedural irregularity. If objections to the election have also been filed, investigation of the objections may be held in abeyance while the procedural irregularities are investigated (see [CHM 50.2.1](#)). The Regional Director conducts whatever investigation is necessary to resolve issues related to the proper conduct of the election. [CHM 48.2.4 through 48.2.6](#) discuss rerunning election ordered by the Regional Director pursuant to §2422.29(a)(4).
- 50.2.1 Action on objections when the Regional Director determines that there have been significant procedural irregularities:** The Regional Director does not investigate objections to an election filed pursuant to § 2422.26 when s/he finds that significant procedural election irregularities exist pursuant to § 2422.29(a)(4). The Regional Director sets aside the election, as discussed in [CHM 48.2.5](#), based on a finding that significant procedural irregularities exist and the results of the election are inconclusive. It is therefore not necessary to investigate objections filed by a party. Compare [CHM 50.14](#), when there is no evidence of significant procedural irregularities, the Regional Director is required to decide all objections.
- 50.3 Timeliness of objections: Objections must be filed and received by the Regional Director within five (5) working days after the tally of ballots has been served [§ 2422.26(a)].** Any objections must be filed and received timely regardless of whether the challenged ballots are sufficient in number to affect the results of the election. Note that the Election Agreement requires in Item #15 (Form 33) and Item #13 (Form 34) that the parties state how the tally will be served. Compare *U.S. Department of Agriculture, Forest Service, Apache-Sitgreaves National Forest, Springerville, Arizona*, 47 FLRA 945 (1993). **The provisions in §§ 2429.24 do not provide for filing objections by facsimile equipment.**

- 50.4 Supporting evidence:** The objecting party must file with the Regional Director evidence, including signed statements, documents, and other materials supporting the objections within 10 days after the objections are filed [§ 2422.26(b)]. *Department of Veterans Affairs, Chattanooga National Cemetery, Chattanooga, Tennessee*, 45 FLRA 263 (1992); and *U.S. Department of Housing and Urban Development, Washington, D.C.*, 34 FLRA 307, 309 (1990) (the Authority held that parties dealing with the Government are charged with knowledge of, and are bound by statutes and lawfully promulgated regulations even if they have relied on, to their detriment, upon incorrect information received from a Government agent or employee).
- 50.5 Service requirements:** The objecting party is required to serve copies of objections, without supporting evidence on all parties (§ 2422.4). Service must be made simultaneously on the parties. See Report on Ruling Number 14, 1 A/SLMR 612 (1970) (no other citation available) and *Department of the Air Force, Electronics System Division, Case No. 31-3338, 1 Rulings on Requests for Review 165*, (1971), Report on Ruling Number 41, 1 A/SLMR 626 (1971).
- 50.6 Letter to other parties:** Upon receipt of the objections, the Regional Director sends a letter to the other parties. The letter notifies the parties of the objections, the name of the objecting party and the date objections were received in the Regional Office. The letter also requests the parties' positions and allows the parties 5 days from the date the objections were served by the objecting party on them to submit their positions and any supporting evidence. See [Figure 50.6](#). **This letter is mailed on the day the objections are received in the Regional Office. A copy is sent to the objecting party.**
- 50.7 Burden of proof:** A party filing objections to the election bears the burden of proof by a preponderance of the evidence concerning those objections [§ 2422.27(b)]. See also *U.S. Department of the Navy, Naval Station, Ingleside, Texas (Naval Station Ingleside)*, 46 FLRA 1011 at n.7, (1992) which stated that "the burden is clearly upon the objecting party to provide the evidence necessary to support its allegations of improper conduct and to demonstrate that the conduct may have improperly affected the results of the election."
- 50.8 Who may file objections:** Objections may only be filed by parties to the election. See § 2422.26(a) and *Department of Housing and Urban Development, Region IX, San Francisco, California*, 50 FLRA 334 (1995) (*DHUD, Region IX*), motion for reconsideration denied in *Department of Housing and Urban Development, Region IX, San Francisco, California*, 50

FLRA 575 (1995).

- 50.8.1 Issues concerning standing to file objections:** When objections to an election are filed, the Regions apply Authority precedent and determine if the filer is a party eligible to file objections under the regulations. The region initially determines whether the objecting party is a "party" because it either filed the petition, was named in the petition, or is an "incumbent intervenor" because it represents all of the employees in the unit sought in the petition. Consistent with the holding in *Fort Drum*, 50 FLRA 249, 253 (1995) the region also determines whether the objecting party should have been notified as a party that may have been affected by issues raised under § 2422.8 of the regulations and whether it should have been served with a copy of the petition. If the region determines that the objecting party has no standing to file objections and was not denied the right to intervene, the region issues a Decision and Order dismissing the objections based on *DHUD, Region IX*, 50 FLRA 334 (1995).
- 50.8.2 Action:** Although the Authority in *DHUD, Region IX* stated that the region should issue a Decision and Order allowing for an application for review to be filed with the Authority even when a party filing objections to an election is found not to be a party, and also provided guidance in *Fort Drum*, 50 FLRA 249 (1995) on the criteria to determine who is an intervenor in a representation proceeding, the Authority has not yet addressed whether a Regional Director is required to delay issuance of the Certification of Representative during the application for review process.

In the absence of clear precedent on the procedure to be followed when objections to the conduct of an election are filed by a non-party, the region contacts the Office of the General Counsel and requests clearance to issue a Certification of Representative prior to expiration of the application for review period and while any application is pending before the Authority. Delaying issuance of the Certification of Representative during the application for review process is not warranted when objections are dismissed because they are filed by a non-party. Such a delay is inconsistent with the OGC's policy that questions concerning representation are resolved quickly in order to achieve the statutory objectives of fostering collective bargaining and ensuring stability in labor-management relations. This course of action also balances the competing interests of allowing the non-party to challenge the region's determination while not delaying issuance of the Certification of Representative.

Thus, the region issues a Decision and Order dismissing the objections and simultaneously issues a Certification of Representative. In addition to

supporting the determination that the filer is not a party to the proceeding, the Decision and Order sets forth the above explanation why the region is issuing the Certification while at the same time issuing a Decision and Order with a right to file an application for review with the Authority. The region notes the competing interests of fairness to the winner of the election and the employees who voted for representation and the interest of due process for the filer of the objections to present its position to the Authority. The Decision and Order also states that the region has taken this action to present the Authority with an opportunity to clarify the procedure the regions should follow when objections to the conduct of an election are filed by a non-party, and discusses the reasons why the alternative of deferring issuance of the Certification was rejected.

Until the Authority provides guidance on this issue, the regions will continue to contact the Office of the General Counsel when this issues arises.

- 50.9 Standard for determining whether conduct is of an objectionable nature:** The standard for determining whether conduct is of an objectionable nature so as to require that an election be set aside is its potential for interfering with the free choice of voters. *Naval Station Ingleside*, 46 FLRA 1011 (1992) *citing Marine Corps Logistics Base, Barstow, California*, 9 FLRA 1046 (1982); *see also U.S. Army Engineer Activity, Capital Area, Fort Myer, Virginia*, 34 FLRA 38 (1989).
- 50.9.1 Period of time when conduct may be the basis for an objection:** The critical period preceding the election, during which objectionable conduct of one party may be used as grounds for setting aside the election, is generally the period between the filing of the petition and service of the tally. *See Report on Ruling Number 58*, 5 A/SLMR 789 (1975) (no other citation available). This does not preclude the filing of a timely unfair labor practice charge without regard to the date of the election petition. *See also Colorado Air National Guard*, Case No. 61-1024(RO), 1 Rulings on Requests for Review 76 (1970), *Report on Ruling Number 12*, 1 A/SLMR 611 (1970).
- 50.9.2 Runoff elections:** The critical period preceding a runoff election during which conduct of one party may be used as grounds for setting aside the election begins running from the date of the first election. *See Naval Air Rework Facility, Norfolk, Virginia*, Case No. 22-2568, 1 Rulings on Requests for Review 193 (1972), *Report on Ruling Number 50*, 1 A/SLMR 640 (1972) ([CHM 48.1.12](#)).

- 50.10 Scope of investigation:** The Regional Director has discretion to determine the scope of the investigation of objections. Although the investigation is limited normally to matters raised timely by the objecting party, the Regional Director cannot ignore evidence relevant to the conduct of the election simply because the objecting party did not specifically raise such conduct in its objections. Section 2422.29(a)(4) allows the Regional Director to rerun an election when s/he “determines that there have been significant procedural irregularities.” [CHM 48.2.4](#). The Regional Director may set aside an election based on conduct s/he discovers during the investigation, even though that particular conduct was not the subject of a specific objection. For additional information, see also *American Safety Equipment Corporation*, 234 NLRB 501 (1978).
- 50.10.1 Limitations on the scope of the objecting party's evidence:** In *Naval Station Ingleside*, 46 FLRA 1011 (1992), the Authority adopted the National Labor Relations Board's (Board) policy that states “if ... evidence of misconduct unrelated to the timely objections comes to the Regional Director's attention during the investigation at the initiative of the objecting party after the time for filing objections has expired, the new evidence should not be considered as a basis for setting aside the election unless the objecting party has proof that the evidence was ‘not only newly discovered, but also previously unavailable.’” *John W. Galbreath & Company (Galbreath)*, 288 NLRB 876, 878 (1988), quoting *Burns Security Services*, 256 NLRB 959, 960 (1981). The Authority limited its discussion in *Naval Station Ingleside*, 46 FLRA 1011 to additional matters raised by the objecting party and did not discuss appropriate circumstances when the Regional Director discovers evidence on his/her own. The region submits any case for advice that concerns the Regional Director's authority pursuant to § 2422.29(a)(4) when the parties raise new objections during the investigation ([CHM 58](#)).
- 50.10.2 Investigation:** As part of the investigation, the region requests the parties' positions on each objection and the names of witnesses. The objecting party is required to cooperate fully and provide whatever evidence it may have in its possession. Its failure to produce any evidence obviates further investigation.

The agent interviews witnesses and obtains affidavits, if possible. If a witness refuses to provide an affidavit, the agent writes a memorandum to the file. If applicable, records are examined. Requests by a party that counsel or a representative be present during the interview of employees or witnesses whose statements could bind that party are handled

in accordance with similar procedures in unfair labor practice investigations.

Once the agent gathers sufficient facts, the agent prepares the case for the Regional Director's consideration in accordance with [CHM 26.2](#). Any recommendation is supported by affidavits, memoranda, and correspondence in the file and includes a legal analysis. An agenda meeting may be required pursuant to [CHM 26.3](#) and [CHM 26.4](#).

5.11 Authority to conduct a hearing: The Regional Director has the authority to issue a notice of hearing pursuant to § 2422.17 of the regulations when:

- a. a material issue of fact is raised; or
- b. the Director concludes that a hearing, rather than an investigation, is the most expeditious and cost effective method of gathering evidence and deciding the objections.

A hearing may be held in lieu of, or in addition to, a regional investigation.

NOTE: The regulations provide that a Regional Director's determination of whether to issue a notice of hearing is not appealable to the Authority [§ 2422.17(d)]. However, if the Regional Director decides that a hearing on objections is not warranted, the Director affords the parties an opportunity to make an offer of proof sufficient to raise a substantial and material factual issue warranting a hearing. Federal Deposit Insurance Corporation, 40 FLRA 775 at 782 - 784, (1991).

[CHM 29](#) sets forth procedures for issuing a notice of hearing. [CHM 51](#) and [HOG 36](#) provides guidance on holding hearings on objections to the election.

Following the hearing, the agent submits a Hearing Officer's Report to the Regional Director and the Regional Director conducts an agenda before issuing a Decision and Order on Objections ([CHM 26.3](#) and [26.4](#)).

50.12 Withdrawal of objections or agreement to rerun election: A meeting held pursuant to § 2422.13(b) is not generally appropriate when investigating objections to an election unless the meeting is scheduled as a prehearing conference ([CHM 25.7](#)).

If objections are withdrawn before the Regional Director issues a Decision and Order on Objections, the Regional Director may approve the withdrawal request and issue the appropriate certification.

If the parties agree to set aside an election, the region obtains the agreement in the form of a written stipulation. In the agreement, the parties waive: a) their right to a hearing; b) a Decision and Order on the objections; and c) their right to file an appeal or a request for review. The parties also stipulate that if the Regional Director approves the stipulation, s/he may set the election aside and conduct a rerun election. If the Regional Director approves the stipulation and agreement, s/he issues an Order Setting Aside the Election and Ordering a Rerun.

50.13 Regional Director Decision and Order on Objections: The Regional Director issues a Decision and Order following an investigation or hearing. [CHM 53](#) provides guidelines for issuing a Decision and Order and specifically discusses at [CHM 53.6](#), a Decision and Order on Objections.

50.14 The Regional Director decides all objections: The Director does not have the authority to rule on one objection and then, based on his/her decision on the one objection, decide it is unnecessary to rule on the other objections. If the Regional Director overrules the objections, the Director does not issue the appropriate certification until after the appeal period expires (see [CHM 55](#)). If the Regional Director sustains the objections, the Decision includes a Direction of Election setting forth the election details or stating the election will be held “at a time and place to be determined.”

NOTE: The Regional Director is not required to investigate objections to an inconclusive election based on his/her decision that procedural irregularities exist pursuant to § 2422.29(a)(4). See [CHM 48.2.6](#) and [CHM 50.2](#).

50.15 Waiver of right to file an application for review: As part of the investigation, or during the hearing, the parties may waive their right to file an application for review of a Regional Director’s Decision and Order which may issue on objections and/or determinative challenged ballots.

50.16 Investigation of and Decision and Order on objections and determinative challenged ballots: Where a case involves both objections and challenged ballots, the Regional Director may issue a Decision and Order on Objections and Challenged Ballots. In such cases, the Decision may be based either on an investigation or a hearing. However, if the Regional Director decides that a material issue of fact exists for one issue, then both issues are set for hearing. In any event, except in unusual circumstances, a hearing in both matters is the most expeditious and cost effective resolution. See [CHM 53.8](#).

