

**31      *Obtaining an election agreement preceding or during the hearing:***

**31.1      *General:*** After the Notice of Representation Hearing is issued, the parties may enter into an election agreement prior to or after the hearing is opened.

**31.2      *Prehearing election agreements:*** During the initial telephone contact and during subsequent prehearing meetings, the Hearing Officer initiates discussions with the parties concerning entering into an election agreement. The Hearing Officer need not continue such discussions beyond the point when the parties indicate a fixed position, precluding a basis for a consent election agreement.

**31.2.1      *Election agreement obtained:*** Where the parties enter into an agreement for election prior to the opening of the hearing, the Regional Director is contacted promptly to determine whether the Regional Director will approve the agreement. The Hearing Officer informs the parties that holding the hearing is contingent upon approval of the agreement by the Regional Director. Therefore, the parties remain at the hearing site until the Regional Director indicates that s/he will approve or disapprove the agreement. Similarly, the court reporter is not released until the Regional Director informs the Hearing Officer that the agreement will be approved. Absent approval, the hearing proceeds.

In presenting the details of the election agreement, the Hearing Officer apprizes the Regional Director of the basis supporting the agreed upon unit. Similarly, if the parties have agreed to utilize the challenged ballot procedure with respect to certain employees whose eligibility is still in dispute, the percentage of potential challenged ballots to the total number of eligible employees is reflected in the agreement. The Regional Director cannot approve an agreement for election where the percentage of challenged ballots is more than fifteen percent (15%). Additionally, the Regional Director cannot approve an Election Agreement:

- a)          if s/he does not agree that the unit is appropriate pursuant to 5 U.S.C. 7112(a); or
- b)          when the petition raises a substantial question of policy requiring a hearing and decision by the Regional Director. See *CHM 28.11.3*.

For guidance and policy considerations in obtaining Election Agreements generally, see *CHM 28*.

**31.2.2 Procedure upon approval of agreement:** When the Regional Director states s/he will approve an Election Agreement, the Hearing Officer informs the parties, and the parties sign the agreement. Thereafter, the parties and the court reporter are allowed to leave.

The hearing is not opened for any purpose, such as to state on the record an election agreement has been obtained or to place a copy of the agreement in evidence.

**31.2.3 Withdrawal of notice of hearing:** No formal action is required to withdraw the notice of hearing. A provision is contained in the agreement for election, which reads as follows: "If Notice of Hearing has been issued in this case, the approval of this agreement by the Regional Director shall constitute withdrawal of the Notice of Hearing heretofore issued, provided that the hearing has not been closed."

**31.3 Election agreement obtained during the hearing:** When the parties indicate a willingness to enter into an agreement for election:

- a) Discussion regarding the details of the agreement are conducted off the record; (see *CHM 28.6* for checklist)
- b) The Hearing Officer participates in the discussion, particularly with regard to formulating the unit description. The Hearing Officer obtains the essential information regarding the criteria for determining the appropriateness of the unit agreed upon by the parties. Such information is recorded in the form of a stipulation or memorandum to the file. It is necessary to establish the basis upon which the Regional Director will approve or disapprove the agreement for election;
- c) The appropriate election agreement form is drafted reflecting the parties' agreement on the unit and other substantive matters. The parties do not sign the agreement until the Regional Director states that the agreement will be approved;
- d) After all matters relating to the proposed election have been agreed upon, the Hearing Officer apprizes the Regional Director of the proposed agreement of the parties, particularly with regard to the essential facts bearing upon the appropriateness of the unit;
- e) If the Regional Director indicates approval, the appropriate election agreement is completed by the Hearing Officer and signed and

dated by the parties. It is then faxed to the Regional Director for approval if the hearing is held outside the Regional Office; and

- f) Once the Regional Director signs the agreement, the hearing is resumed for the limited purpose of the Hearing Officer stating on the record that the parties have entered into an Election Agreement. Thereafter, the hearing is adjourned indefinitely.

Note: A copy of the agreement for election is not introduced in evidence.

**For more information on election agreements, see CHM 28.**

**31.4 Refusal by parties to sign election agreements:**

**31.4.1 Prehearing:** Prior to the opening of the hearing, the parties may state their general willingness to proceed to election. The hearing is not opened and the parties discuss the details of the election agreement. In accordance with § 2422.16(b) of the regulations, if the parties are unable to agree on procedural matters, specifically, the eligibility period, method of election, dates, hours, or locations of the election, the Regional Director decides these election procedures and issues a Direction of Election, without prejudice to the right of a party to file objections to the procedural conduct of the election (see CHM 28.11.1).

If the parties are unable to agree to the unit or other nonprocedural matters, the Hearing Officer proceeds with the hearing (see CHM 28.11.2).

**31.4.2 During the hearing:** During the hearing, the parties may state their willingness to enter into an election agreement, but are unable to agree on procedural matters [§ 2422.16(b)]. The Hearing Officer:

- a) obtains a stipulation on all substantive portions of the election agreement including appropriate unit and eligibility issues;
- b) incorporates the stipulation onto an election agreement, FLRA Form 33 or 34, as appropriate;
- c) notes on the record those matters on which the parties do not agree;
- d) obtains on the record the parties' respective positions with respect to each disputed procedural matter (rather than securing the positions in writing as discussed in CHM 28.11.1);

- e) refers the matter to the Regional Director for review and a Direction of Election; and
- f) adjourns the hearing.

***NOTE: This subsection does not apply when the parties are unable to agree on the unit or other nonprocedural matters {§ 2422.16(c)}. If the parties are willing to enter into an Election Agreement, but are unable to agree on the unit or other nonprocedural matters, the hearing continues.***