

Federal Labor Relations Authority

§ 2422.18

(c) *Withdrawal by incumbent.* When an election is not held because the incumbent disclaims any representation interest in a unit, a petition by the incumbent seeking an election involving the same unit or a subdivision of the same unit will not be considered timely if filed within six (6) months of cancellation of the election.

§ 2422.15 Duty to furnish information and cooperate.

(a) *Relevant information.* After a petition is filed, all parties must, upon request of the Regional Director, furnish the Regional Director and serve all parties affected by issues raised in the petition with information concerning parties, issues, and agreements raised in or affected by the petition.

(b) *Inclusions and exclusions.* After a petition seeking an election is filed, the Regional Director may direct the agency or activity to furnish the Regional Director and all parties affected by issues raised in the petition with a current alphabetized list of employees and job classifications included in and/or excluded from the existing or claimed unit affected by issues raised in the petition.

(c) *Cooperation.* All parties are required to cooperate in every aspect of the representation process. This obligation includes cooperating fully with the Regional Director, submitting all required and requested information, and participating in prehearing conferences and hearings. The failure to cooperate in the representation process may result in the Regional Director taking appropriate action, including dismissal of the petition or denial of intervention.

§ 2422.16 Election agreements or directed elections.

(a) *Election agreements.* Parties are encouraged to enter into election agreements.

(b) *Regional Director directed election.* 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 will decide election procedures and issue a Direction of Election, without prejudice to the rights of a party to file objections

to the procedural conduct of the election.

(c) *Opportunity for a hearing.* Before directing an election, the Regional Director shall provide affected parties an opportunity for a hearing on other than procedural matters, and thereafter may:

(1) Issue a Decision and Order; or

(2) If there are no questions regarding unit appropriateness, issue a Direction of Election without a Decision and Order.

(d) *Challenges or objections to a directed election.* A Direction of Election issued under this section will be issued without prejudice to the right of a party to file a challenge to the eligibility of any person participating in the election and/or objections to the election.

§ 2422.17 Notice of hearing and prehearing conference.

(a) *Purpose of notice of a hearing.* The Regional Director may issue a notice of hearing involving any issues raised in the petition.

(b) *Contents.* The notice of hearing will advise affected parties about the hearing. The Regional Director will also notify affected parties of the issues raised in the petition and establish a date for the prehearing conference.

(c) *Prehearing conference.* A prehearing conference will be conducted by the Hearing Officer, either by meeting or teleconference. All parties must participate in a prehearing conference and be prepared to fully discuss, narrow and resolve the issues set forth in the notification of the prehearing conference.

(d) *No interlocutory appeal of hearing determination.* A Regional Director's determination of whether to issue a notice of hearing is not appealable to the Authority.

§ 2422.18 Hearing procedures.

(a) *Purpose of a hearing.* Representation hearings are considered investigatory and not adversarial. The purpose of the hearing is to develop a full and complete record of relevant and material facts.

(b) *Conduct of hearing.* Hearings will be open to the public unless otherwise

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ordered by the Hearing Officer. There is no burden of proof, with the exception of proceedings on objections to elections as provided for in § 2422.27(b). Formal rules of evidence do not apply.

(c) *Hearing officer.* Hearings will be conducted by a Hearing Officer appointed by the Regional Director. Another Hearing Officer may be substituted for the presiding Hearing Officer at any time.

(d) *Transcript.* An official reporter will make the official transcript of the hearing. Copies of the official transcript may be examined in the appropriate Regional Office during normal working hours. Requests by parties to purchase copies of the official transcript should be made to the official hearing reporter.

§ 2422.19 Motions.

(a) *Purpose of a motion.* Subsequent to the issuance of a Notice of Hearing in a representation proceeding, a party seeking a ruling, an order, or relief must do so by filing or raising a motion stating the order or relief sought and the grounds therefor. Challenges and other filings referenced in other sections of this subpart may, in the discretion of the Regional Director or Hearing Officer, be treated as a motion.

(b) *Prehearing motions.* Prehearing motions must be filed in writing with the Regional Director. Any response must be filed with the Regional Director within five (5) days after service of the motion. The Regional Director may rule on the motion or refer the motion to the Hearing Officer.

(c) *Motions made at the hearing.* During the hearing, motions will be made to the Hearing Officer and may be oral on the record, unless otherwise required in this subpart to be in writing. Responses may be oral on the record or in writing, but, absent permission of the Hearing Officer, must be provided before the hearing closes. When appropriate, the Hearing Officer will rule on motions made at the hearing or referred to the Hearing Officer by the Regional Director.

(d) *Posthearing motions.* Motions made after the hearing closes must be filed in writing with the Regional Director. Any response to a posthearing motion must be filed with the Regional Direc-

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tor within five (5) days after service of the motion.

§ 2422.20 Rights of parties at a hearing.

(a) *Rights.* A party at a hearing will have the right:

(1) To appear in person or by a representative;

(2) To examine and cross-examine witnesses; and

(3) To introduce into the record relevant evidence.

(b) *Documentary evidence and stipulations.* Parties must submit two (2) copies of documentary evidence to the Hearing Officer and copies to all other parties. Stipulations of fact between/among the parties may be introduced into evidence.

(c) *Oral argument.* Parties will be entitled to a reasonable period prior to the close of the hearing for oral argument. Presentation of a closing oral argument does not preclude a party from filing a brief under paragraph (d) of this section.

(d) *Briefs.* A party will be afforded an opportunity to file a brief with the Regional Director.

(1) An original and two (2) copies of a brief must be filed with the Regional Director within thirty (30) days from the close of the hearing.

(2) A written request for an extension of time to file a brief must be filed with and received by the Regional Director no later than five (5) days before the date the brief is due.

(3) No reply brief may be filed without permission of the Regional Director.

§ 2422.21 Duties and powers of the Hearing Officer.

(a) *Duties of the Hearing Officer.* The Hearing Officer will receive evidence and inquire fully into the relevant and material facts concerning the matters that are the subject of the hearing, and may make recommendations on the record to the Regional Director.

(b) *Powers of the Hearing Officer.* During the period a case is assigned to a Hearing Officer by the Regional Director and prior to the close of the hearing, the Hearing Officer may take any action necessary to schedule, conduct, continue, control, and regulate the