

**§ 1422.18**

which suggests either directly or indirectly to employees that the Board endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed.

(c) All elections shall be by secret ballot. An exclusive representative shall be chosen by a majority of the valid ballots cast.

(d) Whenever two or more labor organizations are included as choices in an election, any intervening labor organization may request the Regional Director to remove its name from the ballot. The request must be in writing and received not later than seven (7) days before the date of the election. Such request shall be subject to the approval of the Regional Director whose decision shall be final.

(e) In a proceeding involving an election to determine if a labor organization should cease to be the exclusive representative filed by the Department or any employee or employees or an individual acting on behalf of any employee(s) under §1422.2(b), an organization currently recognized or certified may not have its name removed from the ballot without having served the written request submitted pursuant to paragraph (d) of this section on all parties. Such request shall contain an express disclaimer of any representation interest among the employees in the unit.

(f) Any party may be represented at the polling place(s) by observers of its own selection, subject to such limitations as the Regional Director may prescribe.

(g) A party's request to the Regional Director for named observers shall be in writing and filed with the Regional Director not less than fifteen (15) days prior to an election to be supervised or conducted pursuant to this part. The request shall name and identify the authorized representation election observers sought, and state the reasons therefor. Copies thereof shall be served on the other parties and a written statement of such service shall be filed with the Regional Director. Within five (5) days after service of a copy of the request, a party may file objections to the request with the Regional Director and state the reasons therefor. Copies thereof shall be served on the other

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parties and a written statement of such service shall be filed with the Regional Director. The Regional Director shall rule upon the request not later than five (5) days prior to the date of the election. However, for good cause shown by a party, or on the Regional Director's own motion, the Regional Director may vary the time limits prescribed in this paragraph.

**§ 1422.18 Challenged ballots.**

Any party or the representative of the Board may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded.

**§ 1422.19 Tally of ballots.**

Upon the conclusion of the election, the Regional Director shall cause to be furnished to the parties a tally of ballots.

**§ 1422.20 Certification; objections to election; determination on objections and challenged ballots.**

(a) The Regional Director shall issue to the parties a certification of results of the election or a certification of representative, where appropriate: *Provided, however,* That no objections are filed within the time limit set forth below; the challenged ballots are insufficient in number to affect the results of the election; and no rerun election is to be held.

(b) Within twenty (20) days after the tally of ballots has been furnished, a party may file objections to the procedural conduct of the election, or to conduct which may have improperly affected the results of the election, setting forth a clear and concise statement of the reasons therefor. The objecting party shall bear the burden of proof at all stages of the proceeding regarding all matters raised in its objections. An original and two (2) copies of the objections shall be filed with the Regional Director and copies shall be served on the parties. A statement of such service shall be filed with the Regional Director. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Within

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ten (10) days after the filing of the objections, unless an extension of time has been granted by the Regional Director, the objecting party shall file with the Regional Director evidence, including signed statements, documents and other material supporting the objections.

(c) If objections are filed or challenged ballots are sufficient in number to affect the results of the election, the Regional Director shall investigate the objections or challenged ballots, or both.

(d) When the Regional Director determines that no relevant question of fact exists, the Regional Director (1) shall find whether improper conduct occurred of such a nature as to warrant the setting aside of the election and, if so, indicate an intention to set aside the election, or (2) shall rule on determinative challenged ballots, if any, or both. The Regional Director shall issue a report and findings on objections and/or challenged ballots which shall be served upon all parties to the proceeding. Such report and findings shall state therein any additional pertinent matters such as an intent to rerun the election or count ballots at a specified date, time, and place, and if appropriate, that the Regional Director will cause to be issued a revised tally of ballots.

(e) When the Regional Director determines that no relevant question of fact exists, but that a substantial question of interpretation or policy exists, the Regional Director shall notify the parties in the report and findings and transfer the case to the Board in accordance with of this subchapter.

(f) Any party aggrieved by the findings of a Regional Director with respect to objections to an election or challenged ballots may obtain a review of such action by the Board by following the procedure set forth in §1422.6(d) of this subchapter: *Provided, however,* That a determination by the Regional Director to issue a notice of hearing shall not be subject to review by the Board.

(g) Where it appears to the Regional Director that the objections or challenged ballots raise any relevant question of fact which may have affected the results of the election, the Re-

gional Director shall cause to be issued a notice of hearing. Hearings shall be conducted and decisions issued by Administrative Law Judges and exceptions and related submissions filed with the Board in accordance with §§1423.14 through 1423.28 of this subchapter excluding §1423.18 and §1423.19(j), with the following exceptions:

(1) The Administrative Law Judge may not recommend remedial action to be taken or notices to be posted, as provided under §1423.26(a); and

(2) Reference to "charge, complaint" in §1423.26(b) shall be read as "report and findings of the Regional Director."

(h) At a hearing conducted pursuant to paragraph (g) of this section the party filing the objections shall have the burden of proving all matters alleged in its objections by a preponderance of the evidence. With respect to challenged ballots, no burden of proof is imposed on any party.

(i) The Board shall take action which may consist of the following, as appropriate:

(1) Issue a decision adopting, modifying, or rejecting the Administrative Law Judge's decision;

(2) Issue a decision in any case involving a substantial question of interpretation or policy transferred pursuant to paragraph (e) of this section; or

(3) Issue a ruling with respect to a request for review filed pursuant to paragraph (f) of this section affirming or reversing, in whole or in part, the Regional Director's findings, or make such other disposition as may be appropriate.

**§ 1422.21 Preferential voting.**

In any election in which more than two choices are on the ballot and no choice receives a majority of first preferences the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election shall be certified by the Board as the exclusive representative.