

40 CONDUCTING THE ELECTION:

40.1 Opening the polls: The polls are opened on time. If there is a clock in the polling area, it is used as the official timepiece. If an activity clock is not available, the agent and the observers usually agree on an official timepiece. Absent agreement, the agent selects it. Failure to open at the scheduled hour is not cured by extending the voting period beyond the closing time contained in the Election Agreement.

If the polls open late, the agent records the time and the details, including whether, and how many, individuals came to vote and left without voting. If no one left, it is good practice to secure the signatures of all observers on a statement to that effect.

40.2 Announcements on intercom or e-mail: Arrangements for announcements on the intercom or e-mail are discussed at the election agreement meeting. However, in the event that the activity offers to announce the opening of the polls on an intercom or to send an e-mail on the computer network, the agent drafts the language for the intercom announcement or e-mail. Although allowing one of the parties to draft an announcement is not prohibited, it could lead to the appearance of partiality if the message is not written properly.

40.3 Releasing employees to vote: Unless the Election Agreement or Direction of Election contains provisions for releasing employees to vote in staggered shifts on duty hours, the employees are permitted to vote at any time during the polling hours.

40.4 Entering the polling area: Upon entering the voting area, a voter proceeds to the check-in table. In large elections, guide ropes anchored to stanchions may be necessary. If more than one check-in table is used, information signs reflecting where voters check-in are posted (i.e., "last names A - F vote here").

40.5 Procedure at check-in table:

40.5.1 Voter identification: A voter is properly identified when the voter states his/her full name to the observers and/or presents identification pursuant to the arrangements set forth by the parties in the Election Agreement and on the Notice of Election. The requirement that the voter state his/her full name is rigidly enforced. That a voter may be recognized by, or known to, one or more of the observers, does not relieve the employee from having to state his/her name in full to the observers.

In the event that the Election Agreement states that voters are not required to show identification and one of the observers cannot identify a voter, the voter then states his/her job title, activity code or other identifying information contained on the voting list. If the agreement requires voters to show identification and the voter did not carry the identification to the polling site, the observers may require the voter to get the identification. As an alternative, and if contained in the agreement, the voter may be allowed to vote as long as one of the observers knows the voter by name and the other observers do not challenge the voter's eligibility ([CHM 28.22](#)).

40.5.2 Marking the list: Once a voter's name has been located on the eligibility list, all observers are satisfied as to the voter's identity, and no one questions the voter's eligibility, each observer at the check-in table places a mark in pens of different colors beside the name. The mark may be a dash, a check or an "x" and may be made on either side of the name, depending upon the space available on the list. All marks and where they are placed for each voter are consistent.

Observers are not permitted to maintain separate lists of those who have or have not voted. The official eligibility list is the only record made and shows whether a person named thereon has voted.

For information pertaining to voter eligibility and challenged ballots, see [CHM 44](#).

40.6 Releasing the ballot to the voter: Once a voter has been identified and checked-off, the observers - or one of them designated by the others - informs the agent that the voter has been identified and the list so marked. Often the observer simply states "okay" to the agent signaling that the voter is eligible. The agent then hands a single ballot to the voter and when doing so, checks the ballot for any defects.

40.6.1 Instructing the voter: As the agent hands the voter his/her ballot, the agent instructs the voter to:

- a. enter the voting booth;
- b. mark, but do not sign the ballot;
- c. fold it before leaving the booth; and
- d. deposit it into the ballot box before exiting the polls.

The agent also instructs a voter who spoils a ballot to return it to the agent. The agent will then provide the voter with another ballot.

40.6.2 Spoiled ballots: A voter who spoils his/her ballot and returns it to the agent is given a fresh ballot. The spoiled ballot is torn or folded, marked “void,” and placed in the “Spoiled Ballot” envelope. This envelope is preserved as part of the election records until the case is closed.

40.7 Proceeding to the voting booth: The voter proceeds from the check-in table to a voting booth. The agent periodically polices the booths to ensure there: 1) are no cross-conversations between occupants in adjacent booths; 2) is no more than one occupant per booth; and 3) is no campaign material in the booth.

Secrecy in the casting of a ballot requires that the booth be occupied only by one voter. A voter who requests assistance or information regarding the wording on the ballot leaves the booth and receives any explanation from the agent in the presence of the observers. The only exception to this rule is when rendering assistance to a handicapped voter who also needs assistance in marking his/her ballot (see [CHM 40.9](#)).

40.8 Depositing the ballot into the ballot box: The voter leaves the booth and drops the folded ballot into the ballot box. Unless the voter is handicapped, and then, only in unusual circumstances, no one but the voter may touch the used ballot. If the ballot does not slip through the slot, the voter is instructed to force the ballot into the box. The voter then leaves the polling place. Voters are not permitted to loiter or to wait for other voters in the polling area.

Once the ballot, whether or not it is challenged, is deposited in the ballot box, the voter loses control over its disposition. To permit the withdrawal of ballots places, in most cases, the finality of the election in the hands of such voters. Moreover, allowing such practices may open elections to possible abuses since, once the election results were known, pressures of various kinds could be exerted upon voters to withdraw their ballots to achieve a desired election result. *Great Eastern Color Lithographic Corp.*, 131 NLRB 1139 (1961).

40.9 Assisting handicapped voters: Agents assist handicapped voters. The agent offers to:

- a. accompany a blind voter into a booth; read the ballot to the voter and place the voter’s hand holding the pencil on each box noting the choice on the box. The agent explains all of the choices even though the voter may state “up front” his/her choice;

- b. accompany a paraplegic voter into the booth and assist the voter in accordance with his/her request;
- c. move the booth or set up a different booth to accommodate a handicapped voter; and/or
- d. take any other action required to assist the handicapped voter.

40.10 Safeguarding the ballot box:

40.10.1 Ballot box(es): The ballot box(es) are under the constant surveillance of the agent and the observers in the polling place(s) throughout the one or more voting periods involved. As discussed in [CHM 37.2](#), a separate set of observers are assigned to watch the ballot box in any election involving 200 employees voting per hour. During the election, as the ballot box fills up, the agent shakes it occasionally to compress the ballots in the box.

40.10.2 Sealing the ballot box: During the election, after a ballot box has been filled, it is removed and sealed promptly by the observers. A strip of masking tape is placed over the slot where the ballots were deposited. Each observer signs his/her name across the sealing tape, with the first name begun off the strip and a portion of the last name ending off the strip on the opposite side. Transparent tape is placed over each of the signatures. The sealed box is placed in a location where it is under constant custody and surveillance by the agent and observers during the remainder of the voting period. A new box is constructed as discussed in [CHM 39.9](#).

40.10.3 Custody between voting periods: See also [CHM 42](#) for a discussion on split voting sessions. Item #12 of the election agreement, FLRA Form 33 and Item #10 of the election agreement for unit consolidation elections, FLRA Form 34, specify that the ballot box will be securely stored between voting sessions by the agent. The unused ballots are placed in an envelope or suitable box and sealed and signed over in the same manner as described in [CHM 40.10.2](#). Ballot boxes are sealed and signed over in the same manner.

In carrying out his/her responsibility to secure the ballots and ballot box between voting sessions, the agent remains with the election materials at all times. Locking the ballots and the ballot box in the trunk of one's car or in a hotel room is unacceptable as it could lead to an objection pursuant to § 2422.29 of the regulations.

- 40.11 Closing the polls:** The polls are closed exactly at the scheduled time as determined by the agent, referring to the timepiece selected prior to the opening of the polls. Those employees who are waiting in line outside the polling area to vote when the polls close are permitted to vote without challenge. In these circumstances, the agent notes who the last voter is in line and seals the ballot box and the unused ballots after that voter casts his/her ballot.

There may be situations where voters join the line after the polls close, but before the ballot box is opened for the count. If the voter insists on voting, the agent allows the voter to cast a challenged ballot and includes on the challenged ballot envelope a statement of why the voter appeared late at the polls. This allows an orderly investigation of the circumstances surrounding the matter in postelection proceedings ([CHM 47.6](#)).

In situations where it appears that everyone listed on the eligibility list has voted, the agent may not close the polls before the time established in the Election Agreement. The names on the list are not conclusive of the eligibility of all of the employees in the unit; e.g., omission of name(s) due to clerical error. Thus, the full voting period is available for any employee who desires to vote.

- 40.12 Sealing the ballot box and the unused ballots:** Once the polls are closed, the agent seals both the ballot box across the slot where the ballots were deposited and the unused ballots before doing anything else. **The ballot box is sealed even if the count of the ballots is being held at the polling site immediately following the close of the polls.** The ballot box is sealed as described in [CHM 40.10.2](#). The unused ballots are sealed in a separate envelope in the same manner.

- 40.13 Certification of conduct of election:** At the close of the election, the agent asks the observers to sign a Certification of Conduct of Election, [FLRA Form 42](#). Each observer notes the specific times s/he served as an observer and the party represented. If a party has no observer, the agent writes “No Observer” in the appropriate space. Any observer who leaves the polling place prior to the close of the election is requested to sign the Certification form showing the time spent at the polling place. Where multiple polling places are used, a separate Certification of Conduct of Election is prepared by the Regional Office for each of the locations.

If an observer refuses to sign the Certification, the agent asks the observer to prepare a written signed statement (affidavit) setting forth the reason(s) for such refusal. The agent is responsible for ensuring the affidavit is complete.

This statement is retained with the Certification form signed by the remaining observers. (*CHM 36.2p*).

If there are no observers at the polling site, the agent conducting the election proceeds with the election and notes on the Certification of Conduct that the election was conducted with no observers present. (See also [CHM 43.4](#) for mail-out elections.)

10.14 Securing other election supplies: All election materials pertaining to the election are secured and returned to the Regional Office. This includes the unused ballots, the voting list(s), certification(s) of conduct of election and original tally of ballots. Spoiled ballots are also sealed in a separate envelope. The agent also takes custody of any other challenged ballot lists that s/he instructed the parties to maintain. The observers return their badges to the agent even if the same observers act at the count. The agent is responsible for cleaning up the polling area and removing all election supplies. The secured election supplies (pens, tape, etc.), the unopened ballot box and the voting eligibility lists are used at the count.

40.15 Transferring ballots from ballot box: In certain rare and exceptional circumstances, the count may not take place immediately following the close of the polls. For example, if the ballots are impounded or the election is held in a remote location, the parties may agree in the Election Agreement to count the ballots elsewhere. (See [CHM 55.2](#) for a discussion about impounding ballots: circumstances concerning the decision to impound and procedures for impounding.)

In such situations, the ballots may be removed from the ballot box in front of all observers and transferred in their folded condition to a mailing envelope or other repository. The envelope/box is sealed and signed by all of the observers and transparent tape is placed over each of the signatures. The envelope/box is marked clearly to reflect the case number, date of election and polling place. The envelope/box is also labeled to reflect that it contains ballots and that the envelope may not be opened. If more than one envelope is being used, each envelope is marked in sequence; e.g., "Envelope 1 of 2" or "Envelope 2 of 2", etc. Employees at the receiving location are alerted regarding receipt of the material and that it cannot be opened when received.