

**OBJECTIONS AND DETERMINATIVE CHALLENGED BALLOTS
CHM 49 through 52**

49. INVESTIGATION AND DISPOSITION OF DETERMINATIVE CHALLENGED BALLOTS:

49.1 Basis for investigation: To warrant consideration as determinative challenged ballots, the ballots are:

- a. challenged before the voter deposits his/her ballot into the ballot box;
- b. unresolved by the parties prior to the tally; and
- c. sufficient in number after the tally to affect the results of the election.

Section 2421.22 defines determinative challenged ballots, § 2422.27(a) discusses investigation procedures and [CHM 47.17.1](#) provides an overview of determinative challenged ballots.

[CHM 47.18](#) discusses post-tally party resolution of determinative ballots. In the event the parties do not resolve a sufficient number of determinative challenges to render the remaining challenges nondeterminative, the Regional Director investigates the challenges and decides their eligibility.

CHM 49 concerns the Regional Director's formal investigation of determinative challenged ballots and procedures for resolving them. If objections to an election are filed, they are investigated simultaneously with the determinative challenged ballots ([CHM 50](#)).

49.2 Nature and scope of investigation: The investigation of challenged ballots is nonadversarial, and no party bears a burden of proof [§ 2422.27(b)]. The agent is responsible for gathering all available facts. Resolving challenged ballots involves the same eligibility issues that may be raised during the initial stages of the representation proceeding. **All unresolved determinative challenged ballots are investigated and resolved by Decision and Order ([CHM 49.6](#)).**

49.3 Investigation procedure: Investigation of determinative challenged ballots is undertaken promptly by the Regional Office. A letter is sent to all parties to the election as soon as possible (preferably within 48 hours) after the

Tally of Ballots is issued. The letter advises the parties that challenges are sufficient in number to affect the outcome of the election, lists the names of the employees whose ballots are unresolved and requests the parties' position and supporting evidence. The parties are given ten days to submit their positions. See [Figure 49.3](#) for a sample letter.

The agent interviews the employees whose ballots have been challenged and, if relevant, obtains copies of personnel records concerning the employee's employment status. The agent also interviews other employees of the activity if they can contribute relevant and material information about the eligibility of the employee. For instance, if a voter is challenged based on alleged confidentiality, the agent interviews the employee's supervisor. Requests 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 include a legal analysis. An agenda meeting may be required pursuant to [CHM 26.3](#) and [CHM 26.4](#).

49.4 Authority to conduct a hearing: The Regional Director has the authority to issue a notice of hearing in accordance with § 2422.17 when:

- a. a material issue of fact is raised regarding the eligibility of any voter whose challenged ballot is determinative of the outcome of the election; or
- b. the Director concludes that a hearing, rather than an investigation, is the most expeditious and cost effective method of gathering evidence and resolving the issues raised by the determinative challenged ballots.

A hearing may be held in lieu of, or in addition to, a regional investigation. [CHM 29](#) sets forth procedures for issuing a notice of hearing. See [CHM 52](#) for guidance on holding hearings on determinative challenged ballots.

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

49.5 Resolution by agreement and stipulation: If the parties cannot resolve a sufficient number of the challenged ballots pre or post tally, the Regional Director is responsible for investigating and deciding all remaining challenged ballots.

A meeting held pursuant to § 2422.13(b) may be conducive to resolving determinative challenged ballots. This may even occur prior to any regional investigation. This meeting differs from the post-tally party resolution discussed in [CHM 47.18](#) because it is conducted as part of the region's formal investigation and includes an agent of the region. Thus, the informal resolutions discussed in *CHM 47.18* are not applicable here unless they are consistent with the procedures outlined herein.

A § 2422.13(b) meeting brings together all of the parties to discuss the positions in dispute and the evidence needed to resolve the eligibility dispute(s). It is held after the tally has been issued and the parties have submitted their positions and supporting evidence. If the election was contested, the parties' "hard-line" positions at the count may subside by the time the meeting is scheduled.

The agent's preparation and conduct of this meeting is similar to the outline set forth in [CHM 25](#). When conducting this meeting, the agent reminds the parties that any resolution must be in the form of a stipulation containing sufficient facts to support a Regional Director on the merits. Thereafter, the Regional Director issues a Decision and Order on Determinative Challenged Ballots that must be consistent with the Statute and existing Authority case law on the challenged positions.

49.6 Regional Director Decision and Order: 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 53.7](#), a Decision and Order on Determinative Challenged Ballots.

The Regional Director decides all determinative challenged ballots by sustaining or overruling the challenges, or both, depending on the particular challenged ballot. **The Regional Director is not authorized to defer decision on any challenged ballots.** Although the parties may withdraw or resolve certain challenges by stipulation, the Regional Director decides all challenges in the Decision and Order. Such ballots are considered valid ballots cast, and to open some, without others, suggests that the votes may be manipulated.

49.7 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 determinative challenged ballots.

49.8 Procedures for handling determinative challenged ballots after Regional Director's decision: Agents may not remove determinative challenged ballots from the safe or open the sealed envelopes without express approval of the Regional Director.

In addition, the Regional Director gives written approval to the agent before any determinative challenged ballots that have been counted are discarded or destroyed. This memorandum is placed in the case file.

The following procedures are established for securing and maintaining determinative challenged ballots:

- a. Uncounted determinative challenged ballots are maintained in a secure place until the Regional Director issues a Decision and Order on Determinative Challenged Ballots or any appeal is decided by the Authority or both (see [CHM 55](#) for guidance on stays).
- b. Counted determinative challenged ballots are maintained for a year following issuance of the appropriate certification by the Regional Director.

49.9 Revised tally of ballots: A Revised Tally of Ballots is issued to the parties following the opening and counting of any determinative challenged ballots as directed by the Regional Director. These ballots are counted and tabulated in the presence of authorized observers for the parties if the parties choose to have an observer present. The tally of the results of the original election is entered in the first column, entitled, "Original Tally." The valid ballots cast in the original election are not recounted prior to counting the challenged ballots. A sample Revised Tally is shown in [Figure 49.8](#).

A revised tally does not establish a new objection period. In accordance with § 2422.26, the critical period for filing objections to the procedural conduct of the election or to conduct that may have affected the results of the election, is the five day period after the initial tally of ballots has been served.

The challenged ballots involved are not checked off on the eligibility list. After opening and counting the ballots, the distribution of the votes cast among the various choices is entered in the second column. In the sample in [Figure 49.8](#), the counting of the eight (8) challenged ballots resulted in a final tally of 51 votes cast for Union B constituting a majority of the valid ballots cast. The third column totals the original tally with the challenged ballots counted.

