

- 52 HEARINGS ON DETERMINATIVE CHALLENGED BALLOTS:** Determinative challenged ballots raise issues related to the eligibility of the voter to cast a ballot. If the Regional Director decides to issue a notice of hearing on determinative challenged ballots, the hearing is conducted as any other representation hearing. The *HOG* describes techniques of conducting the hearing and developing a complete record. It also includes Employee Category Sections to assist the Hearing Officer and the parties in defining, narrowing and resolving determinative challenged ballots related to eligibility and employment issues.
- 52.1 Duties of the Hearing Officer:** A hearing on determinative challenged ballots is nonadversarial, and no party bears a burden of proof. The Hearing Officer is responsible for obtaining a complete factual record (*HOG 2*). A complete outline of the Hearing Officer's responsibilities is listed in *HOG 2.2*. Note that, unlike objections cases, the Hearing Officer, at the discretion of the Regional Director, may make recommendations on the record about the eligibility of voters whose ballots are the subject of the hearing.
- 52.2 Stipulations on the record:** During the hearing, the parties are encouraged to enter into a stipulation(s) regarding the bargaining unit eligibility of employees who have cast determinative challenged ballots. The Hearing Officer recesses the hearing and contacts the Regional Director to discuss potential stipulations and seek permission to entertain them. Acceptance of the stipulation is a discretionary matter with the Regional Director. *Veterans Administration Medical Center, Fayetteville, North Carolina*, 8 FLRA 651 (1982). [HOG 26.6.2](#).
- 52.3 Outlining the issues on the record:** The Hearing Officer exercises care in outlining the issues on the record ([HOG 35.7](#) and [HOG 35.7.5](#) - *sample script*). The Hearing Officer:
- a. States the purpose of the hearing;
 - b. States the name of each employee whose ballot was challenged and the title of the employee's position;
 - c. Asks the challenging party(s) to confirm the names of the employees whose ballots were challenged;
 - d. States the name of the party that filed the challenge and asks the party to provide a statement of the reason for each challenge; and
 - e. Describes the procedures for counting the ballots of any employees

found eligible to vote and provisions for issuing a revised tally of ballots.

- 52.4 Obtaining the record:** Once the issues are outlined and explained to the parties, the Hearing Officer proceeds with the hearing by receiving stipulations, summarizing the parties' positions, and proceeding with the presentation of evidence. See [HOG 32](#) which includes an outline of a hearing and [HOG 35](#) for a sample script.
- 52.5 Hearing Officer's Report:** The Hearing Officer is required to complete a Hearing Officer's Report after the hearing is closed. This report is submitted with the record to the Regional Director ([HOG 34](#) and [Figure H34.4](#) for the format for the report).