

**REGIONAL DIRECTOR DECISIONS AND ORDERS,
APPLICATIONS FOR REVIEW, POSTDECISIONAL ACTIONS
CHM 53 through 55**

- 53. REGIONAL DIRECTOR DECISIONS AND ORDERS:** Pursuant to the provisions of section 7105(e)(1) of the Statute, the Authority delegated its authority to process and determine representation matters to the Regional Directors in Appendix B to 5 CFR Chapter XIV - Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the Federal Labor Relations Authority (45 FR 3523, Jan. 17, 1980, as amended at 48 FR 28814, June 23, 1983; 61 FR 16043, Apr. 11, 1996).

Section 2422.30(c) of the regulations states that:

After investigation and/or hearing, when a hearing has been ordered, the Regional Director will resolve the matter in dispute and, when appropriate, direct an election or approve an election agreement, or issue a Decision and Order.

- 53.1 General guidelines:** The Regional Director issues a Decision and Order:
- 53.1.1** Without a hearing when there are no material issues of fact and no unresolved questions regarding unit appropriateness ([CHM 27.4.5](#));
- 53.1.2** Without a hearing, when the parties enter into a stipulation that 1) addresses all appropriate unit issues; 2) includes a waiver of the parties right to a hearing; and 3) is approved by the Regional Director; ([CHM 27.7](#)); or
- 53.1.3** After a hearing ([CHM 27.5](#) and [27.6](#) discuss when hearings are required).
- 53.2 Purposes of a Decision and Order:** This subsection discusses the variety of issues that the Regional Director may decide in a Decision and Order. In a single Decision and Order, the Regional Director decides all issues raised initially by petitions, including those serving multiple purposes. In addition, the Regional Director decides jurisdictional and threshold issues in the same Decision and Order as the substantive issues are decided.
- In a Decision and Order the Regional Director may:
- 53.2.1** Determine an appropriate unit; see *RCL 1*.

- 53.2.2 Determine an appropriate unit and direct an election;
- 53.2.3 Dismiss a petition or a request to intervene; (based on timeliness, standing to file, inadequate showing of interest, find merit in a challenge to the validity of a showing of interest, etc.)
- 53.2.4 Decide a challenge to the status of a labor organization;

Note that a status challenge is a threshold issue. The Regional Director's decision that a challenge to the status of a labor organization petitioner is meritorious may obviate the need for deciding any other issues present in the case. If the Regional Director decides the status challenge lacks merit or the party being challenged is not the petitioner, the Director may also decide the other issues in the case. See [CHM 19](#), [20.1.8](#), and [23.9.3](#).

- 53.2.5 Determine that due to a change in the character and scope of the unit(s):
 - a. a bargaining unit(s) is (are) no longer appropriate; and/or
 - b. an exclusive representative(s) of an appropriate unit(s) ceases to be the exclusive representative of that unit.
- 53.2.6 Determine that in spite of a change in the character and scope of the unit(s):
 - a. a bargaining unit continues to be appropriate; and
 - b. an exclusive representative of an appropriate unit continues to be the exclusive representative of that unit;
- 53.2.7 Determine that due to a change in the character and scope of the unit, certain employees are unrepresented;

For a discussion on [CHM 53.2.5 through 53.2.7](#) see RCL 3 citing *Morale, Welfare and Recreation Directorate, Marine Corps Air Station, Cherry Point, North Carolina*, 45 FLRA 281 (1992) and other cases therein.

- 53.2.8 Decide whether successorship, accretion, schism and/or severance exists and order appropriate action (RCL 3, 8 and 9);

See *Naval Facilities Engineering Service Center, Port Hueneme, California*, 50 FLRA 363 (1995), concerning successorship; *United States Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia*, 52 FLRA

950 (1997) concerning competing claims of successorship and accretion; *Department of the Army. U.S. Army Aviation Missile Command (AMCOM II), Redstone Arsenal, Alabama*, 56 FLRA 126 (2000) for issues relating to successorship and accretion, and *National Association of Government Employees/Service Employees International Union, Local 5000, ALF-CIO-CLC and Service Employees International Union, ALF-CIO-CLC and Department of Veterans Affairs, Washington, DC*, 52 FLRA 1068 (1997) concerning severance.

53.2.9 Decide whether a question has arisen concerning the representation of the employees in an appropriate unit(s) and:

- a. order an election;
- b. dismiss the petition; or
- c. revoke the certification.

Note that such decisions could be based on two different situations:

- (i) questions related to substantial changes in the character and scope of the unit due to a reorganization or realignment of agency operations (see [CHM 53.7](#), and *RCL 3*); or
- (ii) issues related to the majority status of the currently recognized or certified labor organization and/or defunctness (*RCL 4*).

53.2.10 Decide that certain positions are included in or excluded from an appropriate unit; See *RCL 15 through 28 and HOG 51 through 64*.

53.2.11 Decide whether the certification or recognition of an existing unit should be amended;

53.2.12 Decide whether a labor organization is eligible for dues allotment under 5 U.S.C. 7115(c) (*RCL 6 and HOG 42*);

53.2.13 Decide whether to grant a labor organization national consultation rights or consultation rights under 5 U.S.C. 7113 and 7117 respectively (see [CHM 57](#));

53.2.14 Decide whether existing units are appropriate for consolidation under 5 U.S.C. 7112(d) (*RCL 13 and HOG 49*); A Decision and Order is required if: 1) the parties agree on the proposed consolidation and no election is required; or 2) the parties disagree on the proposed consolidation. In the

latter circumstances, see [CHM 29](#) for requirements for Hearings or stipulations in lieu of hearings.

NOTE: if an election is required because either thirty percent of the employees submitted a showing of interest, or the professionals are required to vote on inclusion in the nonprofessional unit, a Decision and Order is not required where the parties agree on the proposed unit. In such cases, the Election Agreement constitutes the Regional Director's finding the proposed consolidated unit appropriate.

- 53.2.15** Determine that an incumbent union has disclaimed representational interest in a unit for which it is the exclusive representative ([CHM 20.9](#));
- 53.2.16** Rule on objections and/or determinative challenged ballots ([CHM 49 and 50](#)); and/or
- 53.2.17** Resolve any other issues before the Regional Director.
- 53.3** **Contents of a Decision and Order:** A Decision and Order contains sufficient facts, legal authority and rationale to support the Regional Director's decision.
- 53.4** **Basic outline of a Decision and Order:** A Decision and Order contains the following information:
- a. Jurisdiction statement setting forth the Regional Director's authority for processing and deciding the representation petition pursuant to 5 U.S.C. 7105(e)(1); and that the Decision and Order is issued pursuant to § 2422.30(c) of the regulations;
 - b. Petitioner's stated purpose of the petition;
 - c. Identification of the parties; briefly name the parties setting forth their party status and provide a short statement of their positions on the issues;
 - d. Background and pertinent facts; reference and detail any stipulations submitted by the parties. The factual portion of the Decision and Order is detailed. Although the parties may stipulate the facts, if the Decision and Order refers to the stipulation, it may only refer to the stipulated facts, not the parties' stipulated legal conclusions based on the facts. The Regional Director's Decision and Order is based on facts, not the parties' conclusions.

Examples of facts in a Decision and Order include:

- (i) if the petition involves an appropriate unit question, the Decision and Order describes the mission, organization, functions, delegations of authority, bargaining history, personnel information, working conditions and other facts that are considered when making unit determinations; (official organizational charts may be attached to Decisions and Orders to assist the reader. *See Army and Air Force Exchange Service, Dallas, Texas and American Federation of Government Employees, AFL-CIO*, 5 FLRA 657 (1981).
 - (ii) if the petition involves matters relating to the representation of employees, such as a reorganization, the Decision reflects all of the facts considered in making an appropriate unit determination both before and after the reorganization, so that the Decision reflects what has happened to the affected employees;
 - (iii) if the petition involves matters relating to unit eligibility, the Decision describes the duties and authorities of the contested employees and their relationships with their superiors and colleagues;
- e. Issues presented for resolution; **these issues are not only defined by the results the petitioner seeks, but also by the facts and circumstances that caused the petition to be filed ([CHM 23.1](#)).**
- f. Applicable case law; Authority decisions are considered first, followed by Decisions of the Federal Labor Relations Council and the Assistant Secretary for Labor Management Relations, and finally, Decisions of the National Labor Relations Board. See also [CHM 24](#).
- (i) *5 U.S.C. 7135(b) states that:*

Policies, regulations and procedures established under Executive Orders 11491, 11616, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless

superceded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.

See also *Florida National Guard, St. Augustine, Florida*, 25 FLRA 728 (1987) and *U.S. Army Corps of Engineers, Headquarters, South Pacific Division, San Francisco, California*, 39 FLRA 1445, 1449 (1991) (a decision of the Assistant Secretary remains in full force and effect unless superceded by decisions issued pursuant to the Statute).

- (ii) *References to private sector precedent decided under the National Labor Relations Act are appropriate where there are no prior decisions, and where analogies to comparable legal developments in the private sector may be relevant and useful. See Turgeon v. FLRA, 677 F.2d 937, 939-940 (D.C. Cir. 1982); Library of Congress v. FLRA, 699 F.2d 1280, 1286 (D.C. Cir. 1983), enforcing American Federation of State, County and Municipal Employees, AFL-CIO, Local 2477 and Library of Congress, Washington, D.C., 7 FLRA 578 (1982); and U.S. Department of Transportation, U.S. Coast Guard Finance Center, Chesapeake, Virginia (Coast Guard), 34 FLRA 946, (1990).*

- g. An analysis of the case law as applied to the facts of the case;
- h. Results: the action that the Regional Director is taking to resolve the issues presented by the petition; for example, order an election, clarify a unit, etc.
- i. The Decision and Order also states that, pursuant to Section 2422.31(e), if no application for review is filed with the Authority, or if one is filed and denied, or if the Authority does not undertake to grant review of the Decision and Order within sixty (60) days after the filing of an application for review, the Decision and Order becomes the final action of the Authority (*as in dismissals when no further action is required*) or the Regional Director will: *set forth appropriate action:*
 - (i) direct an election; and/or, if appropriate
 - (ii) prepare and serve on all parties an Amendment of

Recognition, Clarification of Unit, the appropriate Certification or Revocation of Recognition or Certification or Certification of Consolidation of existing Units ([CHM 56](#)).

NOTE: If the Regional Director decides to issue a certification, clarification, amendment or revocation in the Decision and Order, it is not issued as part of the Decision and Order. It is issued as a separate document.

- j. Every Decision and Order concludes by informing the parties of their rights to file an application for review with the Authority and the filing requirements [§§ 2422.30(d) and 2422.31]. [CHM 53.10](#) states that the parties may waive their right to file an application for review.

53.5 Decision and Order and Direction of Election: When the Regional Director issues a Decision and Order finding a unit appropriate and directs an election, the decision is titled: Decision and Order and Direction of Election. In addition to the information set forth in [CHM 53.4](#), the Decision also contains ([CHM 28.12.1](#)):

- a. a complete description of the unit(s) found appropriate;
- b. a direction of the election explaining the purpose of the election;
- c. the effect of the vote;
- d. general statement of eligibility;
- e. the eligibility date for participating in the election - the payroll period ending prior to the date of the Decision ([CHM 28.18.3.1b](#));

This information is included in the subsequent Election Agreement and on the Notice of Election. See [CHM 28.12.1](#).

NOTE: In a Decision and Order involving an appropriate unit question in an election petition, the Regional Director decides only whether the unit petitioned for in an election case or any alternative unit the petitioner has agreed to is appropriate. The Regional Director does not decide whether there is a more appropriate unit or whether the Activity's proposed unit is appropriate if s/he finds that the petitioner's unit(s) is not appropriate. Department of Transportation, Federal

Aviation Administration, New England Region (FAA), 20 FLRA 224 (1985).

- 53.6 Decision and Order on Objections:** The introduction to a Decision and Order on Objections to the procedural conduct of an election, or to conduct that may have improperly affected the results of the election, includes: 1) the tally of ballots; 2) the date the objections to the procedural conduct of the election and/or conduct improperly affecting the results of the election were filed; and 3) the relevant portion of each objection. The best practice is to quote each objection, if possible. If the objection is too lengthy, it may be paraphrased or attached to the Decision and Order.

The Decision and Order addresses each objection separately except when several objections involve similar or closely related matters. These objections may be treated together. A discussion of each objection includes:

- a. Allegation(s);
- b. Positions of the other party or parties regarding the objection;
- c. Summary and analysis of evidence;

All relevant evidence submitted during the investigation is summarized. The analysis of the evidence includes the application of Authority case law to the facts revealed by the investigation.

- d. Findings;
- e. Conclusion, setting forth the action ordered; and

The summary and analysis is followed by the conclusion that the particular conduct engaged in did, or did not, as alleged, interfere with the employees* freedom of choice, and therefore the election is or is not set aside.

- f. A final paragraph informing an aggrieved party of the right to file an application for review with the Authority [§§ 2422.30(d) and 2422.31].

See also [CHM 50](#).

- 53.7 Decision and Order on Determinative Challenged Ballots:** The introduction to a Decision and Order on Determinative Challenged Ballots states the results of the election as set forth in the tally of ballots and provides a complete description of the unit or voting group involved as described in the Election Agreement or Direction of Election. For each of the individuals whose ballots were challenged, the Decision and Order discusses:
- a. The basis for the challenge and the position of the challenging party;
 - b. The respective position(s) of the other party(ies) regarding the eligibility of the challenged voter;
 - c. A summary of the relevant evidence obtained in the investigation or included in a stipulation if submitted by the parties, and an analysis of such evidence, based on Authority case law;
 - d. Determinations of eligibility;
 - e. The action ordered; and
 - f. A final paragraph informing an aggrieved party of the right to file an application for review with the Authority [§§ 2422.30(d) and 2422.31].

See also [CHM 49](#).

- 53.8 Decision and Order on Objections and Determinative Challenged Ballots:** Where a case involves both objections and challenged ballots, the Regional Director may decide the issues in the same Decision and Order. The Decisions discussed in [CHM 53.6](#) and [53.7](#) are combined.
- 53.9 Service of a Decision and Order:** A Decision and Order of the Regional Director is served on all parties according to § 2422.4. A Decision and Order is served in accordance with § 2429.12.
- 5310 Waiver of right to file application for review:** The parties may, at any time, waive the right to file an application for review. See also [CHM 54.7.1](#).

