

defined unit, will be handled at the post-election stage, i.e., whether the issues affect the election. Note there is some discretion granted the Regional Directors and, in the case of Region 4, there are times under the 2014 procedures where the RD permitted hearings anyway.

2. Briefs – Parties will argue orally. This applies to both pre-election and post-election hearings. The Regional Director has the authority to permit briefing as does a Hearing Officer (who, in almost every instance will recess and ask the Regional Director what to do about a briefing request). In cases where briefs are permitted, the Regional Director will set forth the deadline for briefs and, when the 2014 procedures were in effect, the time periods for briefs tended to be quite limited, often three (3) business days. In addition, the RD can limit the issues to be addressed in the brief and, in Region 4, often would not permit every issue to be briefed. However, if past history is any guide, Region 4 was more liberal about allowing briefs than was necessary, in our view.

C. Timing of Elections

1. Where a Decision and Direction of Election is required, due to the need for a hearing, the RD will transmit the normal information. However, there is no flexibility; the RD *must* indicate the type, date, time and location of the election and the eligibility period.
2. The RD will now schedule elections “at the earliest practicable date” and the twenty (20) business day waiting period is rescinded.

D. Election Notice

Where employees are voting under challenge, the DDE and the Notice of Election shall so state and, further, that the exclusion or inclusion will be resolved, *if necessary*. In other words, there will be a hearing if the challenged ballots are outcome determinative. Presumably, and there is nothing in GC Memo 24-02 on this, where the challenged ballots are *not* outcome determinative, the Region will ultimately use the unit clarification process although usually Region 4 urges the parties to try and work matters out and thereafter spends a fair amount of time doing investigations. Given that Region 4 is understaffed, obviously the Region will try and avoid unit clarification hearings.

GENERAL COMMENTS

Clearly much leverage has been taken away from employers. Until December 26, 2023, an employer could force a hearing and obtain significant delays before a DDE would be issued and then get the advantage of the 20-business day delay. This resulted in unions being forced to accept certain unit determinations that they might otherwise opposed. A petitioning union can now press more aggressively. The key *procedural* positions are to press the Region to use the rules to avoid hearings. Disputes about election dates ought to be decided far more quickly; hopefully the RD will, in the face of an employer not willing to stipulate to an election, simply advise the parties at the time of the hearing when the election will be. That will not avoid the “no issue” hearing but the parties ought to know on the date of the hearing when elections will be once the DDE is issued. (It should be noted that no DDE will issue until after the transcript is received. Board arrangements are that transcripts are submitted no later than three (3) business days after the hearing.)



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