§ 102.69 Election procedure; tally of ballots; objections; certification by the regional director; report on challenged ballots; report on objections; exceptions; action of the Board; hearing.

(a) Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the Regional Director in whose Region the proceeding is pending. All elections shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, either participant may, upon its prompt request to and approval thereof by the Regional Director, whose decision shall be final, have its name removed from the ballot:

Provided, however, That in a proceeding involving an employer-filed petition or a petition for decertification the labor organization certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot.

(b) If no objections are filed within the time set forth above, if the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election is to be held pursuant to § 102.70 of this subpart, the regional director shall forthwith issue to the parties a certification of the results of the election, including certification of representative where appropriate, with the same force and effect as if issued by the Board, and the proceeding will thereupon be closed.

(c)(1) If timely objections are filed to the conduct of the election or to conduct affecting the results of the election, or if the challenged ballots are sufficient in number to affect the results of the election, the regional director shall, consistent with the provisions of § 102.69(d) of this subpart, initiate an investigation, as required, of such objections or challenges.

(2) If a consent election has been held pursuant to § 102.62(b) of this subpart, the regional director shall prepare and cause to be served on the parties a report on challenged ballots or on objections, or on both, including his recommendations, which report, together with the tally of ballots, he shall forward to the Board in Washington, DC. Within 14 days from the date of issuance of the report on challenged ballots or on objections, or on both, any party may file with the Board in Washington, DC, exceptions to such report, with supporting documents as

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permitted by §102.69(g)(3) of this subpart and/or a supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting documents and/or supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief, with supporting documents as permitted by §102.69(g)(3) of this subpart if desired, with the Board in Washington, DC. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The report on challenged ballots may be consolidated with the report on objections in appropriate cases.

(3) If the election has been conducted pursuant to a direction of election issued following any proceeding under §102.67 of this subpart, the regional director may:

(i) Issue a report on objections or on challenged ballots, or on both, as in the case of a consent election pursuant to paragraph (b) of §102.62 of this subpart, or

(ii) Exercise his authority to decide the case and issue a decision disposing of the issues, and directing appropriate action or certifying the results of the election.

(4) If the regional director issues a report on objections and challenges, the parties shall have the rights set forth in paragraph (c)(2) of this section and in §102.69(f) of this subpart; if the regional director issues a decision, the parties shall have the rights set forth in §102.67 of this subpart to the extent consistent herewith, including the right to submit documents supporting the request for review or opposition thereto as permitted by §102.69(g)(3) of this subpart.

(d) In issuing a report on objections or challenged ballots, or both, following proceedings under §§102.62(b) or 102.67 of this subpart, or in issuing a decision on objections or challenged ballots, or both, following proceedings under §102.67 of this subpart, the regional director may act on the basis of an administrative investigation or upon the record of a hearing before a hearing officer. Such hearing shall be conducted with respect to those objections or challenges which the regional director concludes raise substantial and material factual issues.

(e) Any hearing pursuant to this section shall be conducted in accordance with the provisions of §§102.64, 102.65, and 102.66 of this subpart, insofar as applicable, except that, upon the close of such hearing, the hearing officer shall, if directed by the regional director, prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the issues. In any case in which the regional director has directed that a report be prepared and served, any party may, within 14 days from the date of issuance of such report, file with the regional director the original and one copy, which may be a carbon copy, of exceptions to such report, with supporting brief if desired. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the regional director. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the regional director may allow, a party opposing the exceptions may file an answering brief with the regional director. An original and one copy, which may be a carbon copy, shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the regional director. If no exceptions are filed to such report, the regional director, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case.

(f) In a case involving a consent election held pursuant to §102.62(b) of this subpart, if exceptions are filed, either to the report on challenged ballots or on objections, or on both if it be a consolidated report, and it appears to the Board that such exceptions do not raise substantial and material issues with respect to the conduct or results of the election, the Board may decide the matter forthwith upon the record or may make other disposition of the
case. If it appears to the Board that such exceptions raise substantial and material factual issues, the Board may direct the regional director or other agent of the Board to issue a notice of hearing on said exceptions before a hearing officer. The hearing shall be conducted in accordance with the provisions of §§102.64, 102.65, and 102.66 of this subpart insofar as applicable. Upon the close of the hearing the agent conducting the hearing, if directed by the Board, shall prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations to the Board as to the disposition of the challenges or objections, or both if it be a consolidated report. In any case in which the Board has directed that a report be prepared and served, any party may within 14 days from the date of issuance of the report on challenged ballots or on objections, or on both, file with the Board in Washington, DC, exceptions to such report, with supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief with the Board in Washington, DC. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The Board shall thereupon proceed pursuant to §102.67: Provided, however, That in any with an unfair labor practice case for purposes of hearing the provisions of §102.46 of this part of these rules shall govern with respect to the filing of exceptions or an answering brief to the exceptions to the administrative law judge's decision.

(g)(1)(i) In a proceeding pursuant to this section in which a hearing is held, the record in the case shall consist of the notice of hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, exhibits, together with the objections to the conduct of the election or to conduct affecting the results of the election, any report on such objections, any report on challenged ballots, exceptions to any such report, any briefs or other legal memoranda submitted by the parties, the decision of the regional director, if any, and the record previously made as defined in §102.68 of this subpart. Materials other than those set out above shall not be a part of the record.

(ii) In a proceeding pursuant to this section in which no hearing is held, the record shall consist of the objections to the conduct of the election or to conduct affecting the results of the election, any report on objections or on challenged ballots and any exceptions to such a report, any regional director’s decision on objections or challenged ballots and any request for review of such a decision, any documentary evidence, excluding statements of witnesses, relied upon by the regional director in his decision or report, any briefs or other legal memoranda submitted by the parties, and any other motions, rulings or orders of the regional director. Materials other than those set out above shall not be a part of the record, except as provided in paragraph (g)(3) of this section.

(2) Immediately upon issuance of a report on objections or challenges, or both, upon issuance by the regional director of an order transferring the case to the Board, or upon issuance of an order granting a request for review by the Board, the regional director shall transmit to the Board the record of the proceeding as defined in paragraph (g)(1) of this section.

(3) In a proceeding pursuant to this section in which no hearing is held, a party filing exceptions to a regional director’s report on objections or challenges, a request for review of a regional director’s decision on objections or challenges, or any opposition thereto, may support its submission to the Board by appending thereto copies of documentary evidence, including copies of any affidavits, it has timely submitted to the regional director and which were not included in the report or decision. Documentary evidence so appended shall thereupon become part of the record in the proceeding. Failure to timely submit such documentary evidence to the regional director, or to append that evidence to its submission
§ 102.70 Runoff election.

(a) The regional director shall conduct a runoff election, without further order of the Board, when an election in which the ballot provided for not less than three choices (i.e., at least two representatives and “neither”) results in no choice receiving a majority of the valid ballots cast and no objections are filed as provided in §102.69. Only one runoff shall be held pursuant to this section.

(b) Employees who were eligible to vote in the election and who are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

(d) In the event the number of votes cast in an inconclusive election in which the ballot provided for a choice among two or more representatives and “neither” or “none” is equally divided among the several choices; or in the event the number of ballots cast for one choice in such election is equal to the number cast for another of the choices but less than the number cast for the third choice, the regional director shall declare the first election a nullity and shall conduct another election, providing for a selection from