NATIONAL LABOR RELATIONS BOARD

# RULES AND REGULATIONS

**AND**

# STATEMENTS OF PROCEDURE

NATIONAL LABOR RELATIONS ACT

AND

LABOR MANAGEMENT RELATIONS ACT

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# NATIONAL LABOR RELATIONS BOARD

## RULES AND REGULATIONS

## AND

## STATEMENTS OF PROCEDURE

The National Labor Relations Board issued its Rules and Regulations and Statements of Procedure, Series 8, on November 4, 1959. They were published in the FEDERAL REGISTER on November 7, 1959 (24 Fed. Reg. 9095), and became effective on November 13, 1959. Amendments, published in the FEDERAL REGISTER, became effective July 4, 1967.

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| May 15, 1961 | **26 Fed. Reg. 3885**<br>(§§101.20, 101.21, 101.23(c), 101.28, 101.30, 102.60 through 102.72, 102.77(b), 102.80, 102.85, 102.88, 102.90) |
| August 15, 1961 | **26 Fed. Reg. 7546**<br>(§§101.31, 101.33, 101.35, 102.89, 102.90) |
| March 3, 1962 | **27 Fed. Reg. 2091**<br>(§§101.16, 102.52 through 102.59) |
| June 1, 1962 | **27 Fed. Reg. 5094**<br>(§§102.99(c), 102.101, 102.102, 102.106, 102.108, 102.109) |
| September 3, 1963 | **28 Fed. Reg. 7972**<br>(§§101.11, 101.12, 102.15, 102.25, 102.27, 102.35(h), (i), (k), and (l), 102.36, 102.37, 102.45, 102.46, 102.48, 102.69(e), 102.81, 102.111, 102.118, 102.119, 102.120) |
| November 30, 1964 | **29 Fed. Reg. 15918**<br>(§§101.17, 102.4, 102.5, 102.46(j), 102.47, 102.60(a) and (b), 102.61(d) and (e), 102.63, 102.65(a), 102.67(a), (b), (e), (g), and (i), 102.69(c) and (e), 102.71, 102.90, 102.99(c), 102.101, 102.102, 102.106(e), 102.108, 102.109, 102.110, 102.124) |
| August 1, 1966 | **31 Fed. Reg. 10029**<br>(§§101.19(b), 102.69(h)) |
| November 1, 1966 | **31 Fed. Reg. 13850**<br>(§§102.126 through 102.134) |
| June 14, 1967 | **32 Fed. Reg. 8406**<br>(§§102.127(a), 102.128, 102.134) |
| July 4, 1967 | **32 Fed. Reg. 9547**<br>(§§101.6, 101.9, 101.17, 101.18(a) and (c), 102.19, 102.33, 102.46(e), 102.69(c), (d), (e), and (h), 102.72, 102.81, 102.111, 102.117)<br>**33 Fed. Reg. 4139**<br>(§102.117(d)) |

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| July 8, 1968 | **33 Fed. Reg. 9819**<br>(§§101.1 and 102.118) |
| September 24, 1969 | **34 Fed. Reg. 14431**<br>(§§101.11(b), 101.12(b) and (c), 102.48(a) and (b), 102.69(c)) |
| July 6, 1970 | **35 Fed. Reg. 10657**<br>(§§102.69(d), 102.118(b)(2)) |
| July 27, 1970 | **35 Fed. Reg. 10657**<br>(§§102.19(a), 102.81(a) and (c)) |
| December 3, 1970 | **35 Fed. Reg. 18370**<br>(§103.1) |
| December 14, 1970 | **35 Fed. Reg. 18796**<br>(§§102.31(c) and (e)) |
| May 20, 1971 | **36 Fed. Reg. 9132**<br>(§§101.33, 101.36, 102.91, 102.93) |
| June 1, 1971 | **36 Fed. Reg. 9132**<br>(§§102.24, 102.25, 102.26, 102.33(d), 102.35(m), 102.65(a) and (e), 102.67, 102.112) |
| July 1, 1971 | **36 Fed. Reg. 12532**<br>(§§102.135(a), (b), (c)) |
| August 13, 1971 | **36 Fed. Reg. 15101**<br>(§101.112) |
| March 7, 1972 | **37 Fed. Reg. 4911**<br>(§§101.10(b)(4), 102.19(c), 102.35(i)) |
| April 19, 1972 | **37 Fed. Reg. 7693**<br>(§102.112) |
| October 17, 1972 | **37 Fed. Reg. 21939**<br>(§103.100) |
| February 9, 1973 | **38 Fed. Reg. 3961**<br>(§§102.69(a), (c), (d), (e), (f), (g), (h), (i)) |
| March 7, 1973 | **38 Fed. Reg. 6176**<br>(§103.2) |
| April 17, 1973 | **38 Fed. Reg. 9507**<br>(§103.3) |
| February 1, 1974 | **39 Fed. Reg. 4080**<br>(§102.71) |

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| May 2, 1974 | **39 Fed. Reg. 15271**<br>(§102.36) |
| February 10, 1975 | **40 Fed. Reg. 6204**<br>(§§102.16, 102.68, 102.69(g), 102.71(a)) |
| February 19, 1975 | **40 Fed. Reg. 7290**<br>(§§102.117, 102.118(a)) |
| October 14, 1975 | **40 Fed. Reg. 48330**<br>(§§102.117(e) through (k)) |
| October 30, 1975 | **40 Fed. Reg. 50662**<br>(§102.118(a)(2)) |
| December 30, 1975 | **40 Fed. Reg. 59728**<br>(§102.136) |
| January 8, 1976 | **41 Fed. Reg. 1478**<br>(§§102.117(e), (f), (g), (h), (j)(1), (j)(3)) |
| March 9, 1977 | **42 Fed. Reg. 13113**<br>(§§102.126, 102.127, and 102.129 through 102.133) |
| March 12, 1977 | **42 Fed. Reg. 13550**<br>(§§102.137, 102.138, 102.139, 102.140, 102.141, 102.142) |
| August 15, 1977 | **42 Fed. Reg. 41117**<br>(§§102.67(b), (d), (g), (j)) |
| June 14, 1979 | **44 Fed. Reg. 34215**<br>(§§201 through 203.6) |
| June 2, 1980 | **45 Fed. Reg. 37425**<br>(§§102.30(c) and 102.111(a)) |
| August 1, 1980 | **45 Fed. Reg. 51192**<br>(§§102.24, 102.25, 102.30(c), 102.34, 102.36, 102.37, 102.42) |
| September 14, 1981 | **46 Fed. Reg. 45922**<br>(§§102.68, 102.69(a), (c)(1), (2), (3), and (4), (d), (g)(1)(i) and (ii), (2), and (3)) |
| October 1, 1981 | **46 Fed. Reg. 48086**<br>(§§102.143 through 102.155) |
| April 12, 1982 | **47 Fed. Reg. 20888**<br>(§§201, 201.1, 201.1.1, 201.1.4) |
| October 15, 1982 | **47 Fed. Reg. 40770**, as corrected by **47 Fed. Reg. 42569** (§§102.26, 102.27, 102.46(j), 102.65(c), (e)(1), (2), and (3), 102.67(a), (b), (e), (g), (i), (k)(1), (2), and (3), 102.69(c)(1), (2), and (3), (f), (j)(1), (2), and (3)) |
| December 15, 1982 | **47 Fed. Reg. 54432**<br>(§102.69(a)) |

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| January 29, 1986 | **51 Fed. Reg. 3597**<br>(§102.117(c)(2)(iv)(a)) |
| June 1, 1986 | **51 Fed. Reg. 15612**<br>(§§102.98(b), 102.99(b) and (c))<br>**51 Fed. Reg. 15613**<br>(§§102.46(b), (c), and (j)) |
| May 15, 1986 | **51 Fed. Reg. 17732**<br>(§§102.143(c), 102.144(a), 102.147(b)) |
| September 29, 1986 | **51 Fed. Reg. 23744**<br>(§§102.15, 102.19(a) and (c), 102.20, 102.27, 102.46(a), (d)(1), (e), and (f)(1), 102.48(d), 102.52, 102.54(a), 102.65(e)(2), 102.67(b), (e), and (g), 102.69(a), (c)(2), (e), and (f), 102.71(c), 102.81(a) and (c), 102.100, 102.101, 102.107, 102.108, 102.111 through 102.114, 102.150(a), (d), and (e))<br>**51 Fed. Reg. 30635** as corrected by **51 Fed. Reg. 32919**<br>(§§102.88, 102.129(a))<br>**51 Fed. Reg. 32918**<br>(§§102.69(h), 102.111(b), 102.132, 102.150(b)) |
| October 9, 1986 | **51 Fed. Reg. 36223**<br>(§§102.143(a), 102.147(a)) |
| July 27, 1987 | **52 Fed. Reg. 23967**<br>(§§101.1 through 101.43)<br>**52 Fed. Reg. 27990**<br>(§102.118) |
| August 5, 1987 | **52 Fed. Reg. 25213**<br>(§103.20) |
| May 16, 1988 | **53 Fed. Reg. 10872**<br>(§102.117) |
| July 6, 1988 | **53 Fed. Reg. 24440**<br>(§101.14) |
| November 13, 1988 | **53 Fed. Reg. 37754**<br>(§§102.52 through 102.59) |
| May 22, 1989 | **54 Fed. Reg. 16336**<br>(§103.30) |
| October 16, 1989 | **54 Fed. Reg. 38515**<br>(§102.24) |
| December 1, 1989 | **55 Fed. Reg. 51196**<br>(§102.16, 102.24(a)) |
| October 1, 1990 | **55 Fed. Reg. 37874**<br>(§102.114) |

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| October 28, 1991 | **56 Fed. Reg. 49141**<br>(§§102.42, 102.46, 102.48(d)(2), 102.67(k)(3), 102.69(j)(3), 102.90, 102.111) |
| November 8, 1991 | **56 Fed. Reg. 50820**<br>(§102.114(b) and (c)) |
| November 8, 1991 | **56 Fed. Reg. 54538**<br>(§102.114) |
| November 26, 1991 | **56 Fed. Reg. 61373**<br>(§102.65(e)(2)) |
| February 4, 1992 | **57 Fed. Reg. 4157**<br>(§102.111 and §102 Appendix A) |
| March 18, 1992 | **57 Fed. Reg. 9977**<br>(§102.111) |
| April 8, 1992 | **57 Fed. Reg. 12876**<br>(§102.65(e)(2)) |
| August 9, 1993 | **58 FR 42234**<br>(§§102.117 of subpart K(m)(n)(o)) |
| June 23, 1995 | **60 FR 32587**<br>(§102.117) |
| April 14, 1992 | **57 FR 12876**<br>§§102.65 |
| June 23, 1992 | **57 FR 27927**<br>§§100.123 |
| August 9, 1993 | **58 FR 42234**<br>§§102.117 of subpart K (m), (n), (o) |
| July 21, 1994 | **59 FR 37157**<br>§§100.101, 100.102, 100.111 through 100.123, 100.201 through 100.209, 100.301 through 100.307, 100.401, 100.601 through 100.699 |
| May 5, 1995 | **60 FR 22269**<br>§§100.103 through 100.106 |
| June 23, 1995 | **60 FR 32587**<br>§§100.152, 100.153, 100.549, 100.550, 100.560, 102.117 |
| November 8, 1995 | **60 FR 56233**<br>§§102.11, 102.14, 102.60, 102.69, 102.112, 102.113, 102.114 |
| February 23, 1996 | **61 FR 6940**<br>§§102.35, 102.42, 102.45, |
| March 28, 1996 | **61 FR 13764**<br>§§102.117(d)(2)(i). (iii)(A) |
| December 11, 1996 | **61 FR 65180** |

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| | §§101.39, 102.98, 102.99 |
| December 11, 1996 | **61 FR 65182**<br>§§Subpart K of part 102, 102.117 |
| December 12, 1996 | **61 FR 65323**<br>§§102.44, 102.66(d), 102.21 |
| March 4, 1997 | **62 FR 9685**<br>§102.54(b) |
| March 5, 1997 | **62 FR 9930**<br>§§102.31(a),(d), 102.31(a), (b), 102.66(c) |
| October 23, 1997 | **62 FR 55162**<br>§§Subpart U and V to part 102 |
| January 13, 1997 | **62 FR 1668**<br>§§102.24, 102.25, 102.30, 102.34, 102.35, 102.36, 102.42, 102.149 |
| October 3, 2001 | **66 FR 50310**<br>§§102.117(a) through (d) |
| December 6, 2001 | **66 FR 63416**<br>§202 |
| January 7, 2002 | **67 FR 656**<br>§102.35 |
| January 7, 2002 | **67 FR 656**<br>§§102.11, 102.60, 102.83 |
| October 9, 2002 | **67 FR 62992**<br>Amendment of Delegation of Administrative Authority to GC under §3(d) of NLRA |
| November 26, 2002 | **67 FR 70694**<br>§102.114 |
| November 26, 2002 | **67 FR 70695**<br>§102.111 |
| July 3, 2003 | **68 FR 39836**<br>§102.19(a) |
| January 12, 2003 | **69 FR 1676**<br>§§102.24(a) & (b), 102.35(a) & (8), 102.114(g) |
| March 1, 2005 | **70 FR 3477**<br>§§101.19 , 101.28, 102.62 |
| July 1, 2006 | **71 FR 74881-01**<br>§102.117 |

*The Rules and Regulations and Statements of Procedure are in force and effective as amended from time to time.*

# ARRANGEMENT OF CONTENTS BY DIVIDERS

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### Subpart D—Unfair Labor Practice and Representation Cases Under Sections 8(b)(7) and 9(c) of the Act



### Subpart E—Referendum Cases Under Section 9(e)(1) and (2) of the Act

# NATIONAL LABOR RELATIONS BOARD

## STATEMENTS OF PROCEDURE—PART 101

### Subpart A—General Statement

**Section 101.1** General statement.—The following statements of the general course and method by which the Board's functions are channeled and determined are issued and published pursuant to 5 U.S.C. § 552(a)(1)(B).

## Subpart B—Unfair Labor Practice Cases Under Section 10(a) to (i) of the Act and Telegraph Merger Act Cases

**Sec. 101.2** *Initiation of unfair labor practice cases***.—**The investigation of an alleged violation of the National Labor Relations Act is initiated by the filing of a charge, which must be in writing and signed, and must either be notarized or must contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of the person's knowledge and belief. The charge is filed with the Regional Director for the Region in which the alleged violations have occurred or are occurring. A blank form for filing such charge is supplied by the Regional Office upon request. The charge contains the name and address of the person against whom the charge is made and a statement of the facts constituting the alleged unfair labor practices.

**Sec. 101.3** Reserved.

**Sec. 101.4** *Investigation of charges*.—When the charge is received in the Regional Office it is filed, docketed, and assigned a case number. The Regional Director may cause a copy of the charge to be served on the person against whom the charge is made, but timely service of a copy of the charge within the meaning of the proviso to section 10(b) of the Act is the exclusive responsibility of the charging party and not of the Regional Director. The Regional Director requests the person filing the charge to submit promptly evidence in its support. As part of the investigation hereinafter mentioned, the person against whom the charge is filed, hereinafter called the respondent, is asked to submit a statement of position in respect to the allegations. The case is assigned for investigation to a member of the field staff, who interviews representatives of the parties and other persons who have knowledge as to the charge, as is deemed necessary. In the investigation and in all other stages of the proceedings, charges alleging violations of sections 8(b)(4)(A), (B), and (C), charges alleging violations of section 8(b)(4)(D) in which it is deemed appropriate to seek injunctive relief under section 10(l) of the Act, and charges alleging violations of section 8(b)(7) or 8(e) are given priority over all other cases in the office in which they are pending except cases of like character; and charges alleging violations of section 8(a)(3) or 8(b)(2) are given priority over all other cases except cases of like character and cases under section 10(l) of the Act. The Regional Director may exercise discretion to dispense with any portion of the investigation described in this section as appears necessary in consideration of such factors as the amount of time necessary to complete a full investigation, the nature of the proceeding, and the public interest. After investigation, the case may be disposed of through informal methods such as withdrawal, dismissal, or settlement; or the case may necessitate formal

methods of disposition. Some of the informal methods of handling unfair labor practice cases will be stated first.

**Sec. 101.5** *Withdrawal of charges*.—If investigation reveals that there has been no violation of the National Labor Relations Act or the evidence is insufficient to substantiate the charge, the Regional Director recommends withdrawal of the charge by the person who filed. Withdrawal may also be requested on the initiative of the complainant. If the complainant accepts the recommendation of the Regional Director or requests withdrawal, the respondent is immediately notified of the withdrawal of the charge.

**Sec. 101.6** *Dismissal of charges and appeals to the General Counsel*.—If the complainant refuses to withdraw the charge as recommended, the Regional Director dismisses the charge. The Regional Director thereupon informs the parties of this action, together with a simple statement of the grounds therefor, and the complainant's right of appeal to the General Counsel in Washington, D.C., within 14 days. If the complainant appeals to the General Counsel, the entire file in the case is sent to Washington, D.C., where the case is fully reviewed by the General Counsel with staff assistance. Oral presentation of the appeal issues may be permitted a party on timely written request, in which event the other parties are notified and afforded a like opportunity at another appropriate time. Following such review, the General Counsel may sustain the Regional Director's dismissal, stating the grounds of affirmance, or may direct the Regional Director to take further action.

**Sec. 101.7** *Settlements*.—Before any complaint is issued or other formal action taken, the Regional Director affords an opportunity to all parties for the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment, except where time, the nature of the proceeding, and the public interest do not permit. Normally prehearing conferences are held, the principal purpose of which is to discuss and explore such submissions and proposals of adjustment. The Regional Office provides Board-prepared forms for such settlement agreements, as well as printed notices for posting by the respondent. These agreements, which are subject to the approval of the Regional Director, provide for an appeal to the General Counsel, as described in section 101.6, by a complainant who will not join in a settlement or adjustment deemed adequate by the Regional Director. Proof of compliance is obtained by the Regional Director before the case is closed. If the respondent fails to perform the obligations under the informal agreement, the Regional Director may determine to institute formal proceedings.

**Sec. 101.8** *Complaints*.—If the charge appears to have merit and efforts to dispose of it by informal adjustment are unsuccessful, the Regional Director institutes formal action by issuance of a complaint and notice of hearing. In certain types of cases, involving

novel and complex issues, the Regional Director, at the discretion of the General Counsel, must submit the case for advice from the General Counsel before issuing a complaint. The complaint, which is served on all parties, sets forth the facts upon which the Board bases its jurisdiction and the facts relating to the alleged violations of law by the respondent. The respondent must file an answer to the complaint within 14 days of its receipt, setting forth a statement of its defense.

**Sec. 101.9** *Settlement after issuance of complaint.*—(a) Even though formal proceedings have begun, the parties again have full opportunity at every stage to dispose of the case by amicable adjustment and in compliance with the law. Thus, after the complaint has been issued and a hearing scheduled or commenced, the attorney in charge of the case and the Regional Director afford all parties every opportunity for the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment, except where time, the nature of the proceeding, and the public interest do not permit.

(b)(1) After the issuance of a complaint, the Agency favors a formal settlement agreement, which is subject to the approval of the Board in Washington, D.C. In such an agreement the parties agree to waive their right to hearing and agree further that the Board may issue an order requiring the respondent to take action appropriate to the terms of the settlement. Ordinarily the formal settlement agreement also contains the respondent's consent to the Board's application for the entry of a judgment by the appropriate circuit court of appeals enforcing the Board's order.

(2) In some cases, however, the Regional Director, who has authority to withdraw the complaint before the hearing (section 102.18), may conclude that an informal settlement agreement of the type described in section 101.7 is appropriate. Such agreement is not subject to approval by the Board and does not provide for a Board order. It provides for the withdrawal of the complaint.

(c)(1) If after issuance of a complaint but before opening of the hearing, the charging party will not join in a settlement tentatively agreed upon by the Regional Director, the respondent, and any other parties whose consent may be required, the Regional Director serves a copy of the proposed settlement agreement on the charging party with a brief written statement of the reasons for proposing its approval. Within 7 days after service of these documents, the charging party may file with the Regional Director a written statement of any objections to the proposed settlement. Such objections will be considered by the Regional Director in determining whether to approve the proposed settlement. If the settlement is approved by the Regional Director notwithstanding the objections, the charging party is so informed and provided a brief written statement of the reasons for the approval.

(2) If the settlement agreement approved by the Regional Director is a formal one, providing for the entry of a Board order, the settlement agreement together with the charging party's objections and the Regional Director's written statements are submitted to Washington, D.C., where they are reviewed by the General Counsel. If the General Counsel decides to approve the settlement agreement, the charging party is so informed and the agreement and accompanying documents are submitted to the Board, upon whose approval the settlement is contingent. Within 7 days after service of notice of submission of the settlement agreement to the Board, the charging party may file with the Board in Washington, D.C., a further statement in support of objections to the settlement agreement.

(3) If the settlement agreement approved by the Regional Director is an informal one, providing for the withdrawal of the complaint, the charging party may appeal the Regional Director's action to the General Counsel, as provided in section 102.19 of the Board's Rules and Regulations.

(d)(1) If the settlement occurs after the opening of the hearing and before issuance of the administrative law judge's decision and there is an all-party informal settlement, the request for withdrawal of the complaint must be submitted to the administrative law judge for approval. If the all-party settlement is a formal one, final approval must come from the Board. If any party will not join in the settlement agreed to by the other parties, the administrative law judge will give such party an opportunity to state on the record or in writing its reasons for opposing the settlement.

(2) If the administrative law judge decides to accept or reject the proposed settlement, any party aggrieved by such ruling may ask for leave to appeal to the Board as provided in section 102.26.

(e)(1) In the event the respondent fails to comply with the terms of a settlement stipulation, upon which a Board order and court judgment are based, the Board may petition the court to adjudge the respondent in contempt. If the respondent refuses to comply with the terms of a settlement stipulation providing solely for the entry of a Board order, the Board may petition the court for enforcement of its order pursuant to section 10 of the National Labor Relations Act.

(2) In the event the respondent fails to comply with the terms of an informal settlement agreement, the Regional Director may set the agreement aside and institute further proceedings.

**Sec. 101.10** *Hearings*.—(a) Except in extraordinary situations the hearing is open to the public and usually conducted in the Region where the charge originated. A duly designated administrative law judge presides over the hearing. The Government's case is conducted by an attorney attached to the Board's Regional Office, who has the responsibility of presenting the evidence in support of the complaint. The rules of evidence applicable in the district courts of the United States under the Rules of Civil Procedure adopted by the Supreme Court are, so far as practicable, controlling. Counsel

for the General Counsel, all parties to the proceeding, and the administrative law judge have the power to call, examine, and cross-examine witnesses and to introduce evidence into the record. They may also submit briefs, engage in oral argument, and submit proposed findings and conclusions to the administrative law judge. The attendance and testimony of witnesses and the production of evidence material to any matter under investigation may be compelled by subpoena.

(b) The functions of all administrative law judges and other Board agents or employees participating in decisions in conformity with section 8 of the Administrative Procedure Act (5 U.S.C. § 557) are conducted in an impartial manner and any such administrative law judge, agent, or employee may at any time withdraw if he or she deems himself or herself disqualified because of bias or prejudice. The Board's attorney has the burden of proof of violations of section 8 of the National Labor Relations Act and section 222(f) of the Telegraph Merger Act. In connection with hearings subject to the provisions of section 7 of the Administrative Procedure Act (5 U.S.C. § 556):

(1) No sanction is imposed or rule or order issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the preponderance of the reliable, probative, and substantial evidence.

(2) Every party has the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(3) Where any decision rests on official notice of a material fact not appearing in the evidence in the record, any party is on timely request afforded a reasonable opportunity to show the contrary.

(4) Subject to the approval of the administrative law judge, all parties to the proceeding voluntarily may enter into a stipulation dispensing with a verbatim written transcript of record of the oral testimony adduced at the hearing and providing for the waiver by the respective parties of their right to file with the Board exceptions to the findings of fact (but not to conclusions of law or recommended order) in the administrative law judge's decision.

**Sec. 101.11** *Administrative law judge's decision*.—(a) At the conclusion of the hearing the administrative law judge prepares a decision stating findings of fact and conclusions, as well as the reasons for the determinations on all material issues, and making recommendations as to action which should be taken in the case. The administrative law judge may recommend dismissal or sustain the complaint, in whole or in part, and recommend that the respondent cease and desist from the unlawful acts found and take action to remedy their effects.

(b) The administrative law judge's decision is filed with the Board in Washington, D.C., and copies are simultaneously served on each of the parties. At the same time the Board, through its Executive Secretary, issues and serves on each of the parties an order transferring the case to the Board. The parties may accept and comply with the administrative law judge's recommended order, which, in the absence of exceptions, shall become the order of the Board. Or, the parties or counsel for the Board may file exceptions to the administrative law judge's decision with the Board. Whenever any party files exceptions, any other party may file an answering brief limited to questions raised in the exceptions and/or may file cross-exceptions relating to any portion of the administrative law judge's decision. Cross-exceptions may be filed only by a party who has not previously filed exceptions. Whenever any party files cross-exceptions, any other party may file an answering brief to the cross-exceptions. The parties may request permission to appear and argue orally before the Board in Washington, D.C. They may also submit proposed findings and conclusions to the Board.

**Sec. 101.12** *Board decision and order*.—(a) If any party files exceptions to the administrative law judge's decision, the Board, with the assistance of the staff counsel of each Board Member who function in much the same manner as law clerks do for judges, reviews the entire record, including the administrative law judge's decision and recommendations, the exceptions thereto, the complete transcript of evidence, and the exhibits, briefs, and arguments. The Board does not consult with members of the administrative law judge's staff of the division of judges or with any agent of the General Counsel in its deliberations. It then issues its decision and order in which it may adopt, modify, or reject the findings and recommendations of the administrative law judge. The decision and order contains detailed findings of fact, conclusions of law, and basic reasons for decision on all material issues raised, and an order either dismissing the complaint in whole or in part or requiring the respondent to cease and desist from its unlawful practices and to take appropriate affirmative action.

(b) If no exceptions are filed, the administrative law judge's decision and recommended order automatically become the decision and order of the Board pursuant to section 10(c) of the Act. All objections and exceptions, whether or not previously made during or after the hearing, are deemed waived for all purposes.

**Sec. 101.13** *Compliance with Board decision and order*.—(a) Shortly after the Board's decision and order is issued the Director of the Regional Office in which the charge was filed communicates with the respondent for the purpose of obtaining compliance. Conferences may be held to arrange the details necessary for compliance with the terms of the order.

(b) If the respondent effects full compliance with the terms of the order, the Regional Director submits a report to that effect to Washington, D.C., after which the case may be closed. Despite compliance, however, the Board's order is a continuing one; therefore,

the closing of a case on compliance is necessarily conditioned upon the continued observance of that order; and in some cases it is deemed desirable, notwithstanding compliance, to implement the order with an enforcing court judgment. Subsequent violations of the order may become the basis of further proceedings.

**Sec. 101.14** *Judicial review of Board decision and order*.—If the respondent does not comply with the Board's order, or the Board deems it desirable to implement the order with a court judgment, the Board may petition the appropriate Federal court for enforcement. Or, the respondent or any person aggrieved by a final order of the Board may petition the circuit court of appeals to review and set aside the Board's order. If a petition for review is filed, the respondent or aggrieved person must ensure that the Board receives, by service upon its Deputy Associate General Counsel of the Appellate Court Branch, a court-stamped copy of the petition with the date of filing. Upon such review or enforcement proceedings, the court reviews the record and the Board's findings and order and sustains them if they are in accordance with the requirements of law. The court may enforce, modify, or set aside in whole or in part the Board's findings and order, or it may remand the case to the Board for further proceedings as directed by the court. Following the court's judgment, either the Government or the private party may petition the Supreme Court for review upon writ of certiorari. Such applications for review to the Supreme Court are handled by the Board through the Solicitor General of the United States.

**Sec. 101.15** *Compliance with court judgment*.—After a Board order has been enforced by a court judgment the Board has the responsibility of obtaining compliance with that judgment. Investigation is made by the Regional Office of the respondent's efforts to comply. If it finds that the respondent has failed to live up to the terms of the court's judgment, the General Counsel may, on behalf of the Board, petition the court to hold him in contempt of court. The court may order immediate remedial action and impose sanctions and penalties.

**Sec. 101.16** *Backpay proceedings*.—(a) After a Board order directing the payment of backpay has been issued or after enforcement of such order by a court judgment, if informal efforts to dispose of the matter prove unsuccessful, the Regional Director then has discretion to issue a "backpay specification" in the name of the Board and a notice of hearing before an administrative law judge, both of which are served on the parties involved. The specification sets forth computations showing gross and net backpay due and any other pertinent information. The respondent must file an answer within 21 days of the receipt of the specification, setting forth a particularized statement of its defense.

(b) In the alternative, the Regional Director, under the circumstances specified above, may issue and serve on the parties a notice of hearing only, without a specification. Such notice contains, in addition to the time and place of hearing before an administrative law judge, a brief statement of the matters in controversy.

(c) The procedure before the administrative law judge or the Board, whether initiated by the "backpay specification" or by notice of hearing without backpay specification, is substantially the same as that described in sections 101.10 to 101.14, inclusive.

## Subpart C—Representation Cases Under Section 9(c) of the Act and Petitions for Clarification of Bargaining Units and for Amendment of Certifications Under Section 9(b) of the Act

**Sec. 101.17** *Initiation of representation cases and petitions for clarification and amendment*.—The investigation of the question as to whether a union represents a majority of an appropriate grouping of employees is initiated by the filing of a petition by any person or labor organization acting on behalf of a substantial number of employees or by an employer when one or more individuals or labor organizations present a claim to be recognized as the exclusive bargaining representative. If there is a certified or currently recognized representative, any employee, or group of employees, or any individual or labor organization acting in their behalf may also file decertification petitions to test the question of whether the certified or recognized agent is still the representative of the employees. If there is a certified or currently recognized representative of a bargaining unit and there is no question concerning representation, a party may file a petition for clarification of the bargaining unit. If there is a unit covered by a certification and there is no question concerning representation, any party may file a petition for amendment to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or location of the employer involved. The petition must be in writing and signed, and either must be notarized or must contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his or her knowledge and belief. It is filed with the Regional Director for the Region in which the proposed or actual bargaining unit exists. Petition forms, which are supplied by the Regional Office upon request, provide, among other things, for a description of the contemplated or existing appropriate bargaining unit, the approximate number of employees involved, and the names of all labor organizations which claim to represent the employees. If a petition is filed by a labor organization seeking certification, or in the case of a petition to decertify a certified or recognized bargaining agent, the petitioner must supply, within 48 hours after filing but in no event later than the last day on which the petition might timely be filed, evidence of representation. Such evidence is usually in the form of cards, which must be dated, authorizing the labor organization to represent the employees or authorizing the petitioner to file a decertification petition. If a petition is filed by an employer, the petitioner must supply, within 48 hours after filing, proof of demand for recognition by the labor organization named in the petition and, in the event the labor organization named is the incumbent representative of the unit involved, a statement of the objective considerations demonstrating reasonable grounds for believing that the labor organization has lost its majority status.

**Sec. 101.18** *Investigation of petition.*—(a) Upon receipt of the petition in the Regional Office, it is docketed and assigned to a member of the staff, usually a field examiner, for investigation. The field examiner conducts an investigation to ascertain (1) whether the employer's operations affect commerce within the meaning of the Act, (2) the appropriateness of the unit of employees for the purposes of collective bargaining and the existence of a bona fide question concerning representation within the meaning of the Act, (3) whether the election would effectuate the policies of the Act and reflect the free choice of employees in the appropriate unit, and (4) whether, if the petitioner is a labor organization seeking recognition, there is a sufficient probability, based on the evidence of representation of the petitioner, that the employees have selected it to represent them. The evidence of representation submitted by the petitioning labor organization or by the person seeking decertification is ordinarily checked to determine the number or proportion of employees who have designated the petitioner, it being the Board's administrative experience that in the absence of special factors the conduct of an election serves no purpose under the statute unless the petitioner has been designated by at least 30 percent of the employees. However, in the case of a petition by an employer, no proof of representation on the part of the labor organization claiming a majority is required and the Regional Director proceeds with the case if other factors require it unless the labor organization withdraws its claim to majority representation. The field examiner, or other member of the staff, attempts to ascertain from all interested parties whether or not the grouping or unit of employees described in the petition constitutes an appropriate bargaining unit. The petition may be amended at any time prior to hearing and may be amended during the hearing in the discretion of the hearing officer upon such terms as he or she deems just.

(b) The petitioner may on its own initiative request the withdrawal of the petition if the investigation discloses that no question of representation exists within the meaning of the statute, because, among other possible reasons, the unit is not appropriate, or a written contract precludes further investigation at that time, or where the petitioner is a labor organization or a person seeking decertification and the showing of representation among the employees is insufficient to warrant an election under the 30-percent principle stated in paragraph (a) of this section.

(c) For the same or similar reasons the Regional Director may request the petitioner to withdraw its petition. If the petitioner, despite the Regional Director's recommendations, refuses to withdraw the petition, the Regional Director then dismisses the petition, stating the grounds for dismissal and informing the petitioner of its right of appeal to the Board in Washington, D.C. The petition may also be dismissed in the discretion of the Regional Director if the petitioner fails to make available necessary facts which are in its possession. The petitioner may within 14 days appeal from the Regional Director's

dismissal by filing such request with the Board in Washington, D.C.; after a full review of the file with the assistance of its staff, the Board may sustain the dismissal, stating the grounds of its affirmance, or may direct the Regional Director to take further action.

**Sec. 101.19** *Consent adjustments before formal hearing.*—The Board has devised and makes available to the parties three types of informal consent procedures through which representation issues can be resolved without recourse to formal procedures. These informal arrangements are commonly referred to as consent-election agreement followed by Regional Director's determination, stipulated election agreement followed by Board certification, and full consent agreement, in which the parties agree that all pre- and postelection disputes will be resolved with finality by the Regional Director. Forms for use in these informal procedures are available in the Regional Offices.

Comment [N1]: Sec.101.19 revised effective 3/1/05 70 FR 3478 (2005)

(a)(1) The consent-election agreement followed by the Regional Director's determination of representatives is one method of informal adjustment of representation cases. The terms of the agreement providing for this form of adjustment are set forth in printed forms, which are available upon request at the Board's Regional Offices. Under these terms the parties agree with respect to the appropriate unit, the payroll period to be used as the basis of eligibility to vote in an election, and the place, date, and hours of balloting. A Board agent arranges the details incident to the mechanics and conduct of the election. For example, the Board agent usually arranges preelection conferences in which the parties check the list of voters and attempt to resolve any questions of eligibility. Also, prior to the date of election, the holding of such election shall be adequately publicized by the posting of official notices in the establishment whenever possible or in other places, or by the use of other means considered appropriate and effective. These notices reproduce a sample ballot and outline such election details as location of polls, time of voting, and eligibility rules.

(2) The actual polling is always conducted and supervised by Board agents. Appropriate representatives of each party may assist them and observe the election. As to the mechanics of the election, a ballot is given to each eligible voter by the Board's agents. The ballots are marked in the secrecy of a voting booth. The Board agents and authorized observers have the privilege of challenging for reasonable cause employees who apply for ballots.

(3) Customarily the Board agents, in the presence and with the assistance of the authorized observers, count and tabulate the ballots immediately after the closing of the polls. A complete tally of the ballots is made available to the parties upon the conclusion of the election.

(4) If challenged ballots are sufficient in number to affect the results of the election, the Regional Director conducts an investigation and rules on the challenges. Similarly, if objections to the conduct of the election are filed within 7 days after the tally of ballots

has been prepared, the Regional Director likewise conducts an investigation and rules on the objections. If, after investigation, the objections are found to have merit, the Regional Director may void the election results and conduct a new election.

(5) This form of agreement provides that the rulings of the Regional Director on all questions relating to the election (for example, eligibility to vote and the validity of challenges and objections) are final and binding. Also, the agreement provides for the conduct of a runoff election, in accordance with the provisions of the Board's Rules and Regulations, if two or more labor organizations appear on the ballot and no one choice receives the majority of the valid votes cast.

(6) The Regional Director issues to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect as if issued by the Board.

(b) The stipulated election agreement followed by a Board determination provides that disputed matters following the agreed-upon election, if determinative of the results, can be the basis of a formal decision by the Board instead of an informal determination by the Regional Director, except that if the Regional Director decides that a hearing on objections or challenged ballots is necessary the Director may direct such a hearing before a hearing officer, or, if the case is consolidated with an unfair labor practice proceeding, before an administrative law judge. If a hearing is directed, such action on the part of the Regional Director constitutes a transfer of the case to the Board. Thus, except for directing a hearing, it is provided that the Board, rather than the Regional Director, makes the final determination of questions raised concerning eligibility, challenged votes, and objections to the conduct of the election. If challenged ballots are sufficient in number to affect the results of the election, the Regional Director conducts an investigation and issues a report on the challenges instead of ruling thereon, unless the Director elects to hold a hearing. Similarly, if objections to the conduct of the election are filed within 7 days after the tally of ballots has been prepared, the Regional Director likewise conducts an investigation and issues a report instead of ruling on the validity of the objections, unless the Director elects to hold a hearing. The Regional Director's report is served on the parties, who may file exceptions thereto within 14 days with the Board in Washington, D.C. The Board then reviews the entire record made and may, if a substantial issue is raised, direct a hearing on the challenged ballots or the objections to the conduct of the election. Or, the Board may, if no substantial issues are raised, affirm the Regional Director's report and take appropriate action in termination of the proceedings. If a hearing is ordered by the Regional Director or the Board on the challenged ballots or objections, all parties are heard and a report containing findings of fact and recommendations as to the disposition of the challenges or objections, or both, and resolving issues of credibility is issued by the hearing officer and served on the parties, who may file exceptions thereto within 14 days with the Board in Washington,

D.C. The record made on the hearing is reviewed by the Board with the assistance of its staff counsel and a final determination made thereon. If the objections are found to have merit, the election results may be voided and a new election conducted under the supervision of the Regional Director. If the union has been selected as the representative, the Board or the Regional Director, as the case may be, issues its certification and the proceeding is terminated. If upon a decertification or employer petition the union loses the election, the Board or the Regional Director, as the case may be, certifies that the union is not the chosen representative.

(c) The full consent-election agreement followed by the Regional Director's determination of representatives is another method of informal adjustment of representation cases.

(1) Under these terms the parties agree that if they are unable to informally resolve disputes arising with respect to the appropriate unit and other issues pertaining to the resolution of the question concerning representation; the payroll period to be used as the basis of eligibility to vote in an election, the place, date, and hours of balloting, or other details of the election, those issues will be presented to, and decided with finality by the Regional Director after a hearing conducted in a manner consistent with the procedures set forth in Sec. 101.20.

(2) Upon the close of the hearing, the entire record in the case is forwarded to the Regional Director. The hearing officer also transmits an analysis of the issues and the evidence, but makes no recommendations as to resolution of the issues. All parties may file briefs with the Regional Director within 7 days after the close of the hearing. The parties may also request to be heard orally. After review of the entire case, the Regional Director issues a final decision, either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner already described in this section.

(3) All matters arising after the election, including determinative challenged ballots and objections to the conduct of the election shall be processed in a manner consistent with paragraphs (a)(4), (5), and (6) of this section.

**Sec. 101.20** *Formal hearing.*—(a) If no informal adjustment of the question concerning representation has been effected and it appears to the Regional Director that formal action is necessary, the Regional Director will institute formal proceedings by issuance of a notice of hearing on the issues, which is followed by a decision and direction of election or dismissal of the case. In certain types of cases, involving novel or complex issues, the Regional Director may submit the case for advice to the Board before issuing notice of hearing.

(b) The notice of hearing, together with a copy of the petition, is served on the unions and employer filing or named in the petition and on other known persons or labor organizations claiming to have been designated by employees involved in the proceeding.

(c) The hearing, usually open to the public, is held before a hearing officer who normally is an attorney or field examiner attached to the Regional Office but may be another qualified Agency official. The hearing, which is nonadversary in character, is part of the investigation in which the primary interest of the Board’s agents is to insure that the record contains as full a statement of the pertinent facts as may be necessary for determination of the case. The parties are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions. In

most cases a substantial number of the relevant facts are undisputed and stipulated. The parties are permitted to argue orally on the record before the hearing officer.

**Sec. 101.21** *Procedure after hearing.*—(a) Pursuant to section 3(b) of the Act, the Board has delegated to its Regional Directors its powers under section 9 of the Act to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof. These powers include the issuance of such decisions, orders, rulings, directions, and certifications as are necessary to process any representation or deauthorization petition. Thus, by way of illustration and not of limitation, the Regional Director may dispose of petitions by administrative dismissal or by decision after formal hearing; pass upon rulings made at hearings and requests for extensions of time for filing of briefs; rule on objections to elections and challenged ballots in connection with elections directed by the Regional Director or the Board, after administrative investigation or formal hearing; rule on motions to amend or rescind any certification issued after the effective date of the delegation; and entertain motions for oral argument. The Regional Director may at any time transfer the case to the Board for decision, but until such action is taken, it will be presumed that the Regional Director will decide the case. In the event the Regional Director decides the issues in a case, the decision is final subject to the review procedure set forth in the Board's Rules and Regulations.

(b) Upon the close of the hearing, the entire record in the case is forwarded to the Regional Director or, upon issuance by the Regional Director of an order transferring the case, to the Board in Washington, D.C. The hearing officer also transmits an analysis of the issues and the evidence, but makes no recommendations in regard to resolution of the issues. All parties may file briefs with the Regional Director or, if the case is transferred to the Board at the close of the hearing, with the Board, within 7 days after the close of the hearing. If the case is transferred to the Board after the close of the hearing, briefs may be filed with the Board within the time prescribed by the Regional Director. The parties may also request to be heard orally. Because of the nature of the proceedings, however, permission to argue orally is rarely granted. After review of the entire case, the Regional Director or the Board issues a decision, either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner already described in section 101.19.

(c) With respect to objections to the conduct of the election and challenged ballots, the Regional Director has discretion (1) to issue a report on such objections and/or challenged ballots and transmit the issues to the Board for resolution, as in cases involving stipulated elections to be followed by Board certifications, or (2) to decide the issues on the basis of the administrative investigation or after a hearing, with the right to transfer the case to the Board for decision at any time prior to disposition of the issues on the merits. In the event the Regional Director adopts the first procedure, the parties have the same rights, and the same procedure is followed, as has already been described in connection with the postelection procedures in cases involving stipulated elections to be followed by Board certifications. In the event the Regional Director adopts the second procedure, the parties have the same rights, and the same procedure is followed, as has already been described in connection with hearings before elections.

(d) The parties have the right to request review of any final decision of the Regional Director, within the times set forth in the Board's Rules and Regulations, on one or more of the grounds specified therein. Any such request for review must be a self-contained document permitting the Board to rule on the basis of its contents without the necessity of recourse to the record, and must meet the other requirements of the Board's Rules and Regulations as to its contents. The Regional Director's action is not stayed by the filing of such a request or the granting of review, unless otherwise ordered by the Board. Thus, the Regional Director may proceed immediately to make any necessary arrangements for an election, including the issuance of a notice of election. However, unless a waiver is filed, the Director will normally not schedule an election until a date between the 25th and 30th day after the date of the decision, to permit the Board to rule on any request for review which may be filed. As to administrative dismissals prior to the close of hearing, see section 101.18(c).

(e) If the election involves two or more labor organizations and if the election results are inconclusive because no choice on the ballot received the majority of valid votes cast, a runoff election is held as provided in the Board's Rules and Regulations.

## Subpart D—Unfair Labor Practice and Representation Cases Under Sections 8(b)(7) and 9(c) of the Act

**Sec. 101.22** *Initiation and investigation of a case under section 8(b)(7).*—(a) The investigation of an alleged violation of section 8(b)(7) of the Act is initiated by the filing of a charge. The manner of filing such charge and the contents thereof are the same as described in section 101.2. In some cases, at the time of the investigation of the charge, there may be pending a representation petition involving the employees of the employer named in the charge. In those cases, the results of the investigation of the charge will determine the course of the petition.

(b) The investigation of the charge is conducted in accordance with the provisions of section 101.4, insofar as they are applicable. If the investigation reveals that there is merit in the charge, a complaint is issued as described in section 101.8, and an application is made for an injunction under section 10(l) of the Act, as described in section 101.37. If the investigation reveals that there is no merit in the charge, the Regional Director, absent a withdrawal of the charge, dismisses it, subject to appeal to the General Counsel. However, if the investigation reveals that issuance of a complaint may be warranted but for the pendency of a representation petition involving the employees of the employer named in the charge, action on the charge is suspended pending the investigation of the petition as provided in section 101.23.

**Sec. 101.23** *Initiation and investigation of a petition in connection with a case under section 8(b)(7).*—(a) A representation petition[1] involving the employees of the employer named in the charge is handled under an expedited procedure when the investigation of the charge has revealed that: (1) the employer's operations affect commerce within the meaning of the Act; (2) picketing of the employer is being conducted for an object proscribed by section 8(b)(7) of the Act; (3) subparagraph (C) of that section of the Act is applicable to the picketing; and (4) the petition has been filed within a reasonable period of time not to exceed 30 days from the commencement of the picketing. In these circumstances, the member of the Regional Director's staff to whom the matter has been assigned investigates the petition to ascertain further: the unit appropriate for collective bargaining; and whether an election in that unit would effectuate the policies of the Act.

(b) If, based on such investigation, the Regional Director determines that an election is warranted, the Director may, without a prior hearing, direct that an election be held in an appropriate unit of employees. Any party aggrieved may file a request with the Board for special permission to appeal that action to the Board, but such review, if granted, will not,

[1] The manner of filing of such petition and the contents thereof are the same as described in sec. 101.17, except that the petitioner is not required to allege that a claim was made on the employer for recognition or that the union represents a substantial number of employees.

unless otherwise ordered by the Board, stay the proceeding. If it is determined that an election is not warranted, the Director dismisses the petition or makes other disposition of the matter. Should the Regional Director conclude that an election is warranted, the Director fixes the basis of eligibility of voters and the place, date, and hours of balloting. The mechanics of arranging the balloting, the other procedures for the conduct of the election, and the postelection proceedings are the same, insofar as appropriate, as those described in section 101.19, except that the Regional Director's rulings on any objections to the conduct of the election or challenged ballots are final and binding, unless the Board, on an application by one of the parties, grants such party special permission to appeal from the Regional Director's rulings. The party requesting such review by the Board must do so promptly, in writing, and state briefly the grounds relied on. Such party must also immediately serve a copy on the other parties, including the Regional Director. Neither the request for review by the Board nor the Board's grant of such review operates as a stay of any action taken by the Regional Director, unless specifically so ordered by the Board. If the Board grants permission to appeal, and it appears to the Board that substantial and material factual issues have been presented with respect to the objections to the conduct of the election or challenged ballots, it may order that a hearing be held on such issues or take other appropriate action.

(c) If the Regional Director believes, after preliminary investigation of the petition, that there are substantial issues which require determination before an election may be held, the Director may order a hearing on the issues. This hearing is followed by Regional Director or Board decision and direction of election, or other disposition. The procedures to be used in connection with such hearing and posthearing proceedings are the same, insofar as they are applicable, as those described in sections 101.20 and 101.21, except that the parties may not file briefs with the Regional Director or the Board unless special permission therefor is granted, but may state their respective legal positions fully on the record at the hearing, and except that any request for review must be filed promptly after issuance of the Regional Director's decision.

(d) Should the parties so desire, they may, with the approval of the Regional Director, resolve the issues as to the unit, the conduct of the balloting, and related matters pursuant to informal consent procedures, described in section 101.19(a).

(e) If a petition has been filed which does not meet the requirements for processing under the expedited procedures, the Regional Director may process it under the procedures set forth in subpart C.

**Sec. 101.24** *Final disposition of a charge which has been held pending investigation of the petition.*—(a) Upon the determination that the issuance of a direction of election is warranted on the petition, the Regional Director, absent withdrawal of the charge, dismisses it subject to an appeal to the General Counsel in Washington, D.C.

(b) If, however, the petition is dismissed or withdrawn, the investigation of the charge is resumed, and the appropriate steps described in section 101.22 are taken with respect to it.

**Sec. 101.25** *Appeal from the dismissal of a petition, or from the refusal to process it under the expedited procedure.*—If it is determined after the investigation of the representation petition that further proceedings based thereon are not warranted, the Regional Director, absent withdrawal of the petition, dismisses it, stating the grounds therefor. If it is determined that the petition does not meet the requirements for processing under the expedited procedure, the Regional Director advises the petitioner of the determination to process the petition under the procedures described in subpart C. In either event, the Regional Director informs all the parties of such action, and such action is final, although the Board may grant an aggrieved party permission to appeal from the Regional Director's action. Such party must request such review promptly, in writing, and state briefly the grounds relied on. Such party must also immediately serve a copy on the other parties, including the Regional Director. Neither the request for review by the Board, nor the Board's grant of such review, operates as a stay of the action taken by the Regional Director, unless specifically so ordered by the Board.

## Subpart E—Referendum Cases Under Section 9(e)(1) and (2) of the Act

**Sec. 101.26** *Initiation of rescission of authority cases.*—The investigation of the question as to whether the authority of a labor organization to make an agreement requiring membership in a labor organization as a condition of employment is to be rescinded is initiated by the filing of a petition by an employee or group of employees on behalf of 30 percent or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization requiring membership in such labor organization. The petition must be in writing and signed, and either must be notarized or must contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. It is filed with the Regional Director for the Region in which the alleged appropriate bargaining unit exists or, if the bargaining unit exists in two or more Regions, with the Regional Director for any of such Regions. The blank form, which is supplied by the Regional Office upon request, provides, among other things, for a description of the bargaining unit covered by the agreement, the approximate number of employees involved, and the names of any other labor organizations which claim to represent the employees. The petitioner must supply with the petition, or within 48 hours after filing, evidence of authorization from the employees.

**Sec. 101.27** *Investigation of petition; withdrawals and dismissals.*—(a) Upon receipt of the petition in the Regional Office, it is filed, docketed, and assigned to a member of the staff, usually a field examiner, for investigation. The field examiner conducts an investigation to ascertain (1) whether the employer's operations affect commerce within the meaning of the Act, (2) whether there is in effect an agreement requiring as a condition of employment membership in a labor organization, (3) whether the petitioner has been authorized by at least 30 percent of the employees to file such a petition, and (4) whether an election would effectuate the policies of the Act by providing for a free expression of choice by the employees. The evidence of designation submitted by the petitioner, usually in the form of cards signed by individual employees authorizing the filing of such a petition, is checked to determine the proportion of employees who desire rescission.

(b) The petitioner may on its own initiative request the withdrawal of the petition if the investigation discloses that an election is inappropriate, because, among other possible reasons, the petitioner's card-showing is insufficient to meet the 30-percent statutory requirement referred to in subsection (a) of this section.

(c) For the same or similar reasons the Regional Director may request the petitioner to withdraw its petition. If the petitioner, despite the Regional Director's recommendation, refuses to withdraw the petition, the Regional Director then dismisses the petition, stating

the grounds for his dismissal and informing the petitioner of the right of appeal to the Board in Washington, D.C. The petitioner may within 14 days appeal from the Regional Director's dismissal by filing such request with the Board in Washington, D.C. The request shall contain a complete statement setting forth the facts and reasons upon which the request is made. After a full review of the file with the assistance of its staff, the Board may sustain the dismissal, stating the grounds for its affirmance, or may direct the Regional Director to take further action.

**Sec. 101.28** *Consent agreements providing for election.*

Comment [N2]: Sec.101.28 revised effective 3/1/05 70 FR 3478 (2005)

(a) The Board makes available to the parties three types of informal consent procedures through which authorization issues can be resolved without resort to formal procedures. These informal agreements are commonly referred to as consent-election agreement followed by Regional Director's determination, stipulated election agreement followed by Board certification, and full consent-election agreement providing for the Regional Director's determination of both pre- and postelection matters. Forms for use in these informal procedures are available in the Regional Offices.

(b) The procedures to be used in connection with a consent-election agreement providing for the Regional Director's determination, a stipulated election agreement providing for Board certification, and the full consent-election agreement providing for the Regional Director's determination of both pre- and postelection matters are the same as those already described in subpart C of this part in connection with similar agreements in representation cases under section 9(c) of the Act, except that no provision is made for runoff elections.

**Sec. 101.29** *Procedure respecting election conducted without hearing.*—If the Regional Director determines that the case is an appropriate one for election without formal hearing, an election is conducted as quickly as possible among the employees and upon the conclusion of the election the Regional Director makes available to the parties a tally of ballots. The parties, however, have an opportunity to make appropriate challenges and objections to the conduct of the election and they have the same rights, and the same procedure is followed, with respect to objections to the conduct of the election and challenged ballots, as has already been described in subpart C of the Statements of Procedure in connection with the postelection procedures in representation cases under section 9(c) of the Act, except that no provision is made for a runoff election: If no such objections are filed within 7 days and if the challenged ballots are insufficient in number to affect the results of the election, the Regional Director issues to the parties a certification of the results of the election, with the same force and effect as if issued by the Board.

**Sec. 101.30** *Formal hearing and procedure respecting election conducted after hearing.*—(a) The procedures are the same as those described in subpart C of the Statements of Procedure respecting representation cases arising under section 9(c) of the Act. If the preliminary investigation indicates that there are substantial issues which require determination before an appropriate election may be held, the Regional Director

will institute formal proceedings by issuance of a notice of hearing on the issues which, after hearing, is followed by Regional Director or Board decision and direction of election or dismissal. The notice of hearing together with a copy of the petition is served on the petitioner, the employer, and any other known persons or labor organizations claiming to have been designated by employees involved in the proceeding.

(b) The hearing, usually open to the public, is held before a hearing officer who normally is an attorney or field examiner attached to the Regional Office but may be another qualified Agency official. The hearing, which is nonadversary in character, is part of the investigation in which the primary interest of the Board's agents is to insure that the record contains as full a statement of the pertinent facts as may be necessary for determination of the case. The parties are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions. In most cases a substantial number of the relevant facts are undisputed and stipulated. The parties are permitted to argue orally on the record before the hearing officer.

(c) Upon the close of the hearing, the entire record in the case is then forwarded to the Regional Director or the Board, together with an informal analysis by the hearing officer of the issues and the evidence but without recommendations. All parties may file briefs with the Regional Director or the Board within 7 days after the close of the hearing. If the case is transferred to the Board after the close of the hearing, briefs may be filed with the Board within the time prescribed by the Regional Director. The parties may also request to be heard orally. Because of the nature of the proceeding, however, permission to argue orally is rarely granted. After review of the entire case, the Board issues a decision either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner already described in section 101.19.

(d) The parties have the same rights, and the same procedure is followed, with respect to objections to the conduct of the election and challenged ballots as has already been described in connection with the postelection procedures in representation cases under section 9(c) of the Act.

## Subpart F—Jurisdictional Dispute Cases Under Section 10(k) of the Act

**Sec. 101.31** *Initiation of proceedings to hear and determine jurisdictional disputes under section 10(k)*. The investigation of a jurisdictional dispute under section 10(k) is initiated by the filing of a charge, as described in section 101.2, by any person alleging a violation of paragraph (4)(D) of section 8(b). As soon as possible after a charge has been filed, the Regional Director serves on the parties a copy of the charge together with a notice of the filing of such charge.

**Sec. 101.32** *Investigation of charges; withdrawal of charges; dismissal of charges and appeals to Board*.—These matters are handled as described in section 101.4 to 101.7, inclusive. Cases involving violation of paragraph (4)(D) of section 8(b) in which it is deemed appropriate to seek injunctive relief of a district court pursuant to section 10(l) of the Act are given priority over all other cases in the office except other cases under section 10(l) of the Act and cases of like character.

**Sec. 101.33** *Initiation of formal action; settlement*. If, after investigation, it appears that the Board should determine the dispute under section 10(k) of the Act, the Regional Director issues a notice of hearing which includes a simple statement of issues involved in the jurisdictional dispute and which is served on all parties to the dispute out of which the unfair labor practice is alleged to have arisen. The hearing is scheduled for not less than 10 days after service of the notice of the filing of the charge, except that in cases involving the national defense, agreement will be sought for scheduling of hearing on less notice. If the parties present to the Regional Director satisfactory evidence that they have adjusted the dispute, the Regional Director withdraws the notice of hearing and either permits the withdrawal of the charge or dismisses the charge. If the parties submit to the Regional Director satisfactory evidence that they have agreed upon methods for the voluntary adjustment of the dispute, the Regional Director shall defer action upon the charge and shall withdraw the notice of hearing if issued. The parties may agree on an arbitrator, a proceeding under section 9(c) of the Act, or any other satisfactory method to resolve the dispute. If the agreed-upon method for voluntary adjustment results in a determination that employees represented by a charged union are entitled to perform the work in dispute, the Regional Director dismisses the charge against that union irrespective of whether the employer complies with that determination.

**Sec. 101.34** *Hearing*.—If the parties have not adjusted the dispute or agreed upon methods of voluntary adjustment, a hearing, usually open to the public, is held before a hearing officer. The hearing is nonadversary in character, and the primary interest of the hearing officer is to insure that the record contains as full a statement of the pertinent facts as may be necessary for a determination of the issues by the Board. All parties are afforded full opportunity to present their respective positions and to produce evidence in

support of their contentions. The parties are permitted to argue orally on the record before the hearing officer. At the close of the hearing, the case is transmitted to the Board for decision. The hearing officer prepares an analysis of the issues and the evidence, but makes no recommendations in regard to resolution of the dispute.

**Sec. 101.35** *Procedure before the Board.*—The parties have 7 days after the close of the hearing, subject to any extension that may have been granted, to file briefs with the Board and to request oral argument which the Board may or may not grant. However, in cases involving the national defense and so designated in the notice of hearing, the parties may not file briefs but after the close of the evidence may argue orally upon the record their respective contentions and positions, except that for good cause shown in an application expeditiously made to the Board in Washington, D.C., after the close of the hearing, the Board may grant leave to file briefs in such time as it shall specify. The Board then considers the evidence taken at the hearing and the hearing officer's analysis together with any briefs that may be filed and the oral argument, if any, and issues its determination or makes other disposition of the matter.

**Sec. 101.36** *Compliance with determination; further proceedings.*—After the issuance of determination by the Board, the Regional Director in the Region in which the proceeding arose communicates with the parties for the purpose of ascertaining their intentions in regard to compliance. Conferences may be held for the purpose of working out details. If satisfied that the parties are complying with the determination, the Regional Director dismisses the charge. If not satisfied that the parties are complying, the Regional Director issues a complaint and notice of hearing, charging violation of section 8(b)(4)(D) of the Act, and the proceeding follows the procedure outlined in sections 101.8 to 101.15, inclusive. However, if the Board determines that employees represented by a charged union are entitled to perform the work in dispute, the Regional Director dismisses the charge against that union irrespective of whether the employer complies with the determination.

## Subpart G—Procedure Under Section 10(j) and (l) of the Act

**Sec. 101.37** *Application for temporary relief or restraining orders.*—Whenever it is deemed advisable to seek temporary injunctive relief under section 10(j) or whenever it is determined that a complaint should issue alleging violation of section 8(b)(4)(A), (B), or (C), or section 8(e), or section 8(b)(7), or whenever it is appropriate to seek temporary injunctive relief for a violation of section 8(b)(4)(D), the officer or regional attorney to whom the matter has been referred will make application for appropriate temporary relief or restraining order in the district court of the United States within which the unfair labor practice is alleged to have occurred or within which the party sought to be enjoined resides or transacts business, except that such officer or regional attorney will not apply for injunctive relief under section 10(l) with respect to an alleged violation of section 8(b)(7) if a charge under section 8(a)(2) has been filed and, after preliminary investigation, there is reasonable cause to believe that such charge is true and a complaint should issue.

**Sec. 101.38** *Change of circumstances.*—Whenever a temporary injunction has been obtained pursuant to section 10(j) and thereafter the administrative law judge hearing the complaint, upon which the determination to seek such injunction was predicated, recommends dismissal of such complaint, in whole or in part, the officer or regional attorney handling the case for the Board suggests to the district court which issued the temporary injunction the possible change in circumstances arising out of the findings and recommendations of the administrative law judge.

## Subpart H—Advisory Opinions and Declaratory Orders Regarding Board Jurisdiction

**Sec. 101.39** *Initiation of advisory opinion case.*— (a) The question of whether the Board will assert jurisdiction over a labor dispute which is the subject of a proceeding in an agency or court of a State or territory is initiated by the filing of a petition with the Board. This petition may be filed only if:

(1) A proceeding is currently pending before such agency or court;

(2) The petitioner is the agency or court itself; and

(3) The relevant facts are undisputed or the agency or court has already made the relevant factual findings.

(b) The petition must be in writing and signed. It is filed with the Executive Secretary of the Board in Washington, DC. No particular form is required, but the petition must be properly captioned and must contain the allegations required by § 102.99 of the Board's Rules and Regulations. None of the information sought relates to the merits of the dispute. The petition may be withdrawn at any time before the Board issues its advisory opinion determining whether it would or would not assert jurisdiction on the basis of the facts before it.

**Sec. 101.40** *Proceedings following the filing of the petition.*—(a) A copy of the petition is served on all other parties and the appropriate Regional Director by the petitioner.

(b) Interested persons may request intervention by a written motion to the Board. Such intervention may be granted at the discretion of the Board.

(c) Parties other than the petitioner may reply to the petitioner in writing, admitting or denying any or all of the matters asserted therein.

(d) No briefs shall be filed except upon special permission of the Board.

(e) After review of the entire record, the Board issues an advisory opinion as to whether the facts presented would or would not cause it to assert jurisdiction over the case if the case had been originally filed before it. The Board will limit its advisory opinion to the jurisdictional issue confronting it, and will not presume to render an opinion on the merits of the case or on the question of whether the subject matter of the dispute is governed by the Labor Management Relations Act.

**Sec. 101.41** *Informal procedures for obtaining opinion on jurisdictional questions.*— Although a formal petition is necessary to obtain an advisory opinion from the Board, other avenues are available to persons seeking informal and, in most cases, speedy opinions on jurisdictional issues. In discussion of jurisdictional questions informally with Regional Office personnel, information and advice concerning the Board’s jurisdictional standards may be obtained. Such practices are not intended to be discouraged by the rules

providing for formal advisory opinions by the Board, although the opinions expressed by such personnel are not to be regarded as binding upon the Board or the General Counsel.

**Sec. 101.42** *Procedures for obtaining declaratory orders of the Board*.—(a) When both an unfair labor practice charge and a representation petition are pending concurrently in a Regional Office, appeals from a Regional Director's dismissals thereof do not follow the same course. Appeal from the dismissal of a charge must be made to the General Counsel, while appeal from dismissal of a representation petition may be made to the Board. To obtain uniformity in disposing of such cases on jurisdictional grounds at the same stage of each proceeding, the General Counsel may file a petition for declaratory order of the Board. Such order is intended only to remove uncertainty with respect to the question of whether the Board would assert jurisdiction over the labor dispute.

**Sec. 101.43** *Proceedings following the filing of the petition*.—(a) A copy of the petition is served on all other parties.

(b) Interested persons may request intervention by a written motion to the Board. Such intervention may be granted at the discretion of the Board.

(c) All other parties may reply to the petition in writing.

(d) Briefs may be filed.

(e) After review of the record, the Board issues a declaratory order as to whether it will assert jurisdiction over the cases, but it will not render a decision on the merits at this stage of the cases.

(f) The declaratory Board order will be binding on the parties in both cases.

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# NATIONAL LABOR RELATIONS BOARD

## RULES AND REGULATIONS—PART 102

### Subpart A—Definitions

**Section 102.1** *Terms defined in section 2 of the Act*.—The terms "person," "employer," "employee," "representative," "labor organization," "commerce," "affecting commerce," and "unfair labor practice" as used herein shall have the meanings set forth in section 2 of the National Labor Relations Act, as amended by title I of the Labor Management Relations Act, 1947.

**Sec. 102.2** *Act; Board; Board agent*.—The term "act" as used herein shall mean the National Labor Relations Act, as amended. The term "Board" shall mean the National Labor Relations Board and shall include any group of three or more Members designated pursuant to section 3(b) of the Act. The term "Board agent" shall mean any Member, agent, or agency of the Board, including its General Counsel.

**Sec. 102.3** *General Counsel*.—The term "General Counsel" as used herein shall mean the General Counsel under section 3(d) of the Act.

**Sec. 102.4** *Region; subregion*.—The term "Region" as used herein shall mean that part of the United States or any territory thereof fixed by the Board as a particular Region. The term "subregion" shall mean that area within a Region fixed by the Board as a particular subregion.

**Sec. 102.5** *Regional Director; officer-in-charge; regional attorney*.—The term "Regional Director" as used herein shall mean the agent designated by the Board as the Regional Director for a particular Region, and shall also include any agent designated by the Board as officer-in-charge of a subregional office, but the officer-in-charge shall have only such powers, duties, and functions appertaining to Regional Directors as shall have been duly delegated to such officer-in-charge. The term "regional attorney" as used herein shall mean the attorney designated as regional attorney for a particular Region.

**Sec. 102.6** *Administrative law judge; hearing officer*.—The term "administrative law judge" as used herein shall mean the agent of the Board conducting the hearing in an unfair labor practice or Telegraph Merger Act proceeding. The term "hearing officer" as used herein shall mean the agent of the Board conducting the hearing in a proceeding under section 9 or in a dispute proceeding under section 10(k) of the Act.

**Sec. 102.7** *State*.—The term "State" as used herein shall include the District of Columbia and all States, territories, and possessions of the United States.

**Sec. 102.8** *Party*.—The term "party" as used herein shall mean the Regional Director in whose Region the proceeding is pending and any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Board proceeding, including, without limitation, any person filing a charge or petition under that act, any person named as respondent, as employer, or as party to a contract in any proceeding under the Act, and any labor organization alleged to be dominated, assisted, or supported in violation of section 8(a)(1) or 8(a)(2) of the Act; but nothing herein shall

be construed to prevent the Board or its designated agent from limiting any party to participate in the proceedings to the extent of his interest only.

# Subpart B—Procedure Under Section 10(a) to (i) of the Act for the Prevention of Unfair Labor Practices

## CHARGE

**Sec. 102.9** *Who may file; withdrawal and dismissal*.—A charge[1] that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person. Any such charge may be withdrawn, prior to the hearing, only with the consent of the Regional Director with whom such charge was filed; at the hearing and until the case has been transferred to the Board pursuant to section 102.45, upon motion, with the consent of the administrative law judge designated to conduct the hearing; and after the case has been transferred to the Board pursuant to section 102.45, upon motion, with the consent of the Board. Upon withdrawal of any charge, any complaint based thereon shall be dismissed by the Regional Director issuing the complaint, the administrative law judge designated to conduct the hearing, or the Board.

**Sec. 102.10** *Where to file*.—Except as provided in section 102.33 such charge shall be filed with the Regional Director for the Region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occuring in two or more Regions may be filed with the Regional Director for any such Regions.

**Sec. 102.11** *Forms; jurat; or declaration*. — Such charges shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury that its contents are true and correct (see 28 U.S.C. Sec. 1746). One original of such charge shall be filed. A party filing a charge by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.

**Sec. 102.12** *Contents*.—Such charge shall contain the following:

(a) The full name and address of the person making the charge.

(b) If the charge is filed by a labor organization, the full name and address of any national or international labor organization of which it is an affiliate or constituent unit.

(c) The full name and address of the person against whom the charge is made (hereinafter referred to as the respondent).

(d) A clear and concise statement of the facts constituting the alleged unfair labor practices affecting commerce.

**Sec. 102.13** *Note*.—This section, which in Series 7 of the Rules and Regulations related to the filing requirements of section 9(f), (g), and (h) of the Labor Management Relations Act, was eliminated by amendments effective September 14, 1959. To avoid the renumbering of sections 102.14 to 102.72 the Board has left this section number blank.

[1] Procedure under sec. 10(j) to (l) of the Act is governed by subparts F and G of the Rules and Regulations. Procedures for unfair labor practice cases and representation cases under sec. 8(b)(7) of the Act are governed by subpart D.

**Sec. 102.14** *Service of charge*.— (a) Charging party's obligation to serve; methods of service. Upon the filing of a charge, the charging party shall be responsible for the timely and proper service of a copy thereof upon the person against whom such charge is made. Service may be made personally, or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the charge, service may be made by facsimile transmission or by any other agreed-upon method.

(b) Service as courtesy by Regional Director. The Regional Director will, as a matter of courtesy, cause a copy of such charge to be served by regular mail
on the person against whom the charge is made. Such charges may, with the permission of the person receiving the charge, be served by the Regional Director by facsimile transmission. In this event the receipt printed upon the Agency's copy by the Agency's own facsimile machine, showing the phone number to which the charge was transmitted and the date and time of receipt shall be proof of service of the same. However, whether serving by facsimile, by regular mail, or otherwise, the Regional Director shall not be deemed to assume responsibility for such service.

(c) Date of service of charge. In the case of service of a charge by mail or private delivery service, the date of service is the date of deposit with the post office or other carrier. In the case of service by other methods, including hand delivery or facsimile transmission, the date of service is the date of receipt.

## COMPLAINT

**Sec. 102.15** *When and by whom issued; contents; service*.—After a charge has been filed, if it appears to the Regional Director that formal proceedings in respect thereto should be instituted, he shall issue and cause to be served on all the other parties a formal complaint in the name of the Board stating the unfair labor practices and containing a notice of hearing before an administrative law judge at a place therein fixed and at a time not less than 14 days after the service of the complaint. The complaint shall contain (a) a clear and concise statement of the facts upon which assertion of jurisdiction by the Board is predicated, and (b) a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed.

**Sec. 102.16** *Hearing; change of date or place*.—(a) Upon his own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may extend the date of such hearing or may change the place at which it is to be held, except that the authority of the Regional Director to extend the date of a hearing shall be limited to the following circumstances:

(1) Where all parties agree or no party objects to extension of the date of hearing;

(2) Where a new charge or charges have been filed which, if meritorious, might be appropriate for consolidation with the pending complaint;

(3) Where negotiations which could lead to settlement of all or a portion of the complaint are in progress;

(4) Where issues related to the complaint are pending before the General Counsel's Division of Advice or Office of Appeals; or

(5) Where more than 21 days remain before the scheduled date of hearing.

(b) Where in circumstances other than those set forth in subsection (a) of this section, motions to reschedule the hearing should be filed with the Division of Judges in accordance with section 102.24(a). When a motion to reschedule has been granted, the Regional Director issuing the complaint shall retain the authority to order a new date for hearing and retain the responsibility to make the necessary arrangements for conducting such hearing, including its location and the transcription of the proceedings.

**Sec. 102.17** *Amendment*.—Any such complaint may be amended upon such terms as may be deemed just, prior to the hearing, by the Regional Director issuing the complaint; at the hearing and until the case has been transferred to the Board pursuant to section 102.45, upon motion, by the administrative law judge designated to conduct the hearing; and after the case has been transferred to the Board pursuant to section 102.45, at any time prior to the issuance of an order based thereon, upon motion, by the Board.

**Sec. 102.18** *Withdrawal*.—Any such complaint may be withdrawn before the hearing by the Regional Director on his own motion.

**Sec. 102.19** *Appeal to the General Counsel from refusal to issue or reissue*.— (a) If, after the charge has been filed, the Regional Director declines to issue a complaint or, having withdrawn a complaint pursuant to section 102.18, refuses to reissue it, he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making the charge may obtain a review of such action by filing the "Appeal Form" with the General Counsel in

Washington, DC, and filing a copy of the "Appeal Form" with the Regional Director, within 14 days from the service of the notice of such refusal to issue or reissue by the Regional Director, except as a shorter period is provided by section 102.81. If an appeal is taken the person doing so should notify all other parties of his action, but any failure to give such notice shall not affect the validity of the appeal. The person may also file a statement setting forth the facts and reasons upon which the appeal is based. If such a statement is timely filed, the separate "Appeal Form" need not be served. A request for extension of time to file an appeal shall be in writing and be received by the office of General Counsel, and a copy of such request filed with the Regional Director, prior to the expiration of the filing period. Copies of the acknowledgement of the filing of an appeal and of any ruling on a request for an extension of time for filing the appeal shall be served on all parties. Consideration of an appeal untimely filed is within the discretion of the General Counsel upon good cause shown.

(b) Oral presentation in Washington, D.C., of the appeal issues may be permitted a party on written request made within 4 days after service of acknowledgement of the filing of an appeal. In the event such request is granted, the other parties shall be notified and afforded, without additional request, a like opportunity at another appropriate time.

(c) The General Counsel may sustain the Regional Director’s refusal to issue or reissue a complaint, stating the grounds of his affirmance, or may direct the Regional Director to take further action; the General Counsel’s decision shall be served on all the parties. A motion for reconsideration of the decision must be filed within 14 days of service of the decision, except as hereinafter provided, and shall state with particularity the error requiring reconsideration. A motion for reconsideration based upon newly discovered evidence which has become available only since the decision on appeal shall be filed promptly on discovery of such evidence. Motions for reconsideration of a decision previously reconsidered will not be entertained, except in unusual situations where the moving party can establish that new evidence has been discovered which could not have been discovered by diligent inquiry prior to the first reconsideration.

## ANSWER

**Sec. 102.20** *Answer to complaint; time for filing; contents; allegations not denied deemed admitted*.—The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

**Sec. 102.21** *Where to file; service upon the parties; form*.— An original and four copies of the answer shall be filed with the Regional Director issuing the complaint. Immediately upon the filing of his answer, respondent shall serve a copy thereof on the other parties. An answer of a party represented by counsel or non-attorney representative shall be signed by at least one such attorney or non-attorney representative of record in his/her individual name, whose address shall be stated. A party who is not represented by an attorney or non-attorney representative shall sign his/her answer and state his/her address. Except when otherwise specifically provided by rule or statute, an answer need not be verified or accompanied by affidavit. The signature of the attorney or non-attorney party representative constitutes a certificate by him/her that he/she has read the answer; that to the best of his/her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the action may proceed as though the answer had not been served. For a willful violation of this section an attorney or non-attorney party representative may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

**Sec. 102.22** *Extension of time for filing*.—Upon his own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may by written order extend the time within which the answer shall be filed.

**Sec. 102.23** *Amendment*.—The respondent may amend his answer at any time prior to the hearing. During the hearing or subsequent thereto, he may amend his answer in any case where the complaint has been amended, within such period as may be fixed by the administrative law judge or the Board. Whether or not the complaint has been amended, the answer may, in the discretion of the administrative law judge or the Board, upon motion, be amended upon such terms and within such periods as may be fixed by the administrative law judge or the Board.

# MOTIONS

**Sec. 102.24** *Motions*; *where to file; contents; service on other parties; promptness in filing and response; default judgment procedures; summary judgment procedures*.

(a) All motions under §§ 102.22 and 102.29 made prior to the hearing shall be filed in writing with the Regional Director issuing the complaint. All motions for default judgment, summary judgment, or dismissal made prior to the hearing shall be filed in writing with the Board pursuant to the provisions of § 102.50. All other motions made prior to the hearing, including motions to reschedule the hearing under circumstances other than those set forth in § 102.16(a), shall be filed in writing with the chief administrative law judge in Washington, DC, with the associate chief judge in San Francisco, California, with the associate chief judge in New York, New York, or with the associate chief judge in Atlanta, Georgia, as the case may be. All motions made at the hearing shall be made in writing to the administrative law judge or stated orally on the record. All motions filed subsequent to the hearing, but before the transfer of the case to the Board pursuant to § 102.45, shall be filed with the administrative law judge, care of the chief administrative law judge in Washington, DC, the deputy chief judge in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be. Motions shall briefly state the order or relief applied for and the grounds therefor. All motions filed with a Regional Director or an administrative law judge as set forth in this paragraph shall be filed therewith by transmitting three copies thereof together with an affidavit of service on the parties. All motions filed with the Board, including motions for default judgment, summary judgment, or dismissal, shall be filed with the Executive Secretary of the Board in Washington, DC, by transmitting eight copies thereof together with an affidavit of service on the parties. Unless otherwise provided in 29 CFR part 102, motions and responses thereto shall be filed promptly and within such time as not to delay the proceeding.

(b) All motions for summary judgment or dismissal shall be filed with the Board no later than 28 days prior to the scheduled hearing. Where no hearing is scheduled, or where the hearing is scheduled less than 28 days after the date for filing an answer to the complaint or compliance specification, whichever is applicable, the motion shall be filed promptly. Upon receipt of a motion for default judgment, summary judgment, or dismissal, the Board may deny the motion or issue a notice to show cause why the motion should not be granted. If a notice to show cause is issued, the hearing, if scheduled, will normally be postponed indefinitely. If a party desires to file an opposition to the motion prior to issuance of the notice to show cause in order to prevent postponement of the hearing, it may do so; Provided however, That any such opposition shall be filed no later than 21 days prior to the hearing. If a notice to show cause is issued, an opposing party may file a response thereto notwithstanding any opposition it may have filed prior to issuance of the notice. The time for filing the response shall be fixed in the notice to show cause. It is not required that either the opposition or the response be supported by affidavits or other documentary evidence showing that there is a genuine issue for hearing. The Board in its discretion may deny the motion where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist. If the opposing party files no opposition or response, the Board may treat the motion as conceded, and default judgment, summary judgment, or dismissal, if appropriate, shall be entered.

**Sec. 102.25** *Ruling on motions*.—An administrative law judge designated by the chief administrative law judge in Washington, D.C., by the associate chief judge in San Francisco, California, by the associate chief judge in New York, New York, or by the associate chief judge in Atlanta, Georgia, as the case may be, shall rule on all prehearing motions (except as provided in sections 102.16, 102.22, 102.29, and 102.50), and all such rulings and orders shall be issued in writing and a copy served on each of the parties. The administrative law judge designated to conduct the hearing shall rule on all motions after opening of the hearing (except as provided in section 102.47), and any orders in connection therewith, if announced at the hearing, shall be stated orally on the record; in all other cases the administrative law judge shall issue such rulings and orders in writing and shall cause a copy of the same to be served on each of the parties, or shall make his ruling in his decision. Whenever the administrative law judge has reserved his ruling on any motion, and the proceeding is thereafter transferred to and continued before the Board pursuant to section 102.50, the Board shall rule on such motion.

**Sec. 102.26** *Motions; rulings and orders part of the record; rulings not to be appealed directly to the Board without special permission; requests for special permission to appeal*.—All motions, rulings, and orders shall become a part of the record, except that rulings on motions to revoke subpoenas shall become a part of the record only upon the request of the party aggrieved thereby as provided in section 102.31. Unless expressly authorized by the Rules and Regulations, rulings by the Regional Director or by the administrative law judge on motions and/or by the administrative law judge on objections, and orders in connection therewith, shall not be appealed directly to the Board except by special permission of the Board, but shall be considered by the Board in reviewing the record if exception to the ruling or order is included in the statement of exceptions filed with the Board pursuant to section 102.46. Requests to the Board for special permission to appeal from a ruling of the Regional Director or of the administrative law judge, together with the appeal from such ruling, shall be filed promptly, in writing, and shall briefly state (1) the reasons special permission should be granted and (2) the grounds relied on for the appeal. The moving party shall immediately serve a copy of the request for special permission and of the appeal on the other parties and, if the request involves a ruling by an administrative law judge, on the administrative law judge. Any statement in opposition or other response to the request and/or to the appeal shall be filed promptly, in writing, and shall be served immediately on the other parties and on the administrative law judge, if any. If the Board grants the request for special permission to appeal, it may proceed forthwith to rule on the appeal.

**Sec. 102.27** *Review of granting of motion to dismiss entire complaint; reopening of the record*.—If any motion in the nature of a motion to dismiss the complaint in its entirety is granted by the administrative law judge before filing his decision, any party may obtain a review of such action by filing a request therefor with the Board in Washington, D.C., stating the grounds for review, and immediately on such filing shall serve a copy thereof on the Regional Director and on the other parties. Unless such request for review is filed within 28 days from the date of the order of dismissal, the case shall be closed.

**Sec. 102.28** *Filing of answer or other participation in proceedings not a waiver of rights.*—The right to make motions or to make objections to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the administrative law judge.

INTERVENTION

**Sec. 102.29** *Intervention; requisite; rulings on motions to intervene.*—Any person desiring to intervene in any proceeding shall file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. Prior to the hearing, such a motion shall be filed with the Regional Director issuing the complaint; during the hearing such motion shall be made to the administrative law judge. An original and four copies of written motions shall be filed. Immediately upon filing such motion, the moving party shall serve a copy thereof on the other parties. The Regional Director shall rule upon all such motions filed prior to the hearing, and shall cause a copy of said rulings to be served on the other parties, or may refer the motion to the administrative law judge for ruling. The administrative law judge shall rule upon all such motions made at the hearing or referred to him by the Regional Director, in the manner set forth in section 102.25. The Regional Director or the administrative law judge, as the case may be, may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper.

WITNESSES, DEPOSITIONS, AND SUBPOENAS

**Sec. 102.30**—*Examination of witnesses; deposition.*—Witnesses shall be examined orally under oath, except that for good cause shown after the issuance of a complaint, testimony may be taken by deposition.

(a) Applications to take depositions shall be in writing setting forth the reasons why such depositions should be taken, the name and post office address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for the purposes of this section hereinafter referred to as the officer). Such application shall be made to the Regional Director prior to the hearing, and to the administrative law judge during and subsequent to the hearing but before transfer of the case to the Board pursuant to section 102.45 or section 102.50. Such application shall be served on the Regional Director or the administrative law judge, as the case may be, and on all other parties, not less than 7 days (when the deposition is to be taken within the continental United States) and 15 days (if the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken. The Regional Director or administrative law judge, as the case may be, shall upon receipt of the application, if in his discretion good cause has been shown, make and serve on the parties an order which will specify the name of the witness whose deposition is to be taken and the time, the place, and the designation of the officer before whom the witness is to testify, who may or may not be the same officer as that specified in the application. Such order shall be served on all the other parties by the Regional Director or on all parties by the administrative law judge.

(b) Such deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, including any agent of the Board authorized to administer oaths. If the examination is held in a foreign country, it may be taken before any secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States.

(c) At the time and place specified in said order the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all the parties appearing, and his testimony shall be reduced to type-writing by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objections but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that said officer is not of counsel or attorney to any of the parties nor interested in the event of the proceeding or investigation. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver an original and two copies of said transcript, together with his certificate, in person or by registered or certified mail to the Regional Director or the administrative law judge, care of the chief administrative law judge in Washington, D.C., the associate chief judge in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be.

(d) The administrative law judge shall rule upon the admissibility of the deposition or any part thereof.

(e) All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or, with due diligence, might have been ascertained.

(f) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

**Sec. 102.31** *Issuance of subpoenas; petitions to revoke subpoenas; right to inspect or copy data*

(a) The Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof. Applications for subpoenas, if filed prior to the hearing, shall be filed with the Regional Director. Applications for subpoenas filed during the hearing shall be filed with the administrative law judge. Either the Regional Director or the administrative law judge, as the case may be, shall grant the application on behalf of the Board or any Member thereof. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) Any person served with a subpoena, whether ad testificandum or duces tecum, if he or she does not intend to comply with the subpoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received. All petitions to revoke subpoenas shall be served on the party at whose request the subpoena was issued. Such petition to revoke, if made prior to the hearing, shall be filed with the Regional Director and the Regional Director shall refer the petition to the administrative law judge or the Board for ruling. Petitions to revoke subpoenas filed during the hearing shall be filed with the administrative law judge. Notice of the filing of petitions to revoke shall be promptly given by the Regional Director or the administrative law judge, as the case may be, to the party at whose request the subpoena was issued. The administrative law judge or the Board, as the case may be, shall revoke the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The administrative law judge or the Board, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the petition to revoke. The petition to revoke, any answer filed thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(c) With the approval of the Attorney General of the United States, the Board may issue an order requiring any individual to give testimony or provide other information at any proceeding before the Board if, in the judgment of the Board, (1) the testimony or other

information from such individual may be necessary to the public interest, and (2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination. Requests for the issuance of such an order by the Board may be made by any party. Prior to hearing, and after transfer of the proceeding to the Board, such requests shall be made to the Board in Washington, D.C., and the Board shall take such action thereon as it deems appropriate. During the hearing, and thereafter while the proceeding is pending before the administrative law judge, such requests shall be made to the administrative law judge. If the administrative law judge denies the request, his ruling shall be subject to appeal to the Board in Washington, D.C., in the manner and to the extent provided in section 102.26 with respect to rulings and orders by an administrative law judge, except that requests for permission to appeal in this instance shall be filed within 24 hours of the administrative law judge's ruling. If no appeal is sought within such time, or the appeal is denied, the ruling of the administrative law judge shall become final and his denial shall become the ruling of the Board. If the administrative law judge deems the request appropriate, he shall recommend that the Board seek the approval of the Attorney General for the issuance of the order, and the Board shall take such action on the administrative law judge's recommendation as it deems appropriate. Until the Board has issued the requested order no individual who claims the privilege against self-incrimination shall be required, or permitted, to testify or to give other information respecting the subject matter of the claim.

(d) Upon the failure of any person to comply with a subpoena issued upon the request of a private party, the General Counsel shall in the name of the Board but on relation of such private party, institute proceedings in the appropriate district court for the enforcement thereof, unless in the judgment of the Board the enforcement of such subpoena would be inconsistent with law and with the policies of the Act. Neither the General Counsel nor the Board shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

(e) Persons compelled to submit data or evidence at a public proceeding are entitled to retain or, on payment of lawfully prescribed costs, to procure copies or transcripts of the data or evidence submitted by them. Persons compelled to submit data or evidence in the nonpublic investigative stages of proceedings may, for good cause, be limited by the Regional Director to inspection of the official transcript of their testimony, but shall be entitled to make copies of documentary evidence or exhibits which they have produced.

**Sec. 102.32**—*Payment of witness fees and mileage; fees of persons taking depositions*.—Witnesses summoned before the administrative law judge shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear and the persons taking the deposition shall be paid by the party at whose instance the deposition is taken.

TRANSFER, CONSOLIDATION, AND SEVERANCE

**Sec. 102.33**—*Transfer of charge and proceeding from Region to Region; consolidation of proceedings in same Region; severance*.—(a) Whenever the General Counsel deems it necessary in order to effectuate the purposes of the Act or to avoid unnecessary costs or delay, he may permit a charge to be filed with him in Washington, D.C., or may, at any time after a charge has been filed with a Regional Director pursuant to section 102.10, order that such charge and any proceeding which may have been initiated with respect thereto:

(1) Be transferred to and continued before him for the purpose of investigation or consolidation with any other proceeding which may have been instituted in a regional office or with him; or

(2) Be consolidated with any other proceeding which may have been instituted in the same Region; or

(3) Be transferred to and continued in any other Region for the purpose of investigation or consolidation with any proceeding which may have been instituted in or transferred to such other Region; or

(4) Be severed from any other proceeding with which it may have been consolidated pursuant to this section.

(b) The provisions of sections 102.9 to 102.32, inclusive, shall, insofar as applicable, govern proceedings before the General Counsel, pursuant to this section, and the powers granted to Regional Directors in such provisions shall, for the purpose of this section, be reserved to and exercised by the General Counsel. After the transfer of any charge and any proceeding which may have been instituted with respect thereto from one Region to another pursuant to this section, the provisions of this subpart shall, insofar as possible, govern such charge and such proceeding as if the charge had originally been filed in the Region to which the transfer is made.

(c) The Regional Director may, prior to hearing, exercise the powers in subsections (a) (2) and (4) of this section with respect to proceedings pending in his Region.

(d) Motions to consolidate or sever proceedings after issuance of complaint shall be filed as provided in section 102.24 and ruled upon as provided in section 102.25, except that the Regional Director may consolidate or sever proceedings prior to hearing upon his own motion. Rulings by the administrative law judge upon motions to consolidate or sever may be appealed to the Board as provided in section 102.26.

HEARINGS

**Sec. 102.34** *Who shall conduct; to be public unless otherwise ordered*.—The hearing for the purpose of taking evidence upon a complaint shall be conducted by an administrative law judge designated by the chief administrative law judge in Washington, D.C., by the associate chief judge in San Francisco, California, by the associate chief judge in New York, New York, or by the associate chief judge in Atlanta, Georgia, as the case may be, unless the Board or any Member thereof presides. At any time an administrative law judge may be designated to take the place of the administrative law judge previously designated to conduct the hearing. Such hearings shall be public unless otherwise ordered by the Board or the administrative law judge.

**Sec. 102.35** *Duties and powers of administrative law judges; stipulations of cases to administrative law judges or to the Board; assignment and powers of settlement judges*.— (a) It shall be the duty of the administrative law judge to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. The administrative law judge shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the Board, subject to the Rules and Regulations of the Board and within its powers:

(1) To administer oaths and affirmations;

(2) To grant applications for subpoenas;

(3) To rule upon petitions to revoke subpoenas;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(6) To regulate the course of the hearing and, if appropriate or necessary, to exclude persons or counsel from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;

(7) To hold conferences for the settlement or simplification of the issues by consent of the parties, but not to adjust cases;

(8) To dispose of procedural requests, motions, or similar matters, including motions referred to the administrative law judge by the Regional Director and motions for default judgment, summary judgment, or to amend pleadings; also to dismiss complaints or portions thereof; to order hearings reopened; and upon motion order proceedings consolidated or severed prior to issuance of administrative law judge decisions;

(9) To approve stipulations, including stipulations of facts that waive a hearing and provide for a decision by the administrative law judge. Alternatively, the parties may agree to waive a hearing and decision by an administrative law judge and submit directly to the Executive Secretary a stipulation of facts, which, if approved, provides for a decision by the Board. A statement of the issues presented should be set forth in the stipulation of facts and each party should also submit a short statement (no more than three pages) of its position on the issues. If the administrative law judge (or the Board) approves the stipulation, the administrative law judge (or the Board) will set a time for the filing of briefs. In proceedings before an administrative law judge, no further briefs shall be filed except by special leave of the administrative law judge. In proceedings before the Board, answering briefs may be filed within 14 days, or such further period as the Board may allow, from the last date on which an initial brief may be filed. No further

briefs shall be filed except by special leave of the Board. At the conclusion of the briefing schedule, the judge (or the Board) will decide the case or make other disposition of it.

(10) To make and file decisions, including bench decisions delivered within 72 hours after conclusion of oral argument, in conformity with Public Law 89-554, 5 U.S.C. 557;

(11) To call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence;

(12) To request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(13) To take any other action necessary under the foregoing and authorized by the published Rules and Regulations of the Board.

(b) Upon the request of any party or the judge assigned to hear a case, or on his or her own motion, the chief administrative law judge in Washington, D.C., the associate chief judge in San Francisco, the associate chief judge in Atlanta, or the associate chief judge in New York may assign a judge who shall be other than the trial judge to conduct settlement negotiations. In exercising his or her discretion, the chief, or associate chief judge making the assignment will consider, among other factors, whether there is reason to believe that resolution of the dispute is likely, the request for assignment of a settlement judge is made in good faith, and the assignment is otherwise feasible. Provided, however, that no such assignment shall be made absent the agreement of all parties to the use of this procedure.

(1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties, assess the practicalities of a potential settlement, and report to the chief, or associate the status of settlement negotiations, recommending continuation or termination of the settlement negotiations. Where feasible settlement conferences shall be held in person.

(2) The settlement judge may require that the attorney or other representative for each party be present at settlement conferences and that the parties or agents with full settlement authority also be present or available by telephone.

(3) Participation of the settlement judge shall terminate upon the order of the chief, or associates issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the hearing.

(4) All discussions between the parties and the settlement judge shall be confidential. The settlement judge shall not discuss any aspect of the case with the trial judge, and no evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement judge shall be admissible in any proceeding before the Board, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless voluntarily produced or obtained pursuant to subpoena.

(5) No decision of a chief, or associate concerning the assignment of a settlement judge or the termination of a settlement judge's assignment shall be appealable to the Board.

(6) Any settlement reached under the auspices of a settlement judge shall be subject to approval in accordance with the provisions of § 101.9 of the Board's Statements of Procedure.

**Sec. 102.36** *Unavailability of administrative law judges.*—In the event the administrative law judge designated to conduct the hearing becomes unavailable to the Board after the hearing has been opened, the chief administrative law judge in Washington, D.C., the associate chief judge in San Francisco, California, the associate

chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be, may designate another administrative law judge for the purpose of further hearing or other appropriate action.

**Sec. 102.37** *Disqualification of administrative law judges*.—An administrative law judge may withdraw from a proceeding whenever he deems himself disqualified. Any party may request the administrative law judge, at any time following his designation and before filing of his decision, to withdraw on grounds of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts a timely affidavit setting forth in detail the matters alleged to constitute grounds for disqualification. If, in the opinion of the administrative law judge, such affidavit is filed with due diligence and is sufficient on its face, he shall forthwith disqualify himself and withdraw from the proceeding. If the administrative law judge does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling, and proceed with the hearing, or, if the hearing has closed, he shall proceed with issuance of his decision, and the provisions of section 102.26, with respect to review of rulings of administrative law judges, shall thereupon apply.

**Sec. 102.38** *Rights of parties*.—Any party shall have the right to appear at such hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other evidence, except that the participation of any party shall be limited to the extent permitted by the administrative law judge: *And provided further*, That documentary evidence shall be submitted in duplicate.

**Sec. 102.39** *Rules of evidence controlling so far as practicable*.—Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U.S.C., title 28, secs. 723–B, 723–C).

**Sec. 102.40** *Stipulations of fact admissible*.—In any such proceeding stipulations of fact may be introduced in evidence with respect to any issue.

**Sec. 102.41**—*Objection to conduct of hearing; how made; objections not waived by further participation*.—Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

**Sec. 102.42** *Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing*.— Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which may include presentation of proposed findings and conclusions, and shall be included in the stenographic report of the hearing. In the discretion of the administrative law judge, any party may, upon request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge, who may fix a reasonable time for such filing, but not in excess of 35 days from the close of the hearing. Requests for further extensions of time shall be made to the chief administrative law judge in Washington, D.C., to the associate chief judge in San Francisco, California, to the associate chief judge in New York, New York, or to the associate chief judge in Atlanta, Georgia, as the case may be. Notice of the request for any extension shall be

immediately served on all other parties, and proof of service shall be furnished. Three copies of the brief or proposed findings and conclusions shall be filed with the administrative law judge, and copies shall be served on the other parties, and a statement of such service shall be furnished. In any case in which the administrative law judge believes that written briefs or proposed findings of fact and conclusions may not be necessary, he or she shall notify the parties at the opening of the hearing or as soon thereafter as practicable that he or she may wish to hear oral argument in lieu of briefs.

**Sec. 102.43** *Continuance and adjournment*.—In the discretion of the administrative law judge, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement thereof at the hearing by the administrative law judge, or by other appropriate notice.

## ADMINISTRATIVE LAW JUDGE'S DECISION AND TRANSFER OF CASE TO THE BOARD

**Sec. 102.45** *Administrative law judge's decision; contents; service; transfer of case to the Board; contents of record in case.*— (a) After hearing for the purpose of taking evidence upon a complaint, the administrative law judge shall prepare a decision. Such decision shall contain findings of fact, conclusions, and the reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record, and shall contain recommendations as to what disposition of the case should be made, which may include, if it be found that the respondent has engaged in or is engaging in the alleged unfair labor practices, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act. The administrative law judge shall file the original of his decision with the Board and cause a copy thereof to be served on each of the parties. If the administrative law judge delivers a bench decision, promptly upon receiving the transcript the judge shall certify the accuracy of the pages of the transcript containing the decision; file with the Board a certified copy of those pages, together with any supplementary matter the judge may deem necessary to complete the decision; and cause a copy thereof to be served on each of the parties. Upon the filing of the decision, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, on all the parties. Service of the administrative law judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

(b) The charge upon which the complaint was issued and any amendments thereto, the complaint and any amendments thereto, notice of hearing, answer and any amendments thereto, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, together with the administrative law judge's decision and exceptions, and any cross-exceptions or answering briefs as provided in section 102.46, shall constitute the record in the case.

EXCEPTIONS TO THE RECORD AND PROCEEDINGS

**Sec. 102.46** *Exceptions, cross-exceptions, briefs, answering briefs; time for filing; where to file; service on the parties; extension of time; effect of failure to include matter in exceptions; reply briefs; oral arguments.*—(a) Within 28 days, or within such further period as the Board may allow, from the date of the service of the order transferring the case to the Board, pursuant to section 102.45, any party may (in accordance with section 10(c) of the Act and sections 102.111 and 102.112 of these rules) file with the Board in Washington, D.C., exceptions to the administrative law judge's decision or to any other part of the record or proceedings (including rulings upon all motions or objections), together with a brief in support of said exceptions. Any party may, within the same period, file a brief in support of the administrative law judge's decision. The filing of such exceptions and briefs is subject to the provisions of paragraph (j) of this section. Requests for extension of time to file exceptions or briefs shall be in writing and copies thereof shall be served promptly on the other parties.

(b)(1) Each exception (i) shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; (ii) shall identify that part of the administrative law judge's decision to which objection is made; (iii) shall designate by precise citation of page the portions of the record relied on; and (iv) shall concisely state the grounds for the exception. If a supporting brief is filed the exceptions document shall not contain any argument or citation of authority in support of the exceptions, but such matters shall be set forth only in the brief. If no supporting brief is filed the exceptions document shall also include the citation of authorities and argument in support of the exceptions, in which event the exceptions document shall be subject to the 50-page limit as for briefs set forth in section 102.46(j).

(2) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

(c) Any brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A clear and concise statement of the case containing all that is material to the consideration of the questions presented.

(2) A specification of the questions involved and to be argued, together with a reference to the specific exceptions to which they relate.

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the record and the legal or other material relied on.

(d)(1) Within 14 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, a party opposing the exceptions may file an answering brief to the exceptions, in accordance with the provisions of paragraph (j) of this section.

(2) The answering brief to the exceptions shall be limited to the questions raised in the exceptions and in the brief in support thereof. It shall present clearly the points of fact and law relied on in support of the position taken on each question. Where exception has been taken to a factual finding of the administrative law judge and it is proposed to support that finding, the answering brief should specify those pages of the record which, in the view of the party filing the brief, support the administrative law judge's finding.

(3) Requests for extension of time to file an answering brief to the exceptions shall be in writing and copies thereof shall be served promptly on the other parties.

(e) Any party who has not previously filed exceptions may, within 14 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, file cross-exceptions to any portion of the administrative law judge's decision, together with a supporting brief, in accordance with the provisions of paragraphs (b) and (j) of this section.

(f)(1) Within 14 days, or such further period as the Board may allow, from the last date on which cross-exceptions and any supporting brief may be filed, any other party may file an answering brief to such cross-exceptions in accordance with the provisions of paragraphs (c) and (j) of this section. Such answering brief shall be limited to the questions raised in the cross-exceptions.

(2) Requests for extension of time to file cross-exceptions, or answering brief to cross-exceptions, shall be in writing and copies thereof shall be served promptly on the other parties.

(g) No matter not included in exceptions or cross-exceptions may thereafter be urged before the Board, or in any further proceeding.

(h) Within 14 days from the last date on which an answering brief may be filed pursuant to paragraph (d) or (f) of this section, any party may file a reply brief to any such answering brief. Any reply brief filed pursuant to this subsection shall be limited to matters raised in the brief to which it is replying, and shall not exceed 10 pages. No extensions of time shall be granted for the filing of reply briefs, nor shall permission be granted to exceed the 10 page length limitation. Eight copies of any reply brief shall be filed with the Board, copies shall be served on the other parties, and a statement of such service shall be furnished. No further briefs shall be filed except by special leave of the Board. Requests for such leave shall be in writing and copies thereof shall be served promptly on the other parties.

(i) Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board simultaneously with the statement of any exceptions or cross-exceptions filed pursuant to the provisions of this section with a statement of service on the other parties. The Board shall notify the parties of the time and place of oral argument, if such permission is granted. Oral arguments are limited to 30 minutes for each party entitled to participate. No request for additional time will be granted unless timely application is made in advance of oral argument.

(j) Exceptions to administrative law judges' decisions, or to the record, and briefs shall be printed or otherwise legibly duplicated. Carbon copies of typewritten matter will not be accepted. Eight copies of such documents shall be filed with the Board in Washington, D.C., and copies shall also be served promptly on the other parties. All documents filed pursuant to this section shall be double spaced on 8-1/2 by 11-inch paper. Any brief filed pursuant to this section shall not be combined with any other brief, and except for reply briefs whose length is governed by paragraph (h) of this section, shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefor, filed not less than 10 days prior to the date the brief is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

**Sec. 102.47** *Filing of motion after transfer of case to Board.*—All motions filed after the case has been transferred to the Board pursuant to section 102.45 shall be filed with the Board in Washington, D.C., by transmitting eight copies thereof to the Board, together with an affidavit of service upon the parties. Such motions shall be printed or otherwise legibly duplicated: *Provided, however;* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted.

PROCEDURE BEFORE THE BOARD

**Sec. 102.48** *Action of the Board upon expiration of time to file exceptions to administrative law judge's decision; decisions by the Board; extraordinary postdecisional motions*.—(a) In the event no timely or proper exceptions are filed as herein provided, the findings, conclusions, and recommendations contained in the administrative law judge's decision shall, pursuant to section 10(c) of the Act, automatically become the decision and order of the Board and become its findings, conclusions, and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

(b) Upon the filing of timely and proper exceptions, and any cross-exceptions or answering briefs, as provided in section 102.46, the Board may decide the matter forthwith upon the record, or after oral argument, or may reopen the record and receive further evidence before a Member of the Board or other Board agent or agency, or may make other disposition of the case.

(c) Where exception is taken to a factual finding of the administrative law judge, the Board, in determining whether the finding is contrary to a preponderance of the evidence, may limit its consideration to such portions of the record as are specified in the exceptions, the supporting brief, and the answering brief.

(d)(1) A party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing, or reopening of the record after the Board decision or order. A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on. A motion for rehearing shall specify the error alleged to require a hearing *de novo* and the prejudice to the movant alleged to result from such error. A motion to reopen the record shall state briefly the additional evidence sought to be adduced, why it was not presented previously, and that, if adduced and credited, it would require a different result. Only newly discovered evidence, evidence which has become available only since the close of the hearing, or evidence which the Board believes should have been taken at the hearing will be taken at any further hearing.

(2) Any motion pursuant to this section shall be filed within 28 days, or such further period as the Board may allow, after the service of the Board's decision or order, except that a motion for leave to adduce additional evidence shall be filed promptly on discovery of such evidence. Copies of any request for an extension of time shall be served promptly on the other parties.

(3) The filing and pendency of a motion under this provision shall not operate to stay the effectiveness of the action of the Board unless so ordered. A motion for reconsideration or rehearing need not be filed to exhaust administrative remedies.

**Sec. 102.49** *Modification or setting aside of order of Board before record filed in court; action thereafter*.—Within the limitations of the provisions of section 10(c) of the Act, and section 102.48 of these rules, until a transcript of the record in a case shall have been filed in a court, within the meaning of section 10 of the Act, the Board may at any time upon reasonable notice modify or set aside, in whole or in part, any findings of fact, conclusions of law, or order made or issued by it. Thereafter, the Board may proceed pursuant to section 102.50, insofar as applicable.

**Sec. 102.50** *Hearings before the Board or Member thereof*.—Whenever the Board deems it necessary in order to effectuate the purpose of the Act or to avoid unnecessary

cost or delay, it may, at any time, after a complaint has issued pursuant to section 102.15 or section 102.33, order that such complaint and any proceeding which may have been instituted with respect thereto be transferred to and continued before it or any Member of the Board. The provisions of this subpart shall, insofar as applicable, govern proceedings before the Board or any Member pursuant to this section, and the powers granted to administrative law judges in such provisions shall, for the purpose of this section, be reserved to and exercised by the Board or the Member thereof who shall preside.

**Sec. 102.51** *Settlement or adjustment of issues*.—At any stage of a proceeding prior to hearing, where time, the nature of the proceeding, and the public interest permit, all interested parties shall have opportunity to submit to the Regional Director, with whom the charge was filed, for consideration, facts, arguments, offers of settlement, or proposals of adjustment.

COMPLIANCE PROCEEDINGS

**Sec. 102.52** *Compliance with Board order; notification of compliance determination.*—After entry of a Board order directing remedial action, or the entry of a court judgment enforcing such order, the Regional Director shall seek compliance from all persons having obligations thereunder. The Regional Director shall make a compliance determination as appropriate and shall notify the parties of the compliance determination. A charging party adversely affected by a monetary, make-whole, reinstatement, or other compliance determination will be provided, on request, with a written statement of the basis for that determination.

**Sec. 102.53** *Review by the General Counsel of compliance determination; appeal to the Board of the General Counsel's decision.*—(a) The charging party may appeal such determination to the General Counsel in Washington, D.C., within 14 days of the written statement of compliance determination provided as set forth in section 102.52. The appeal shall contain a complete statement setting forth the facts and reasons upon which it is based and shall identify with particularity the error claimed in the Regional Director's determination. The charging party shall serve a copy of the appeal on all other parties and on the Regional Director. The General Counsel may for good cause shown extend the time for filing an appeal.

(b) The General Counsel may affirm or modify the determination of the Regional Director, or may take such other action deemed appropriate, stating the grounds for the decision.

(c) Within 14 days after service of the General Counsel's decision, the charging party may file a request for review of that decision with the Board in Washington, D.C. The request for review shall contain a complete statement of the facts and reasons upon which it is based and shall identify with particularity the error claimed in the General Counsel's decision. A copy of the request for review shall be served on the General Counsel and on the Regional Director.

(d) The Board may affirm or modify the decision of the General Counsel, or make such other disposition of the matter as it deems appropriate. The denial of the request for review will constitute an affirmance of the decision of the General Counsel.

**Sec. 102.54** *Initiation of formal compliance proceedings; issuance of compliance specification and notice of hearing.*—(a) If it appears that controversy exists with respect to compliance with an order of the Board which cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a compliance specification in the name of the Board. The specification shall contain or be accompanied by a notice of hearing before an administrative law judge at a place therein fixed and at a time not less than 21 days after the service of the specification.

(b) Whenever the Regional Director deems it necessary in order to effectuate the purposes and policies of the Act or to avoid unnecessary costs or delay, the Regional Director may issue a compliance specification, with or without a notice of hearing, based on an outstanding complaint.

(c) Whenever the Regional Director deems it necessary in order to effectuate the purposes and policies of the Act or to avoid unnecessary costs or delay, the Regional Director may consolidate with a complaint and notice of hearing issued pursuant to section 102.15 a compliance specification based on that complaint. After opening of the hearing, consolidation shall be subject to the approval of the Board or the administrative

law judge, as appropriate. Issuance of a compliance specification shall not be a prerequisite or bar to Board initiation of proceedings in any administrative or judicial forum which the Board or the Regional Director determines to be appropriate for obtaining compliance with a Board order.

**Sec. 102.55** *Contents of compliance specification.*

(a) *Contents of specification with respect to allegations concerning the amount of backpay due.*—With respect to allegations concerning the amount of backpay due, the specification shall specifically and in detail show, for each employee, the backpay periods broken down by calendar quarters, the specific figures and basis of computation of gross backpay and interim earnings, the expenses for each quarter, the net backpay due, and any other pertinent information.

(b) *Contents of specification with respect to allegations other than the amount of backpay due.*—With respect to allegations other than the amount of backpay due, the specification shall contain a clear and concise description of the respects in which the respondent has failed to comply with a Board or court order, including the remedial acts claimed to be necessary for compliance by the respondent and, where known, the approximate dates, places, and names of the respondent's agents or other representatives described in the specification.

(c) *Amendments to specification.*—After the issuance of the notice of compliance hearing but prior to the opening of the hearing, the Regional Director may amend the specification. After the opening of the hearing, the specification may be amended upon leave of the administrative law judge or the Board, as the case may be, upon good cause shown.

**Sec. 102.56** *Answer to compliance specification.*

(a) *Filing and service of answer; form.*—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or

without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

(d) *Extension of time for filing answer to specification.*—Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer*.—Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

**Sec. 102.57** *Extension of date of hearing*.—Upon the Regional Director's own motion or upon proper cause shown, the Regional Director issuing the compliance specification and notice of hearing may extend the date of the hearing.

**Sec. 102.58** *Withdrawal*.—Any compliance specification and notice of hearing may be withdrawn before the hearing by the Regional Director upon his or her own motion.

**Sec. 102.59** *Hearing; posthearing procedure*.—After the issuance of a compliance specification and notice of hearing, the procedures provided in sections 102.24 to 102.51 shall be followed insofar as applicable.

## SUBPART C—PROCEDURE UNDER SECTION 9(c) OF THE ACT FOR THE DETERMINATION OF QUESTIONS CONCERNING REPRESENTATION OF EMPLOYEES[3] AND FOR CLARIFICATION OF BARGAINING UNITS AND FOR AMENDMENT OF CERTIFICATIONS UNDER SECTION 9(b) OF THE ACT

**Sec. 102.60** *Petitions*.

(a) *Petition for certification or decertification; who may file; where to file; withdrawal*.—A petition for investigation of a question concerning representation of employees under paragraphs (1)(A)(i) and (1)(B) of section 9(c) of the Act (hereinafter called a petition for certification) may be filed by an employee or group of employees or any individual or labor organization acting in their behalf or by an employer. A petition under paragraph (1)(A)(ii) of section 9(c) of the Act, alleging that the individual or labor organization which has been certified or is being currently recognized as the bargaining representative is no longer such representative (hereinafter called a petition for decertification), may be filed by any employee or group of employees or any individual or labor organization acting in their behalf. Petitions under this section shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury, that its contents are true and correct (see 28 U.S.C. Sec. 1746). One original of the petition shall be filed. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. Except as provided in § 102.72, such petitions shall be filed with the Regional Director for the Region wherein the bargaining unit exists, or, if the bargaining unit exists in two or more Regions, with the Regional Director for any of such Regions. Prior to the transfer of the case to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Regional Director with whom such petition was filed. After the transfer of the case to the Board, the petition may be withdrawn only with the consent of the Board. Whenever the Regional Director or the Board, as the case may be, approves the withdrawal of any petition, the case shall be closed.

(b) *Petition for clarification of bargaining unit or petition for amendment of certification under section 9(b) of the Act; who may file; where to file; withdrawal*.—A petition for clarification of an existing bargaining unit or a petition for amendment of certification, in the absence of a question concerning representation, may be filed by a labor organization or by an employer. Where applicable the same procedures set forth in subsection (a) of this section shall be followed.

**Sec. 102.61** *Contents of petition for certification; contents of petition for decertification; contents of petition for clarification of bargaining unit; contents of petition for amendment of certification*.—(a) A petition for certification, when filed by an employee or group of employees or an individual or labor organization acting in their behalf, shall contain the following:

(1) The name of the employer.

(2) The address of the establishment involved.

(3) The general nature of the employer's business.

[3] Procedure under the first proviso to sec. 8(b)(7)(C) of the Act is governed by subpart D.

(4) A description of the bargaining unit which the petitioner claims to be appropriate.

(5) The names and addresses of any other persons or labor organizations who claim to represent any employees in the alleged appropriate unit and brief descriptions of the contracts, if any, covering the employees in such unit.

(6) The number of employees in the alleged appropriate unit.

(7) A statement that the employer declines to recognize the petitioner as the representative within the meaning of section 9(a) of the Act or that the labor organization is currently recognized but desires certification under the Act.

(8) The name, the affiliation, if any, and the address of the petitioner.

(9) Whether a strike or picketing is in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(10) Any other relevant facts.

(b) A petition for certification, when filed by an employer, shall contain the following:

(1) The name and address of the petitioner.

(2) The general nature of the petitioner's business.

(3) A brief statement setting forth that one or more individuals or labor organizations have presented to the petitioner a claim to be recognized as the exclusive representative of all employees in the unit claimed to be appropriate; a description of such unit; and the number of employees in the unit.

(4) The name or names, the affiliation, if any, and the addresses of the individuals or labor organizations making such claim for recognition.

(5) A statement whether the petitioner has contracts with any labor organization or other representatives of employees and, if so, their expiration dates.

(6) Whether a strike or picketing is in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(7) Any other relevant facts.

(c) A petition for decertification shall contain the following:

(1) The name of the employer.

(2) The address of the establishment and a description of the bargaining unit involved.

(3) The general nature of the employer's business.

(4) The name, the affiliation, if any, and the address of the petitioner.

(5) The name or names of the individuals or labor organizations who have been certified or are being currently recognized by the employer and who claim to represent any employees in the unit involved, and the expiration dates of any contracts covering such employees.

(6) An allegation that the individuals or labor organizations who have been certified or are currently recognized by the employer are no longer the representative in the appropriate unit as defined in section 9(a) of the Act.

(7) The number of employees in the unit.

(8) Whether a strike or picketing is in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(9) Any other relevant facts.

(d) A petition for clarification shall contain the following:

(1) The name of the employer and the name of the recognized or certified bargaining representative.

(2) The address of the establishment involved.

(3) The general nature of the employer's business.

(4) A description of the present bargaining unit and, if the bargaining unit is certified, an identification of the existing certification.

(5) A description of the proposed clarification.

(6) The names and addresses of any other persons or labor organizations who claim to represent any employees affected by the proposed clarifications and brief descriptions of the contracts, if any, covering any such employees.

(7) The number of employees in the present bargaining unit and in the unit as proposed under the clarification.

(8) The job classifications of employees as to whom the issue is raised and the number of employees in each classification.

(9) A statement by petitioner setting forth reasons why petitioner desires clarification of unit.

(10) The name, the affiliation, if any, and the address of the petitioner.

(11) Any other relevant facts.

(e) A petition for amendment of certification shall contain the following:

(1) The name of the employer and the name of the certified union involved.

(2) The address of the establishment involved.

(3) The general nature of the employer's business.

(4) Identification and description of the existing certification.

(5) A statement by petitioner setting forth the details of the desired amendment and reasons therefor.

(6) The names and addresses of any other persons or labor organizations who claim to represent any employees in the unit covered by the certification and brief descriptions of the contracts, if any, covering the employees in such unit.

(7) The name, the affiliation, if any, and the address of the petitioner.

(8) Any other relevant facts.

**Sec. 102.62** *Consent-election agreements.*— (a) Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of employees involved may, with the approval of the Regional Director, enter into a consent-election agreement leading to a determination by the Regional Director of the facts ascertained after such consent election. Such agreement shall include a description of the appropriate unit, the time and place of holding the election, and the payroll period to be used in determining what employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the direction and supervision of the Regional Director. The method of conducting such consent election shall be consistent with the method followed by the Regional Director in conducting elections pursuant to Sec. Sec. 102.69 and 102.70 except that the rulings and determinations by the Regional Director of the results thereof shall be final, and the Regional Director shall issue to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect, in that case, as if issued

by the Board, provided further that rulings or determinations by the Regional Director in respect to any amendment of such certification shall also be final.

(b) Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of the employees involved may, with the approval of the Regional Director, enter into an agreement providing for a waiver of hearing and a consent election leading to a determination by the Board of the facts ascertained after such consent election, if such a determination is necessary. Such agreement shall also include a description of the appropriate bargaining unit, the time and place of holding the election, and the payroll period to be used in determining which employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the direction and supervision of the Regional Director. The method of conducting such election and the postelection procedure shall be consistent with that followed by the Regional Director in conducting elections pursuant to sections 102.69 and 102.70.

(c) Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of the employees involved may, with the approval of the Regional Director, enter into an agreement providing for a hearing pursuant to Sec. Sec. 102.63, 102.64, 102.65, 102.66 and 102.67 to resolve any issue necessary to resolve the question concerning representation. Upon the conclusion of such a hearing, the Regional Director shall issue a Decision. The rulings and determinations by the Regional Director thereunder shall be final, with the same force and effect, in that case, as if issued by the Board. Any election ordered by the Regional Director shall be conducted under the direction and supervision of the Regional Director. The method of conducting such consent election shall be consistent with the method followed by the Regional Director in conducting elections pursuant to Sec. Sec. 102.69 and 102.70, except that the rulings and determinations by the Regional Director of the results thereof shall be final, and the Regional Director shall issue to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect, in that case, as if issued by the Board, provided further that rulings or determinations by the Regional Director in respect to any amendment of such certification shall also be final.

**Sec. 102.63** *Investigation of petition by Regional Director; notice of hearing; service of notice; withdrawal of notice.*—(a) After a petition has been filed under section 102.61(a), (b), or (c), if no agreement such as that provided in section 102.62 is entered into and if it appears to the Regional Director that there is reasonable cause to believe that a question of representation affecting commerce exists, that the policies of the Act will be effectuated, and that an election will reflect the free choice of employees in the appropriate unit, the Regional Director shall prepare and cause to be served on the parties and on any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such investigation, a notice of hearing before a hearing officer at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing. Any such notice of hearing may be amended or withdrawn before the close of the hearing by the Regional Director on his own motion.

(b) After a petition has been filed under section 102.61(d) or (e), the Regional Director shall conduct an investigation and, as appropriate, he may issue a decision without a hearing; or prepare and cause to be served on the parties and on any known individuals or

labor organizations purporting to act as representatives of any employees directly affected by such investigation, a notice of hearing before a hearing officer at a time and place fixed therein; or take other appropriate action. If a notice of hearing is served, it shall be accompanied by a copy of the petition. Any such notice of hearing may be amended or withdrawn before the close of the hearing by the Regional Director on his own motion. All hearing and posthearing procedure under this subsection (b) shall be in conformance with sections 102.64 through 102.68 whenever applicable, *except* where the unit or certification involved arises out of an agreement as provided in section 102.62(a), the Regional Director's action shall be final, and the provisions for review of Regional Director's decisions by the Board shall not apply. Dismissals of petitions without a hearing shall not be governed by section 102.71. The Regional Director's dismissal shall be by decision, and a request for review therefrom may be obtained under section 102.67, except where an agreement under section 102.62(a) is involved.

**Sec. 102.64** *Conduct of hearing*.—(a) Hearings shall be conducted by a hearing officer and shall be open to the public unless otherwise ordered by the hearing officer. At any time a hearing officer may be substituted for the hearing officer previously presiding. It shall be the duty of the hearing officer to inquire fully into all matters in issue and necessary to obtain a full and complete record upon which the Board or the Regional Director may discharge their duties under section 9(c) of the Act.

(b) The hearing officer may, in his discretion, continue the hearing from day to day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice.

**Sec. 102.65** *Motions; interventions*.—(a) All motions, including motions for intervention pursuant to subsections (b) and (e) of this section, shall be in writing or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. An original and two copies of written motions shall be filed and a copy thereof immediately shall be served on the other parties to the proceeding. Motions made prior to the transfer of the case to the Board shall be filed with the Regional Director, except that motions made during the hearing shall be filed with the hearing officer. After the transfer of the case to the Board, all motions shall be filed with the Board. Such motions shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matters shall not be filed and if submitted will not be accepted. Eight copies of such motions shall be filed with the Board. The Regional Director may rule upon all motions filed with him, causing a copy of said ruling to be served on the parties, or he may refer the motion to the hearing officer: *Provided*, That if the Regional Director prior to the close of the hearing grants a motion to dismiss the petition, the petitioner may obtain a review of such ruling in the manner prescribed in section 102.71. The hearing officer shall rule, either orally on the record or in writing, upon all motions filed at the hearing or referred to him as hereinabove provided, except that all motions to dismiss petitions shall be referred for appropriate action at such time as the entire record is considered by the Regional Director or the Board, as the case may be.

(b) Any person desiring to intervene in any proceeding shall make a motion for intervention, stating the grounds upon which such person claims to have an interest in the proceeding. The Regional Director or the hearing officer, as the case may be, may by order permit intervention in person or by counsel or other representative to such extent

and upon such terms as he may deem proper, and such intervenor shall thereupon become a party to the proceeding.

(c) All motions, rulings, and orders shall become a part of the record, except that rulings on motions to revoke subpenas shall become a part of the record only upon the request of the party aggrieved thereby as provided in section 102.66(c). Unless expressly authorized by the Rules and Regulations, rulings by the Regional Director or by the hearing officer shall not be appealed directly to the Board, but shall be considered by the Board on appropriate appeal pursuant to section 102.67(b), (c), and (d) or whenever the case is transferred to it for decision: *Provided, however,* That if the Regional Director has issued an order transferring the case to the Board for decision such rulings may be appealed directly to the Board by special permission of the Board. Nor shall rulings by the hearing officer be appealed directly to the Regional Director unless expressly authorized by the Rules and Regulations, except by special permission of the Regional Director, but shall be considered by the Regional Director when he reviews the entire record. Requests to the Regional Director, or to the Board in appropriate cases, for special permission to appeal from a ruling of the hearing officer, together with the appeal from such ruling, shall be filed promptly, in writing, and shall briefly state (1) the reasons special permission should be granted and (2) the grounds relied on for the appeal. The moving party shall immediately serve a copy of the request for special permission and of the appeal on the other parties and on the Regional Director. Any statement in opposition or other response to the request and/or to the appeal shall be filed promptly, in writing, and shall be served immediately on the other parties and on the Regional Director. If the Board or the Regional Director, as the case may be, grants the request for special permission to appeal, the Board or the Regional Director may proceed forthwith to rule on the appeal.

(d) The right to make motions or to make objections to rulings on motions shall not be deemed waived by participation in the proceeding.

(e)(1) A party to a proceeding may, because of extraordinary circumstances, move after the close of the hearing for reopening of the record, or move after the decision or report for reconsideration, for rehearing, or to reopen the record, but no such motion shall stay the time for filing a request for review of a decision or exceptions to a report. No motion for reconsideration, for rehearing, or to reopen the record will be entertained by the Board or by any Regional Director with respect to any matter which could have been but was not raised pursuant to any other section of these rules: *Provided, however,* That the Regional Director may treat a request for review of a decision or exceptions to a report as a motion for reconsideration. A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on for the motion. A motion for rehearing or to reopen the record shall specify briefly the error alleged to require a rehearing or hearing *de novo,* the prejudice to the movant alleged to result from such error, the additional evidence sought to be adduced, why it was not presented previously, and what result it would require if adduced and credited. Only newly discovered evidence—evidence which has become available only since the close of the hearing—or evidence which the Regional Director or the Board believes should have been taken at the hearing will be taken at any further hearing.

(2) Any motion for reconsideration or for rehearing pursuant to this paragraph shall be filed within 14 days, or such further period as may be allowed, after the service of the

decision or report. Any request for an extension of time to file such a motion shall be served promptly on the other parties. A motion to reopen the record shall be filed promptly on discovery of the evidence sought to be adduced.

(3) The filing and pendency of a motion under this provision shall not unless so ordered operate to stay the effectiveness of any action taken or directed to be taken, except that, if the motion states with particularity that the granting thereof will affect the eligibility to vote of specific employees, the ballots of such employees shall be challenged and impounded in any election conducted while such motion is pending. A motion for reconsideration, for rehearing, or to reopen the record need not be filed to exhaust administrative remedies.

**Sec. 102.66** *Introduction of evidence; rights of parties at hearing; subpoenas.*—(a) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the hearing officer shall have power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses shall be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Stipulations of fact may be introduced in evidence with respect to any issue.

(b) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

(c) The Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof. Any party may file applications for subpoenas in writing with the Regional Director if made prior to hearing, or with the hearing officer if made at the hearing. Applications for subpoenas may be made ex parte. The Regional Director or the hearing officer, as the case may be, shall forthwith grant the subpoenas requested. Any person served with a subpoena, whether ad testificandum or duces tecum, if he or she does not intend to comply with the subopoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received. Such petition shall be filed with the Regional Director who may either rule upon it or refer it for ruling to the hearing officer: *Provided, however,* That if the evidence called for is to be produced at a hearing and the hearing has opened, the petition to revoke shall be filed with the hearing officer. Notice of the filing of petitions to revoke shall be promptly given by the Regional Director or hearing officer, as the case may be, to the party at whose request the subpoena was issued. The Regional Director or the hearing officer, as the case may be, shall revoke the subpoena, if, in his opinion, the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The Regional Director or the hearing officer, as the case may be, shall make a simple statement of procedural or other grounds for his ruling. The petition to revoke, any answer filed thereto, and any ruling thereon shall not become part

of the record except upon the request of the party aggrieved by the ruling. Persons compelled to submit data or evidence are entitled to retain or, on payment of lawfully prescribed costs, to procure copies or transcripts of the data or evidence submitted by them.

(d) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing.

(e) The hearing officer may submit an analysis of the record to the Regional Director or the Board but he shall make no recommendations.

(f) Witness fees and mileage shall be paid by the party at whose instance the witness appears.

**Sec. 102.67** *Proceedings before the Regional Director; further hearing; briefs; action by the Regional Director; appeals from action by the Regional Director; statement in opposition to appeal; transfer of case to the Board; proceedings before the Board; Board action.*—(a) The Regional Director may proceed, either forthwith upon the record or after oral argument, the submission of briefs, or further hearing, as he may deem proper, to determine the unit appropriate for the purpose of collective bargaining, to determine whether a question concerning representation exists, and to direct an election, dismiss the petition, or make other disposition of the matter. Any party desiring to submit a brief to the Regional Director shall file the original and one copy thereof, which may be a typed carbon copy, within 7 days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause the hearing officer may grant an extension of time not to exceed an additional 14 days. Copies of the brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the Regional Director together with the brief. No reply brief may be filed except upon special leave of the Regional Director.

(b) A decision by the Regional Director upon the record shall set forth his findings, conclusions, and order or direction. The decision of the Regional Director shall be final: *Provided, however,* That within 14 days after service thereof any party may file a request for review with the Board in Washington, D.C. The Regional Director shall schedule and conduct any election directed by the decision notwithstanding that a request for review has been filed with or granted by the Board. The filing of such a request shall not, unless otherwise ordered by the Board, operate as a stay of the election or any other action taken or directed by the Regional Director: *Provided, however,* That if a pending request for review has not been ruled upon or has been granted ballots whose validity might be affected by the final Board decision shall be segregated in an appropriate manner, and all ballots shall be impounded and remain unopened pending such decision.

(c) The Board will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.

(2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

(4) That there are compelling reasons for reconsideration of an important Board rule or policy.

(d) Any request for review must be a self-contained document enabling the Board to rule on the basis of its contents without the necessity of recourse to the record; however, the Board may, in its discretion, examine the record in evaluating the request. With respect to ground (2), and other grounds where appropriate, said request must contain a summary of all evidence or rulings bearing on the issues together with page citations from the transcript and a summary of argument. But such request may not raise any issue or allege any facts not timely presented to the Regional Director.

(e) Any party may, within 7 days after the last day on which the request for review must be filed, file with the Board a statement in opposition thereto, which shall be served in accordance with the requirements of paragraph (k) of this section. A statement of such service of opposition shall be filed simultaneously with the Board. The Board may deny the request for review without awaiting a statement in opposition thereto.

(f) The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmance of the Regional Director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

(g) The granting of a request for review shall not stay the Regional Director's decision unless otherwise ordered by the Board. Except where the Board rules upon the issues on review in the order granting review, the appellants and other parties may, within 14 days after issuance of an order granting review, file briefs with the Board. Such briefs may be reproductions of those previously filed with the Regional Director and/or other briefs which shall be limited to the issues raised in the request for review. Where review has been granted, the Board will consider the entire record in the light of the grounds relied on for review. Any request for review may be withdrawn with the permission of the Board at any time prior to the issuance of the decision of the Board thereon.

(h) In any case in which it appears to the Regional Director that the proceeding raises questions which should be decided by the Board, he may, at any time, issue an order, to be effective after the close of the hearing and before decision, transferring the case to the Board for decision. Such an order may be served on the parties upon the record of the hearing.

(i) If any case is transferred to the Board for decision after the parties have filed briefs with the Regional Director, the parties may, within such time after service of the order transferring the case as is fixed by the Regional Director, file with the Board the brief previously filed with the Regional Director. No further briefs shall be permitted except by special permission of the Board. If the case is transferred to the Board before the time expires for the filing of briefs with the Regional Director and before the parties have filed briefs, such briefs shall be filed as set forth above and served in accordance with the requirements of subsection (k) of this section within the time set by the Regional Director. If the order transferring the case is served on the parties during the hearing, the hearing officer may, prior to the close of the hearing and for good cause, grant an extension of the time within which to file a brief with the Board for a period not to exceed an additional 14 days. No reply brief may be filed except upon special leave of the Board.

(j) Upon transfer of the case to the Board, the Board shall proceed, either forthwith upon the record, or after oral argument or the submission of briefs, or further hearing, as it may determine, to decide the issues referred to it or to review the decision of the Regional Director, and shall direct a secret ballot of the employees or the appropriate action to be taken on impounded ballots of an election already conducted, dismiss the petition, affirm or reverse the Regional Director's order in whole or in part, or make such other disposition of the matter as it deems appropriate.

(k)(1) All documents filed with the Board under the provisions of this section shall be filed in eight copies, double spaced, on 8-1/2-by 11-inch paper, and shall be printed or otherwise legibly duplicated. Carbon copies of typewritten materials will not be accepted. Requests for review, including briefs in support thereof; statements in opposition thereto; and briefs on review shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefor, filed not less than 5 days, including Saturdays, Sundays, and holidays, prior to the date the document is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

(2) The party filing with the Board a request for review, a statement in opposition to a request for review, or a brief on review shall serve a copy thereof on the other parties and shall file a copy with the Regional Director. A statement of such service shall be filed with the Board together with the document.

(3) Requests for extensions of time to file requests for review, statements in opposition to a request for review, or briefs, as permitted by this section, shall be filed with the Board or the Regional Director, as the case may be. The party filing the request for an extension of time shall serve a copy thereof on the other parties and, if filed with the Board, on the Regional Director. A statement of such service shall be filed with the document.

**Sec. 102.68** *Record; what constitutes; transmission to the Board.*—The record in a proceeding conducted pursuant to the foregoing section shall consist of: the petition, notice of hearing with affidavit of service thereof, motions, rulings, orders, the stenographic report of the hearing and of any oral argument before the Regional Director, stipulations, exhibits, affidavits of service, and any briefs or other legal memoranda submitted by the parties to the Regional Director or to the Board, and the decision of the Regional Director, if any. Immediately 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 the record to the Board.

**Sec. 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 without giving timely notice in writing to all

parties and the Regional Director, disclaiming any representation interest among the employees in the unit. Any party may be represented by observers of its own selection, subject to such limitations as the Regional Director may prescribe. Any party and Board agents may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election the ballots will be counted and a tally of ballots prepared and immediately made available to the parties. Within 7 days after the tally of ballots has been prepared, any party may file with the Regional Director an original and five copies of objections to the conduct of the election or to conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. A person filing objections by facsimile pursuant to §102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to §102.114(f). The Regional Director will cause a copy of the objections to be served on each of the other parties to the proceeding. Within 7 days after the filing of objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections.

(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 section 102.70, the Regional Director shall forthwith issue to the parties a certification of the results of the election, including certifications 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 section 102.69(d), initiate an investigation, as required, of such objections or challenges.

(2) If a consent election has been held pursuant to section 102.62(b), 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, D.C. 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, D.C., exceptions to such report, with supporting documents as permitted by section 102.69(g)(3) 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 section 102.69(g)(3) if desired, with the Board in Washington, D.C. 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 section 102.67, 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 section 102.62, 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 section 102.69(f); if the Regional Director issues a decision, the parties shall have the rights set forth in section 102.67 to the extent consistent herewith, including the right to submit documents supporting the request for review or opposition thereto as permitted by section 102.69(g)(3).

(d) In issuing a report on objections or on challenged ballots, or on both, following proceedings under section 102.62(b) or 102.67, or in issuing a decision on objections or on challenged ballots, or on both, following proceedings under section 102.67, 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 sections 102.64, 102.65, and 102.66, 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 section 102.62(b), 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 and cause to be served on the parties a notice of hearing on said exceptions before a hearing officer. The hearing shall be conducted in accordance with the provisions of sections 102.64, 102.65, and 102.66 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, D.C., 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, D.C. 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 section 102.67: *Provided, however,* That in any proceeding wherein a representation case has been consolidated with an unfair labor practice case for purposes of hearing the provisions of section 102.46 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, and 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 section 102.68. 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 on 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 on challenges, or on 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 on challenges, a request for review of a Regional Director's decision on objections or on 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 to the Board in the representation proceeding as provided above, shall preclude a party from relying on such evidence in any subsequent related unfair labor practice proceeding.

(h) In any such case in which the Regional Director or the Board, upon a ruling on challenged ballots, has directed that such ballots be opened and counted and a revised tally of ballots issued, and no objection to such revised tally is filed by any party within 7 days after the revised tally of ballots has been made available, the Regional Director shall forthwith issue to the parties certification of the results of the election, including certifications of representative where appropriate, with the same force and effect as if issued by the Board. The proceeding shall thereupon be closed.

(i)(1) The action of the Regional Director in issuing a notice of hearing on objections or on challenged ballots, or on both, following proceedings under section 102.62(b) shall constitute a transfer of the case to the Board, and the provisions of section 102.65(c) shall apply with respect to special permission to appeal to the Board from any such direction of hearing.

(2) Exceptions, if any, to the hearing officer's report or to the administrative law judge's decision, and any answering brief to such exceptions, shall be filed with the Board in Washington, D.C., in accordance with subsection (f) of this section.

(j)(1) All documents filed with the Board under the provisions of this section shall be filed in eight copies, double spaced, on 8-1/2-by 11-inch paper, and shall be printed or otherwise legibly duplicated. Carbon copies of typewritten materials will not be accepted. Briefs in support of exceptions or answering briefs shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefor, filed not less than 5 days, including Saturdays, Sundays, and holidays, prior to the date the brief is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

(2) The party filing with the Board exceptions to a report, a supporting brief, or an answering brief shall serve a copy thereof on the other parties and shall file a copy with the Regional Director. A statement of such service shall be filed with the Board together with the document.

(3) Requests for extensions of time to file exceptions to a report, supporting briefs, or answering briefs, as permitted by this section, shall be filed with the Board or the Regional Director, as the case may be. The party filing the request for an extension of time shall serve a copy thereof on the other parties and, if filed with the Board, or the Regional Director. A statement of such service shall be filed with the document.

**Sec. 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 section 102.69. Only one runoff election 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 among the three choices afforded in the original ballot; and shall thereafter proceed in accordance with subsections (a), (b), and (c) of this section. In the event two or more choices receive the same number of ballots and another choice receives no ballots and there are no challenged ballots that would affect the results of the election, and if all eligible voters have cast valid ballots, there shall be no runoff election and a certification of results of election shall be issued. Only one such further election pursuant to this subsection may be held.

(e) Upon the conclusion of the runoff election, the provisions of section 102.69 shall govern, insofar as applicable.

**Sec. 102.71** *Dismissal of petition; refusal to proceed with petition; requests for review by Board of action of the Regional Director.*—(a) If, after a petition has been filed and at any time prior to the close of hearing, it shall appear to the Regional Director that no further proceedings are warranted, the Regional Director may dismiss the petition by administrative action and shall so advise the petitioner in writing, setting forth a simple statement of the procedural or other grounds for the dismissal, with copies to the other parties to the proceeding. Any party may obtain a review of such action by filing a request therefor with the Board in Washington, D.C., in accordance with the provisions of subsection (c) of this section. A request for review from an action of a Regional Director pursuant to this subsection may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.

(2) There are compelling reasons for reconsideration of an important Board rule or policy.

(3) The request for review is accompanied by documentary evidence previously submitted to the Regional Director raising serious doubts as to the Regional Director's factual findings, thus indicating that there are factual issues which can best be resolved upon the basis of the record developed at a hearing.

(4) The Regional Director's action is, on its face, arbitrary or capricious.

(5) The petition raises issues which can best be resolved upon the basis of a record developed at a hearing.

(b) Where the Regional Director dismisses a petition or directs that the proceeding on the petition be held in abeyance, and such action is taken because of the pendency of concurrent unresolved charges of unfair labor practices, and the Regional Director, upon request, has so notified the parties in writing, any party may obtain a review of the Regional Director's action by filing a request therefor with the Board in Washington, D.C., in accordance with the provisions of subsection (c) of this section. A review of an action of a Regional Director pursuant to this subsection may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.

(2) There are compelling reasons for reconsideration of an important Board rule or policy.

(3) The Regional Director's action is, on its face, arbitrary or capricious.

(c) A request for review must be filed with the Board in Washington, D.C., and a copy filed with the Regional Director and copies served on all the other parties within 14 days of service of the notice of dismissal or notification that the petition is to be held in abeyance. The request shall be submitted in eight copies and shall contain a complete statement setting forth facts and reasons upon which the request is based. Such request shall be printed or otherwise legibly duplicated: *Provided, however*, That carbon copies of typewritten materials will not be accepted. Requests for an extension of time within which to file the request for review shall be filed with the Board in Washington, D.C., and a statement of service shall accompany such request.

**Sec. 102.72** *Filing petition with General Counsel: investigation upon motion of General Counsel; transfer of petition and proceeding from Region to General Counsel or to another Region; consolidation of proceedings in same Region; severance; procedure before General Counsel in cases over which he has assumed jurisdiction.*—(a) Whenever it appears necessary in order to effectuate the purposes of the Act, or to avoid unnecessary costs or delay, the General Counsel may permit a petition to be filed with him in Washington, D.C., or may, at any time after a petition has been filed with a Regional Director pursuant to section 102.60, order that such petition and any proceeding that may have been instituted with respect thereto:

(1) Be transferred to and continued before him, for the purpose of investigation or consolidation with any other proceeding which may have been instituted in a Regional Office or with him; or

(2) Be consolidated with any other proceeding which may have been instituted in the same Region; or

(3) Be transferred to and continued in any other Region, for the purpose of investigation or consolidation with any proceeding which may have been instituted in or transferred to such Region; or

(4) Be severed from any other proceeding with which it may have been consolidated pursuant to this section.

(b) The provisions of sections 102.60 to 102.71, inclusive, shall, insofar as applicable, apply to proceedings before the General Counsel pursuant to this section, and the powers granted to Regional Directors in such provisions shall, for the purpose of this section, be reserved to and exercised by the General Counsel. After the transfer of any petition and any proceeding which may have been instituted in respect thereto from one Region to another pursuant to this section, the provisions of this subpart shall, insofar as applicable, govern such petition and such proceeding as if the petition had originally been filed in the Region to which the transfer was made.

(c) The Regional Director may exercise the powers in subsections (a)(2) and (4) of this section with respect to proceedings pending in his Region.

## Subpart D—Procedure for Unfair Labor Practice and Representation Cases Under Sections 8(b)(7) and 9(c) of the Act

**Sec. 102.73** *Initiation of proceedings.*—Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of section 8(b)(7) of the Act, the Regional Director shall investigate such charge, giving it the priority specified in subpart G of these rules.

**Sec. 102.74** *Complaint and formal proceedings.*—If it appears to the Regional Director that the charge has merit, formal proceedings in respect thereto shall be instituted in accordance with the procedures described in sections 102.15 to 102.51, inclusive, insofar as they are applicable, and insofar as they are not inconsistent with the provisions of this subpart. If it appears to the Regional Director that issuance of a complaint is not warranted, he shall decline to issue a complaint, and the provisions of section 102.19, including the provisions for appeal to the General Counsel, shall be applicable unless an election has been directed under sections 102.77 and 102.78, in which event the provisions of section 102.81 shall be applicable.

**Sec. 102.75** *Suspension of proceedings on the charge where timely petition is filed.*—If it appears to the Regional Director that issuance of a complaint may be warranted but for the pendency of a petition under section 9(c) of the Act, which has been filed by any proper party within a reasonable time not to exceed 30 days from the commencement of picketing, the Regional Director shall suspend proceedings on the charge and shall proceed to investigate the petition under the expedited procedure provided below, pursuant to the first proviso to subparagraph (C) of section 8(b)(7) of the Act.

**Sec. 102.76** *Petition; who may file; where to file; contents.*—When picketing of an employer has been conducted for an object proscribed by section 8(b)(7) of the Act, a petition for the determination of a question concerning representation of the employees of such employer may be filed in accordance with the provisions of sections 102.60 and 102.61, insofar as applicable: *Provided, however,* That if a charge under section 102.73 has been filed against the labor organization on whose behalf picketing has been conducted, the petition shall not be required to contain a statement that the employer declines to recognize the petitioner as the representative within the meaning of section 9(a) of the Act; or that the labor organization is currently recognized but desires certification under the Act; or that the individuals or labor organizations who have been certified or are currently recognized by the employer are no longer the representative; or, if the petitioner is an employer, that one or more individuals or labor organizations have presented to the petitioner a claim to be recognized as the exclusive representative of the employees in the unit claimed to be appropriate.

**Sec. 102.77** *Investigation of petition by Regional Director; directed election.*—(a) Where a petition has been filed pursuant to section 102.76, the Regional Director shall make an investigation of the matters and allegations set forth therein. Any party, and any individual or labor organization purporting to act as representative of the employees involved and any labor organization on whose behalf picketing has been conducted as described in section 8(b)(7)(C) of the Act, may present documentary and other evidence relating to the matters and allegations set forth in the petition.

(b) If, after the investigation of such petition or any petition filed under subpart C of these rules, and after the investigation of the charge filed pursuant to section 102.73, it appears to the Regional Director that an expedited election under section 8(b)(7)(C) is

warranted, and that the policies of the Act would be effectuated thereby, he shall forthwith proceed to conduct an election by secret ballot of the employees in an appropriate unit, or make other disposition of the matter: *Provided, however*, That in any case in which it appears to the Regional Director that the proceeding raises questions which cannot be decided without a hearing, he may issue and cause to be served on the parties, individuals, and labor organizations involved a notice of hearing before a hearing officer at a time and place fixed therein. In this event, the method of conducting the hearing and the procedure following, including transfer of the case to the Board, shall be governed insofar as applicable by sections 102.63 to 102.68, inclusive, except that the parties shall not file briefs without special permission of the Regional Director or the Board, as the case may be, but shall, however, state their respective legal positions upon the record at the close of the hearing, and except that any request for review of a decision of the Regional Director shall be filed promptly after the issuance of such decision.

**Sec. 102.78** *Election procedure; method of conducting balloting; postballoting procedure*.—If no agreement such as that provided in section 102.79 has been made, the Regional Director shall fix the time and place of the election, eligibility requirements for voting, and other arrangements for the balloting. The method of conducting the balloting and the postballoting procedure shall be governed, insofar as applicable, by the provisions of sections 102.69 and 102.70, except that the labor organization on whose behalf picketing has been conducted may not have its name removed from the ballot without the consent of the Regional Director and except that the Regional Director's rulings on any objections or challenged ballots shall be final unless the Board grants special permission to appeal from the Regional Director's rulings. Any request for such permission shall be filed promptly, in writing, and shall briefly state the grounds relied on. The party requesting review shall immediately serve a copy thereof on each other party. A request for review shall not operate as a stay of the Regional Director's rulings unless so ordered by the Board.

**Sec. 102.79** *Consent-election agreements*.—Where a petition has been duly filed, the parties involved may, subject to the approval of the Regional Director, enter into an agreement governing the method of conducting the election as provided for in section 102.62(a), insofar as applicable.

**Sec. 102.80** *Dismissal of petition; refusal to process petition under expedited procedure*.—(a) If, after a petition has been filed pursuant to the provisions of section 102.76, and prior to the close of the hearing, it shall appear to the Regional Director that further proceedings in respect thereto in accordance with the provisions of section 102.77 are not warranted, he may dismiss the petition by administrative action, and the action of the Regional Director shall be final, subject to a prompt appeal to the Board on special permission which may be granted by the Board. Upon such appeal the provisions of section 102.71 shall govern insofar as applicable. Such appeal shall not operate as a stay unless specifically ordered by the Board.

(b) If it shall appear to the Regional Director that an expedited election is not warranted but that proceedings under subpart C of these rules are warranted, he shall so notify the parties in writing with a simple statement of the grounds for his decision.

(c) Where the Regional Director, pursuant to sections 102.77 and 102.78, has determined that a hearing prior to election is not required to resolve the issues raised by the petition and has directed an expedited election, any party aggrieved may file a request

with the Board for special permission to appeal from such determination. Such request shall be filed promptly, in writing, and shall briefly state the grounds relied on. The party requesting such appeal shall immediately serve a copy thereof on each other party. Should the Board grant the requested permission to appeal, such action shall not, unless specifically ordered by the Board, operate as a stay of any action by the Regional Director.

**Sec. 102.81** *Review by the General Counsel of refusal to proceed on charge; resumption of proceedings upon charge held during pendency of petition; review by General Counsel of refusal to proceed on related charge.*—(a) Where an election has been directed by the Regional Director or the Board in accordance with the provisions of sections 102.77 and 102.78, the Regional Director shall decline to issue a complaint on the charge, and he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making the charge may obtain a review of such action by filing an appeal with the General Counsel in Washington, D.C., and filing a copy of the appeal with the Regional Director, within 7 days from the service of the notice of such refusal by the Regional Director. In all other respects the appeal shall be subject to the provisions of section 102.19. Such appeal shall not operate as a stay of any action by the Regional Director.

(b) Where an election has not been directed and the petition has been dismissed in accordance with the provisions of section 102.80, the Regional Director shall resume investigation of the charge and shall proceed in accordance with section 102.74.

(c) If in connection with an 8(b)(7) proceeding, unfair labor practice charges under other sections of the Act have been filed and the Regional Director upon investigation has declined to issue a complaint upon such charges, he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making such charges may obtain a review of such action by filing an appeal with the General Counsel in Washington, D.C., and filing a copy of the appeal with the Regional Director, within 7 days from the service of the notice of such refusal by the Regional Director. In all other respects the appeal shall be subject to the provisions of section 102.19.

**Sec. 102.82** *Transfer, consolidation, and severance.*—The provisions of sections 102.33 and 102.72, respecting the filing of a charge or petition with the General Counsel and the transfer, consolidation, and severance of proceedings, shall apply to proceedings under this subpart of these rules, except that the provisions of section 102.73 to 102.81, inclusive, shall govern proceedings before the General Counsel.

## Subpart E—Procedure for Referendum Under Section 9(e) of the Act

**Sec. 102.83** *Petition for referendum under section 9(e)(1) of the Act; who may file; where to file; withdrawal.*— A petition to rescind the authority of a labor organization to make an agreement requiring as a condition of employment membership in such labor organization may be filed by an employee or group of employees on behalf of 30 percent or more of the employees in a bargaining unit covered by such an agreement. The petition shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. One original of the petition shall be filed with the Regional Director wherein the bargaining unit exists or, if the unit exists in two or more Regions, with the Regional Director for any of such Regions. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. The petition may be withdrawn only with the approval of the Regional Director with whom such petition was filed, except that if the proceeding has been transferred to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Board. Upon approval of the withdrawal of any petition the case shall be closed.

**Sec. 102.84** *Contents of petition to rescind authority.*—

(a) The name of the employer.

(b) The address of the establishment involved.

(c) The general nature of the employer’s business.

(d) A description of the bargaining unit involved.

(e) The name and address of the labor organization whose authority it is desired to rescind.

(f) The number of employees in the unit.

(g) Whether there is a strike or picketing in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(h) The dates of execution and of expiration of any contract in effect covering the unit involved.

(i) The name and address of the person designated to accept service of documents for petitioner.

(j) Any other relevant facts.

**Sec. 102.85** *Investigation of petition by Regional Director; consent referendum; directed referendum.*—Where a petition has been filed pursuant to section 102.83 and it appears to the Regional Director that the petitioner has made an appropriate showing, in such form as the Regional Director may determine, that 30 percent or more of the employees within a unit covered by an agreement between their employer and a labor organization requiring membership in such labor organization desire to rescind the authority of such labor organization to make such an agreement, he shall proceed to conduct a secret ballot of the employees involved on the question whether they desire to rescind the authority of the labor organization to make such an agreement with their employer: *Provided, however,* That in any case in which it appears to the Regional Director that the proceeding raises questions which cannot be decided without a hearing

he may issue and cause to be served on the parties a notice of hearing before a hearing officer at a time and place fixed therein. The Regional Director shall fix the time and place of the election, eligibility requirements for voting, and other arrangements of the balloting, but the parties may enter into an agreement, subject to the approval of the Regional Director, fixing such arrangements. In any such consent agreements, provision may be made for final determination of all questions arising with respect to the balloting by the Regional Director or by the Board.

**Sec. 102.86** *Hearing; posthearing procedure*.—The method of conducting the hearing and the procedure following the hearing, including transfer of the case to the Board, shall be governed, insofar as applicable, by sections 102.63 to 102.68, inclusive.

**Sec. 102.87** *Method of conducting balloting; postballoting procedure*.—The method of conducting the balloting and the postballoting procedure shall be governed by the provisions of section 102.69, insofar as applicable.

**Sec. 102.88** *Refusal to conduct referendum; appeal to Board*.—If, after a petition has been filed, and prior to the close of the hearing, it shall appear to the Regional Director that no referendum should be conducted, he shall dismiss the petition by administrative action. Such dismissal shall be in writing and accompanied by a simple statement of the procedural or other grounds. The petitioner may obtain a review of such action by filing a request therefor with the Board in Washington, D.C., and filing a copy of such request with the Regional Director and the other parties within 14 days from the service of notice of such dismissal. The request shall contain a complete statement setting forth the facts and reasons upon which the request is based.

## Subpart F—Procedure to Hear and Determine Disputes Under Section 10(k) of the Act

**Sec. 102.89** *Initiation of proceedings.*—Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b) of the Act, the Regional Director of the office in which such charge is filed or to which it is referred shall, as soon as possible after the charge has been filed, serve on the parties a copy of the charge together with a notice of the filing of the charge and shall investigate such charge and if it is deemed appropriate to seek injunctive relief of a district court pursuant to section 10(l) of the Act, he shall give it priority over all other cases in the office except other cases under section 10(l) and cases of like character.

**Sec. 102.90** *Notice of filing of charge; notice of hearing; hearing; proceedings before the Board; briefs; determination of dispute.*—If it appears to the Regional Director that the charge has merit and the parties to the dispute have not submitted satisfactory evidence to the Regional Director that they have adjusted, or have agreed upon methods for the voluntary adjustment of, the dispute out of which such unfair labor practice shall have arisen, he shall cause to be served on all parties to such dispute a notice of hearing under section 10(k) of the Act before a hearing officer at a time and place fixed therein which shall be not less than 10 days after service of the notice of the filing of said charge. The notice of hearing shall contain a simple statement of the issues involved in such dispute. Such notice shall be issued promptly, and, in cases in which it is deemed appropriate to seek injunctive relief pursuant to section 10(l) of the Act, shall normally be issued within 5 days of the date upon which injunctive relief is first sought. Hearings shall be conducted by a hearing officer, and the procedure shall conform, insofar as applicable, to the procedure set forth in sections 102.64 to 102.68, inclusive. Upon the close of the hearing, the proceeding shall be transferred to the Board and the Board shall proceed either forthwith upon the record, or after oral argument, or the submission of briefs, or further hearing, to determine the dispute or make other disposition of the matter. Should any party desire to file a brief with the Board, eight copies thereof shall be filed with the Board in Washington, D.C., within 7 days after the close of the hearing: *Provided, however,* That in cases involving the national defense and so designated in the notice of hearing no briefs shall be filed, and the parties, after the close of the evidence, may argue orally upon the record their respective contentions and positions: *Provided further,* That, in cases involving the national defense, upon application for leave to file briefs expeditiously made to the Board in Washington, D.C., after the close of the hearing, the Board may for good cause shown grant such leave and thereupon specify the time for filing. Immediately upon such filing, a copy shall be served on the other parties. Such brief shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted. Requests for extension of time in which to file a brief under authority of this section shall be in writing with copies thereof served on the other parties. No reply brief may be filed except upon special leave of the Board.

**Sec. 102.91** *Compliance with determination; further proceedings.*—If, after issuance of the determination by the Board, the parties submit to the Regional Director satisfactory evidence that they have complied with the determination, the Regional Director shall dismiss the charge. If no satisfactory evidence of compliance is submitted, the Regional Director shall proceed with the charge under paragraph (4)(D) of section 8(b) and section

10 of the Act and the procedure prescribed in sections 102.9 to 102.51, inclusive, shall, insofar as applicable, govern: *Provided, however*, That if the Board determination is that employees represented by a charged union are entitled to perform the work in dispute, the Regional Director shall dismiss the charge as to that union irrespective of whether the employer has complied with that determination.

**Sec. 102.92** *Review of determination*.—The record of the proceeding under section 10(k) and the determination of the Board thereon shall become a part of the record in such unfair labor practice proceeding and shall be subject to judicial review, insofar as it is in issue, in proceedings to enforce or review the final order of the Board under section 10(e) and (f) of the Act.

**Sec. 102.93** *Alternative procedure*.—If, either before or after service of the notice of hearing, the parties submit to the Regional Director satisfactory evidence that they have adjusted the dispute, the Regional Director shall dismiss the charge and shall withdraw the notice of hearing if notice has issued. If, either before or after issuance of the notice of hearing, the parties submit to the Regional Director satisfactory evidence that they have agreed upon methods for the voluntary adjustment of the dispute, the Regional Director shall defer action upon the charge and shall withdraw the notice of hearing if notice has issued. If it appears to the Regional Director that the dispute has not been adjusted in accordance with such agreed-upon methods and that an unfair labor practice within the meaning of section 8(b)(4)(D) of the Act is occurring or has occurred, he may issue a complaint under section 102.15, and the procedure prescribed in sections 102.9 to 102.51, inclusive, shall, insofar as applicable, govern; and sections 102.90 to 102.92, inclusive, are inapplicable: *Provided, however*, That if an agreed-upon method for voluntary adjustment results in a determination that employees represented by a charged union are entitled to perform the work in dispute, the Regional Director shall dismiss the charge as to that union irrespective of whether the employer has complied with that determination.

## Subpart G—Procedure in Cases Under Section 10(j), (l), and (m) of the Act

**Sec. 102.94** *Expeditious processing of section 10(j) cases.*—(a) Whenever temporary relief or a restraining order pursuant to section 10(j) of the Act has been procured by the Board, the complaint which has been the basis for such temporary relief or restraining order shall be heard expeditiously and the case shall be given priority by the Board in its successive steps following the issuance of the complaint (until ultimate enforcement or dismissal by the appropriate circuit court of appeals) over all other cases except cases of like character and cases under section 10(l) and (m) of the Act.

(b) In the event the administrative law judge hearing a complaint, concerning which the Board has procured temporary relief or a restraining order pursuant to section 10(j), recommends a dismissal in whole or in part of such complaint, the chief law officer shall forthwith suggest to the district court which issued such temporary relief or restraining order the possible change in circumstances arising out of the findings and recommendations of the administrative law judge.

**Sec. 102.95** *Priority of cases pursuant to section 10(l) and (m) of the Act.*—(a) Whenever a charge is filed alleging the commission of an unfair labor practice within the meaning of paragraph (4)(A), (B), (C), or (7) of section 8(b) of the Act, or section 8(e) of the Act, the Regional Office in which such charge is filed or to which it is referred shall give it priority over all other cases in the office except cases of like character and cases under paragraph (4)(D) of section 8(b) of the Act in which it is deemed appropriate to seek injunctive relief of a district court pursuant to section 10(l) of the Act.

(b) Whenever a charge is filed alleging the commission of an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 8 of the Act, the Regional Office in which such charge is filed or to which it is referred shall give it priority over all other cases in the office except cases of like character and cases under section 10(l) of the Act.

**Sec. 102.96** *Issuance of complaint promptly.*—Whenever the regional attorney or other Board officer to whom the matter may be referred seeks injunctive relief of a district court pursuant to section 10(l) of the Act, a complaint against the party or parties sought to be enjoined, covering the same subject matter as such application for injunctive relief, shall be issued promptly, normally within 5 days of the date upon which such injunctive relief is first sought, except in those cases under section 10(l) of the Act in which the procedure set forth in sections 102.90 to 102.92, inclusive, is deemed applicable.

**Sec. 102.97** *Expeditious processing of section 10(l) and (m) cases in successive stages.*—(a) Any complaint issued pursuant to section 102.95(a) or, in a case in which it is deemed appropriate to seek injunctive relief of a district court pursuant to section 10(l) of the Act, any complaint issued pursuant to section 102.93 or notice of hearing issued pursuant to section 102.90 shall be heard expeditiously and the case shall be given priority in such successive steps following its issuance (until ultimate enforcement or dismissal by the appropriate circuit court of appeals) over all cases except cases of like character.

(b) Any complaint issued pursuant to section 102.95(b) shall be heard expeditiously and the case shall be given priority in its successive steps following its issuance (until ultimate enforcement or dismissal by the appropriate circuit court of appeals) over all cases except cases of like character and cases under section 10(l) of the Act.

## Subpart H—Advisory Opinions and Declaratory Orders Regarding Board Jurisdiction

**Sec. 102.98** *Petition for advisory opinion; who may file; where to file* Whenever an agency or court of any State or territory is in doubt whether the Board would assert jurisdiction over the parties in a proceeding pending before such agency or court, the agency or court may file a petition with the Board for an advisory opinion on whether the Board would decline to assert jurisdiction over the parties before the agency or the court (1) on the basis of its current standards, or (2) because the employing enterprise is not within the jurisdiction of the National Labor Relations Act.

**Sec. 102.99** *Contents of petition for advisory opinion*

(a) A petition for an advisory opinion, when filed by an agency or court of a State or territory, shall allege the following:

(1) The name of the agency or court.

(2) The names of the parties to the proceeding and the docket number.

(3) The nature of the proceeding, and the need for the Board's opinion on the jurisdictional issue to the proceeding.

(4) The general nature of the business involved in the proceeding and, where appropriate, the nature of and details concerning the employing enterprise.

(5) The findings of the agency or court or, in the absence of findings, a statement of the evidence relating to the commerce operations of such business and, where appropriate, to the nature of the employing enterprise.

(b) Eight copies of such petition or request shall be submitted to the Board in Washington, D.C. Such petition or request shall be printed or otherwise legibly duplicated: Carbon copies of typewritten matter will not be accepted.

**Sec. 102.100** *Notice of petition; service of petition*.—Upon the filing of a petition the petitioner shall immediately serve in the manner provided by section 102.114(a) of these rules a copy of the petition on all parties to the proceeding and on the Director of the Board's Regional Office having jurisdiction over the territorial area in which such agency or court is located. A statement of service shall be filed with the petition as provided by section 102.114(b) of these rules.

**Sec. 102.101** *Response to petition; service of response*.—Any party served with such petition may, within 14 days after service thereof, respond to the petition, admitting or denying its allegations. Eight copies of such response shall be filed with the Board in Washington, D.C. Such response shall be printed or otherwise legibly duplicated: *Provided, however*, That carbon copies of typewritten materials will not be accepted. Such response shall immediately be served on all other parties to the proceeding, and a statement of service shall be filed in accordance with the provisions of section 102.114(b) of these rules.

**Sec. 102.102** *Intervention*.—Any person desiring to intervene shall make a motion for intervention, stating the grounds upon which such person claims to have an interest in the petition. Eight copies of such motion shall be filed with the Board in Washington, D.C. Such motion shall be printed or otherwise legibly duplicated: *Provided, however*, That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted.

**Sec. 102.103** *Proceedings before the Board; briefs; advisory opinions*.—The Board shall thereupon proceed, upon the petition, responses, and submission of briefs, to

determine whether; on the facts before it, the commerce operations of the employer involved are such that it would or would not assert jurisdiction. Such determination shall be in the form of an advisory opinion and shall be served on the parties. No briefs shall be filed except upon special permission of the Board.

**Sec. 102.104** *Withdrawal of petition.*—The petitioner may withdraw his petition at any time prior to issuance of the Board's advisory opinion.

**Sec. 102.105** *Petitions for declaratory orders; who may file; where to file; withdrawal.*—Whenever both an unfair labor practice charge and a representative case relating to the same employer are contemporaneously on file in a Regional Office of the Board, and the General Counsel entertains doubt whether the Board would assert jurisdiction over the employer involved, he may file a petition with the Board for a declaratory order disposing of the jurisdictional issue in the case. Such petition may be withdrawn at any time prior to the issuance of the Board's order.

**Sec. 102.106** *Contents of petition for declaratory order.*—A petition for a declaratory order shall allege the following:

(a) The name of the employer.

(b) The general nature of the employer's business.

(c) The case numbers of the unfair labor practice and representation cases.

(d) The commerce data relating to the operations of such business.

(e) Whether any proceeding involving the same subject matter is pending before an agency or court of a State or territory.

Eight copies of the petition shall be filed with the Board in Washington, D.C. Such petition shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted.

**Sec. 102.107** *Notice of petition; service of petition.*—Upon filing a petition, the General Counsel shall immediately serve a copy thereof on all parties and shall file a statement of service as provided by section 102.114(b) of these rules.

**Sec. 102.108** *Response to petition; service of response.*—Any party to the representation or unfair labor practice case may, within 14 days after service thereof, respond to the petition, admitting or denying its allegations. Eight copies of such response shall be filed with the Board in Washington, D.C. Such response shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten materials will not be accepted. Such response shall be served on the General Counsel and all other parties, and a statement of service shall be filed as provided by section 102.114(b) of these rules.

**Sec. 102.109** *Intervention.*—Any person desiring to intervene shall make a motion for intervention, stating the grounds upon which such person claims to have an interest in the petition. Eight copies of such motion shall be filed with the Board in Washington, D.C. Such motion shall be printed or otherwise legibly duplicated: *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted.

**Sec. 102.110** *Proceedings before the Board; briefs; declaratory orders.*—The Board shall thereupon proceed, upon the petition, responses, and submission of briefs, to determine whether; on the facts before it, the commerce operations of the employer involved are such that it would or would not assert jurisdiction over them. Such determination shall be made by a declaratory order; with like effect as in the case of other

orders of the Board, and shall be served on the parties. Any party desiring to file a brief shall file eight copies with the Board in Washington, D.C., with a statement that copies thereof are being served simultaneously on the other parties. Such brief shall be printed or otherwise legibly duplicated: *Provided, however*, That carbon copies shall not be filed and if submitted will not be accepted.

## Subpart I—Service and Filing of Papers

**Sec. 102.111** *Time computation.*—(a) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the official closing time of the receiving office on the next Agency business day (see appendix A to this part 102 setting forth the official business hours of the Agency's several offices). When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) When the Act or any of these rules require the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the official closing time of the receiving office on the last day of the time limit, if any, for such filing or extension of time that may have been granted (see appendix A to the part 102 setting forth the official business hours of the Agency's several offices). A request for an extension of time to file a document shall be filed no later than the official closing time of the receiving office on the date on which the document is due. Requests for extensions of time filed within three days of the due date must be grounded upon circumstances not reasonably foreseeable in advance. In construing this section of the rules, the Board will accept as timely filed any document which is hand delivered to the Board on or before the official closing time of the receiving office on the due date or postmarked on the day before (or earlier than) the due date; documents which are postmarked on or after the due date are untimely. "Postmarking" shall include timely depositing the document with a delivery service that will provide a record showing that the document was tendered to the delivery service in sufficient time for delivery by the due date, but in no event later than the day before the due date. *Provided, however,* The following documents must be received on or before the official closing time of the receiving office on the last day for filing:

(1) Charges filed pursuant to section 10(b) of the Act (see also sec. 102.14).

(2) Applications for awards and fees and other expenses under the Equal Access to Justice Act.

(3) Petitions to revoke subpoenas.

(4) Requests for extensions of time to file any document for which such an extension may be granted.

(c) The following documents may be filed within a reasonable time after the time prescribed by these rules only upon good cause shown based on excusable neglect and when no undue prejudice would result:

(1) In unfair labor practice proceedings, motions, exceptions, answers to a complaint or a backpay specification, and briefs; and

(2) In representation proceedings, exceptions, requests for review, motions, briefs, and any responses to any of these documents. A party seeking to file such documents beyond the time prescribed by these rules shall file, along with the document, a motion that states the grounds relied on for requesting permission to file untimely. The specific facts relied on to support the motion shall be set forth in affidavit form and sworn to by individuals with personal knowledge of the facts. The time for filing any document responding to the untimely document shall not commence until

the date a ruling issues accepting the untimely document. In addition, cross-exceptions shall be due within 14 days, or such further period as the Board may allow, from the date a ruling issues accepting the untimely filed documents.

**Sec. 102.112** *Date of service; date of filing.*— The date of service shall be the day when the matter served is deposited in the United States mail, or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service, or is delivered in person, as the case may be. Where service is made by facsimile transmission, the date of service shall be the date on which transmission is received. The date of filing shall be the day when the matter is required to be received by the Board as provided by § 102.111.

**Sec. 102.113** *Methods of service of process and papers by the Agency; proof of service* (a) Service of complaints and compliance specifications. Complaints and accompanying notices of hearing, compliance specifications, and amendments to either complaints or to compliance specifications, shall be served upon all parties either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(b) Service of final orders and decisions. Final orders of the Board in unfair labor practice cases and administrative law judges' decisions shall be served upon all parties either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(c) Service of subpoenas. Subpoenas shall be served upon the recipient either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(d) Service of other documents. Other documents may be served by the Agency by any of the foregoing methods as well as regular mail or private delivery service. Such other documents may be served by facsimile transmission with the permission of the person receiving the document.

(e) Proof of service. In the case of personal service, or delivery to a principal office or place of business, the verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same. In the case of service by mail or telegraph, the return post office receipt or telegraph receipt therefor when registered or certified and mailed or when telegraphed shall be proof of service of the same. However, these methods of proof of service are not exclusive; any sufficient proof may be relied upon to establish service.

(f) Service upon representatives of parties. Whenever these rules require or permit the service of pleadings or other papers upon a party, a copy shall also be served on any attorney or other representative of the party who has entered a written appearance in the proceeding on behalf of the party. If a party is represented by more than one attorney or representative, service upon any one of such persons in addition to the party shall satisfy this requirement. Service by the Board or its agents of any documents upon any such attorney or other representative may be accomplished by any means of service permitted by these rules, including regular mail.

**Sec. 102.114** *Filing and service of papers by parties; form of papers; manner and proof of filling or service; electronic filings.*—(a) Service of papers by a party on other parties may be made personally, or by registered mail, certified mail, regular mail, or private delivery service. Service of papers by a party on other parties by any other means,

including facsimile transmission, is permitted only with the consent of the party being served. Unless otherwise specified elsewhere in these rules, service on all parties shall be made in the same manner as that utilized in filing the paper with the
Board, or in a more expeditious manner; however, when filing with the Board is done by hand, the other parties shall be promptly notified of such action by telephone, followed by service of a copy in a manner designed to insure receipt by them by the close of the next business day. The provisions of this section apply to the General Counsel after a complaint has issued, just as they do to any other party, except to the extent that the provisions of §§ 102.113(a) or 102.113(c) provide otherwise.

(b) When service is made by registered mail, or by certified mail, the return post office receipt shall be proof of service. When service is made by a private delivery service, the receipt from that service showing delivery shall be proof of service. However, these methods of proof of service are not exclusive; any sufficient proof may be relied upon to establish service.

(c) Failure to comply with the requirements of this section relating to timeliness of service on other parties shall be a basis for either:

(1) A rejection of the document; or

(2) Withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond.

(d) Papers filed with the Board, General Counsel, Regional Director, Administrative Law Judge, or Hearing Officer shall be typewritten or otherwise legibly duplicated on 8 1/2 by 11-inch plain white paper, shall have margins no less than one inch on each side, shall be in a typeface no smaller than 12 characters-per-inch (elite or the equivalent), and shall be double spaced (except that quotations and footnotes may be single spaced). Carbon copies shall not be filed and will not be accepted. Nonconforming papers may, at the Agency's discretion, be rejected.

(e) The person or party serving the papers or process on other parties in conformance with §102.113 and paragraph (a) of this section shall submit a written statement of service thereof to the Board stating the names of the parties served and the date and manner of service. Proof of service as defined in paragraph (a) of this section shall be required by the Board only if subsequent to the receipt of the statement of service a question is raised with respect to proper service. Failure to make proof of service does not affect the validity of the service.

(f) Unfair labor practice charges, petitions in representation proceedings, objections to elections, and requests for extensions of time for filing documents will be accepted by the Agency if transmitted to the facsimile machine of the appropriate office. Other documents, except those specifically prohibited in paragraph (g) of this section, will be accepted by the Agency if transmitted to the facsimile machine of the office designated to receive them only with advance permission from the receiving office which may be obtained by telephone. Advance permission must be obtained for each such filing. At the discretion of the receiving office, the person submitting a document by facsimile may be required simultaneously to serve the original and any required copies on the office by overnight delivery service. When filing a charge, a petition in a representation proceeding, or election objections by facsimile transmission pursuant to this section,

receipt of the transmitted document by the Agency constitutes filing with the Agency. A failure to timely file or serve a document will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason.

(g) Facsimile transmissions of the following documents will not be accepted for filing: Showing of Interest in Support of Representation Petitions, including Decertification Petitions; Answers to Complaints; Exceptions or Cross-Exceptions; Briefs; Requests for Review of Regional Director Decisions; Administrative Appeals from Dismissal of Petitions or Unfair Labor Practice Charges; Objections to Settlements; EAJA Applications; Motions for Default Judgment; Motions for Summary Judgment; Motions to Dismiss; Motions for Reconsideration; Motions to Clarify; Motions to Reopen the Record; Motions to Intervene; Motions to Transfer, Consolidate or Sever; or Petitions for Advisory Opinions. Facsimile transmissions in contravention of this rule will not be filed.

(h) Documents and other papers filed through facsimile transmission shall be served on all parties in the same way as used to serve the office where filed, or in a more expeditious manner, in conformance with paragraph (a) of this section. Thus, facsimile transmission shall be used for this purpose whenever possible. When a party cannot be served by this method, or chooses not to accept service by facsimile as provided for in paragraph (a) of this section, the party shall be notified personally or by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service or overnight delivery service.

(i) The Agency's web site (http://www.nlrb.gov) contains certain forms that parties or other persons are permitted to file with the Agency electronically. Parties or other persons choosing to utilize those forms to file documents electronically are permitted to do so by following the instructions described on the web site, notwithstanding any contrary provisions elsewhere in these rules. In the event the document being filed electronically is required to be served on another party to a proceeding, the other party shall be notified by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service no later than the next day, by overnight delivery service, or, with the permission of the party receiving the document, by facsimile transmission.

## Subpart J—Certification and Signature of Documents

**Sec. 102.115** *Certification of papers and documents.*—The Executive Secretary of the Board or, in the event of his absence or disability, whosoever may be designated by the Board in his place and stead shall certify copies of all papers and documents which are a part of any of the files or records of the Board as may be necessary or desirable from time to time.

**Sec. 102.116** *Signature of orders*.—The Executive Secretary or an associate executive secretary or, in the event of their absence or disability, whosoever may be designated by the Board in their place and stead is hereby authorized to sign all orders of the Board.

## Subpart K—Records and Information

**Sec. 102.117** *Board materials and formal documents available for public inspection and copying; requests for described records; time limit for response; appeal from denial of request; fees for document search and duplication; files and records not subject to inspection.*— (a)(1) This subpart contains the rules that the National Labor Relations Board follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Information routinely provided to the public as part of a regular Agency activity (for example, press releases issued by the Division of Information) may be provided to the public without following this subpart. Such records may also be made available in the Agency's reading room in paper form, as well as electronically to facilitate public access. As a matter of policy, the Agency will consider making discretionary disclosures of records or information exempt under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(2) The following materials are available to the public for inspection and copying during normal business hours:

(i) All final opinions and orders made in the adjudication of cases;

(ii) Statements of policy and interpretations that are not published in the Federal Register;

(iii) Administrative staff manuals and instructions that affect any member of the public (excepting those establishing internal operating rules, guidelines, and procedures for investigation, trial, and settlement of cases);

(iv) A current index of final opinions and orders in the adjudication of cases;

(v) A record of the final votes of each Member of the Board in every Agency proceeding;

(vi) Records which have been released and which the Agency determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records; and

(vii) A general index of records referred to in paragraph (a)(2)(vi) of this section. Items in paragraphs (a)(2)(i) through (vii) of this section are available for inspection and copying during normal business hours at the Board's offices in Washington, DC. Items in paragraph (a)(2)(iii) of this section are also available for inspection and copying during normal business hours at each Regional, Subregional, and Resident Office of the Board. Final opinions and orders made by Regional Directors in the adjudication of representation cases pursuant to the delegation of authority from the Board under section 3(b) of the Act are available to the public for inspection and copying in the original office where issued. Records encompassed within paragraphs (a)(2)(i) through (a)(2)(vii) of this section created on or after November 1, 1996, will be made available by November 1, 1997, to the public by computer telecommunications or, if computer telecommunications means have not been established by the Agency, by other electronic means. The Agency shall maintain and make available for public inspection and copying a current subject matter index of all reading room materials which shall be updated regularly, at least quarterly, with respect to newly included records. Copies of the index are available upon request for a fee of the direct cost of duplication. The index of FOIA-processed records referred to in paragraph (a)(2)(vii) of this section will be available by computer telecommunications by December 31, 1999.

(3) Copies of forms prescribed by the board for the filing of charges under section 10 alleging violations of the Act under section 8, or petitions under section 9, may be obtained without charge from any Regional, Subregional, or Resident Office of the Board. These forms are available electronically through the Agency's World Wide Web site (which can be found at http://www.nlrb.gov).

(4) The Agency shall, on or before February 1, 1998, and annually thereafter, submit a FOIA report covering the preceding fiscal year to the Attorney General of the United States. The report shall include those matters required by 5 U.S.C. 552(e), and shall be made available electronically.

(b)(1) The formal documents constituting the record in a case or proceeding are matters of official record and, until officially destroyed pursuant to applicable statutory authority, are available to the public for inspection and copying during normal business hours at the appropriate Regional Office of the Board or at the Board's office in Washington, DC, as the case may be. If the case or proceeding has been closed for more than 2 years, the appropriate Regional Office of the Board or the Board's office in Washington, DC, upon request, will contact the Federal Records Center to obtain the records.

(2) The Executive Secretary shall certify copies of all formal documents upon request made a reasonable time in advance of need and payment of lawfully prescribed costs.

(c)(1) Requests for the inspection and copying of records other than those specified in paragraphs (a) and (b) of this section must be in writing and must reasonably describe the record in a manner to permit its identification and location. The envelope and the letter, or the cover sheet of any fax transmittal, should be clearly marked to indicate that it contains a request for records under the Freedom of Information Act (FOIA). The request must contain a specific statement assuming financial liability in accordance with paragraph (d)(2) of this section for the direct costs of responding to the request. If the request is made for records in a Regional or Subregional Office of the Agency, it should be made to that Regional or Subregional Office; if for records in the Office of the General Counsel and located in Washington, DC, it should be made to the Freedom of Information Officer, Office of the General Counsel, Washington, DC; if for records in the offices the Board or the Inspector General in Washington, DC, to the Executive Secretary of the Board, Washington, DC. Requests made to other than the appropriate office will be forwarded to that office by the receiving office, but in that event the applicable time limit for response set forth in paragraph (c)(2)(i) of this section shall be calculated from the date of receipt by the appropriate office. Requesters may be given an opportunity to discuss their request so that requests may be modified to meet the requirements of this section. In the case of records generated by the Inspector General and in possession of another office, or in the possession of the Inspector General but generated by another office of the Agency, the request may be referred to the generating office for decision. If the Agency determines that a request does not reasonably describe records, it may contact the requester to inform the requester either what additional information is needed or why the request is insufficient. Similar referrals may, in the Agency's discretion, be made between other offices.

(2)(i) The Agency ordinarily shall respond to requests according to their order of receipt. Effective October 2, 1997, an initial response shall be made within 20 working

days (i.e. exempting Saturdays, Sundays, and legal public holidays) after the receipt of a request for a record under this part by the Freedom of Information Officer or his designee. An appeal under paragraph (c)(2)(v) of this section shall be decided within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such an appeal by the Office of Appeals or the Chairman of the Board. Because the Agency has been able to process its requests without a backlog of cases, the Agency will not institute a multitrack processing system.

(ii) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve: Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information; the loss of substantial due process rights; or a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. A request for expedited processing may be made at the time of the initial request for records or at any later time. A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. The formality of certification may be waived as a matter of administrative discretion. Within ten calendar days of its receipt of a request for expedited processing, the Agency shall decide whether to grant it and shall notify the requester of the decision. Once the determination has been made to grant expedited processing, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, the Agency shall act expeditiously on any appeal of that decision.

(iii) Within 20 working days after receipt of a request by the appropriate office of the Agency a determination shall be made whether to comply with such request, and the person making the request shall be notified in writing of that determination. In the case of requests made to the Executive Secretary for Inspector General Records, that determination shall be made by the Inspector General. In the case of all other requests, that determination shall be made by the General Counsel's office, the Regional or Subregional Office, or the Executive Secretary's office, as the case may be. If the determination is to comply with the request, the records shall be made promptly available to the person making the request and, at the same time, a statement of any charges due in accordance with the provisions of paragraph (d)(2) of this section will be provided. If the determination is to deny the request in any respect, the requester shall be notified in writing of that determination. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Act; a determination on any disputed fee matter, including a denial of a request for a fee waiver or reduction or placement in a particular fee category; and a denial of a request for expedited treatment. For a determination to deny a request in any respect, the notification shall set forth the reasons therefor and the name and title or position of each person responsible for the denial, shall provide an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form

of estimation (this estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption), and shall notify the person making the request of the right to appeal the adverse determination under provisions of paragraph (c)(2)(v) of this section.

(iv) Business information obtained by the Agency from a submitter will be disclosed under the FOIA only consistent with the procedures established in this section.

(A) For purposes of this section:

(1) Business information means commercial or financial information obtained by the Agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) Submitter means any person or entity from whom the Agency obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(B) A submitter of business information will use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period. The Agency shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (c)(2)(iv)(C) of this section, except as provided in paragraph (c)(2)(iv)(F) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (c)(2)(iv)(D) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(C) Notice shall be given to a submitter wherever: the information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or the Agency has reason to believe that the information may be protected from disclosure under Exemption 4.

(D) The Agency will allow a submitter a reasonable time to respond to the notice described in paragraph (c)(2)(iv)(B) of this section. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(E) The Agency shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever the Agency decides to disclose business information over the objection of a submitter, the

Agency shall give the submitter written notice, which shall include: A statement of the reason(s) why each of the submitter's disclosure objections was not sustained; a description of the business information to be disclosed; and a specified disclosure date, which shall be a reasonable time subsequent to the notice.

(F) The notice requirements of paragraphs (c)(2)(iv)(B) and (E) of this section shall not apply if: The Agency determines that the information should not be disclosed; the information lawfully has been published or has been officially made available to the public; disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or the designation made by the submitter under paragraph (c)(2)(iv)(B) of this section appears obviously frivolous-except that, in such a case, the Agency shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(G) Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the Agency shall promptly notify the submitter.

(H) Whenever the Agency provides a submitter with notice and an opportunity to object to disclosure under paragraph (c)(2)(iv)(B) of this section, the Agency shall also notify the requester(s). Whenever the Agency notifies a submitter of its intent to disclose requested information under paragraph (c)(2)(iv)(E) of this section, the Agency shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Agency shall notify the requester(s).

(v) An appeal from an adverse determination made pursuant to paragraph (c)(2)(iii) of this section must be filed within 20 working days of the receipt by the person making the request of the notification of the adverse determination where the request is denied in its entirety; or, in the case of a partial denial, within 20 working days of the receipt of any records being made available pursuant to the request. If the adverse determination was made in a Regional Office, a Subregional Office, or by the Freedom of Information Officer, Office of the General Counsel, the appeal shall be filed with the General Counsel in Washington, DC. If the adverse determination was made by the Executive Secretary of the Board or the Inspector General, the appeal shall be filed with the Chairman of the Board in Washington, DC. Within 20 working days after receipt of an appeal the General Counsel or the Chairman of the Board, as the case may be, shall make a determination with respect to such appeal and shall notify the person making the request in writing. If the determination is to comply with the request, the record shall be made promptly available to the person making the request upon receipt of payment of any charges due in accordance with the provisions of paragraph (d)(2) of this section. If on appeal the denial of the request for records is upheld in whole or in part, the person making the request shall be notified of the reasons for the determination, the name and title or position of each person responsible for the denial, and the provisions for judicial review of that determination under the provisions of 5 U.S.C. 552(4)(B). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the General Counsel or the Chairman of the Board may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of an adverse determination under this appeal procedure by written notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification. An

adverse determination by the General Counsel or the Chairman of the Board, as the case may be, will be the final action of the Agency. If the requester wishes to seek review by a court of any adverse determination, the requester must first appeal it under this section.

(vi) In unusual circumstances as specified in this paragraph, the time limits prescribed in either paragraph (c)(2)(i) or (iv) of this section may be extended by written notice to the person requesting the record setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice or notices shall specify a date or dates that would result in an extension or extensions totaling more than 10 working days with respect to a particular request, except as set forth below in this paragraph. As used in this paragraph, unusual circumstances means, but only to the extent reasonably necessary to the proper processing of the particular request:

(A) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

(C) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or with two or more components of the Agency having a substantial subject matter interest in the request. Where the extension is for more than ten working days, the Agency shall provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period for processing the request or a modified request.

(vii) The Agency shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(d)(1) For purposes of this section, the following definitions apply:

(i) Direct costs means those expenditures which are actually incurred in searching for and duplicating and, in the case of commercial use requests, reviewing documents to respond to a FOIA request.

(ii) Search refers to the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The Agency shall ensure that searches are done in the most efficient and least expensive manner reasonably possible.

(iii) Duplication refers to the process of making a copy of a record, or the information contained in it, necessary to respond to a FOIA request. Such copies can take the form of paper, microfilm, videotape, audiotape, or electronic records (e.g., magnetic tape or disk), among others. The Agency shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with

reasonable efforts in the requested form or format by the office responding to the request.

(iv) Review refers to the process of examining documents located in response to a request that is for commercial use to determine whether any portion of it is exempt from disclosure. It includes processing any documents for disclosure, e.g., doing all that is necessary to redact and prepare them for disclosure. Review time includes time spent considering any formal objection to disclosure made by a business submitter under paragraph (c)(2)(iv) of this section, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(v) Commercial use request refers to a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation.

(vi) Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(vii) Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in instances where they can qualify as disseminators of ``news'') who make their products available for purchase or subscription by the general public. For ``freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but the Agency shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for commercial use. However, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(viii) Working days, as used in this paragraph, means calendar days excepting Saturdays, Sundays, and legal holidays.

(2) Persons requesting records from this Agency shall be subject to a charge of fees for the full allowable direct costs of document search, review, and duplicating, as appropriate, in accordance with the following schedules, procedures, and conditions:

(i) Schedule of charges:

(A) For each one-quarter hour or portion thereof of clerical time * * * $3.10.

(B) For each one-quarter hour or portion thereof of professional time * * * $9.25.

(C) For each sheet of duplication (not to exceed 8\1/2\ by 14 inches) of requested records * * * $0.12.

(D) All other direct costs of preparing a response to a request shall be charged to the requester in the same amount as incurred by the Agency. Such costs shall include, but

not be limited to: Certifying that records are true copies; sending records to requesters or receiving records from the Federal records storage centers by special methods such as express mail; and, where applicable, the cost of conducting computer searches for information and for providing information in electronic format.

(ii) Fees incurred in responding to information requests are to be charged in accordance with the following categories of requesters:

(A) Commercial use requesters will be assessed charges to recover the full direct costs for searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought.

(B) Educational institution requesters will be assessed charges for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but are sought in furtherance of scholarly research. Requesters must reasonably describe the records sought.

(C) Requesters who are representatives of the news media will be assessed charges for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (d)(1)(vii) of this section, and the request must not be made for commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use. Requesters must reasonably describe the records sought.

(D) All other requesters, not elsewhere described, will be assessed charges to recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge. Requesters must reasonably describe the records sought.

(E) Absent a reasonably based factual showing that a requester should be placed in a particular user category, fees will be imposed as provided for in the commercial use requester category.

(iii)(A) In no event shall fees be imposed on any requester when the total charges are less than $5, which is the Agency's cost of collecting and processing the fee itself.

(B) If the Agency reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Agency may aggregate those requests and charge accordingly. The Agency may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, the Agency will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(iv) Documents are to be furnished without charge or at reduced levels if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest. A fee waiver or

reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. Where only some of the requested records satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(v) If a requester fails to pay chargeable fees that were incurred as a result of the Agency's processing of the information request, beginning on the 31st day following the date on which the notification of charges was sent, the Agency may assess interest charges against the requester in the manner prescribed in 31 U.S.C. 3717. Where appropriate, other steps permitted by federal debt collection statutes, including disclosure to consumer reporting agencies, use of collection agencies, and offset, will be used by the Agency to encourage payment of amounts overdue.

(vi) Each request for records shall contain a specific statement assuming financial liability, in full or to a specified maximum amount, for charges, in accordance with paragraphs (d)(2)(i) and (ii) of this section, which may be incurred by the Agency in responding to the request. If the anticipated charges exceed the maximum limit stated by the person making the request or if the request contains no assumption of financial liability or charges, the person shall be notified and afforded an opportunity to assume financial liability. In either case, the request for records shall not be deemed received for purposes of the applicable time limit for response until a written assumption of financial liability is received. The Agency may require a requester to make an advance payment of anticipated fees under the following circumstances:

(A) If the anticipated charges are likely to exceed $250, the Agency shall notify the requester of the likely cost and obtain satisfactory assurance of full payment when the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(B) If a requester has previously failed to pay fees that have been charged in processing a request within 30 days of the date of the notification of fees was sent, the requester will be required to pay the entire amount of fees that are owed, plus interest as provided for in paragraph (d)(2)(v) of this section, before the Agency will process a further information request. In addition, the Agency may require advance payment of fees that the Agency estimates will be incurred in processing the further request before the Agency commences processing that request. When the Agency acts under paragraph (d)(2)(vi)(A) or (B) of this section, the administrative time limits for responding to a request or an appeal from initial denials will begin to run only after the Agency has received the fee payments required above.

(vii) Charges may be imposed even though the search discloses no records responsive to the request, or if records located are determined to be exempt from disclosure.

(e) Subject to the provisions of Sec. Sec. **102**.31(c) and **102**.66(c), all fines, documents, reports, memoranda, and records of the Agency falling within the exemptions specified in 5 U.S.C. 552(b) shall not be made available for inspection or copying, unless specifically permitted by the Board, its Chairman, or its General Counsel.

(f) An individual will be informed whether a system of records maintained by this Agency contains a record pertaining to such individual. An inquiry should be made in

writing or in person during normal business hours to the official of this Agency designated for that purpose and at the address set forth in a notice of a system of records published by this Agency, in a Notice of Systems of Governmentwide Personnel Records published by the Office of Personnel Management, or in a Notice of Governmentwide Systems of Records published by the Department of Labor. Copies of such notices, and assistance in preparing an inquiry, may be obtained from any Regional Office of the Board or at the Board offices at 1099 14th Street, NW., Washington, DC 20570. The inquiry should contain sufficient information, as defined in the notice, to identify the record. Reasonable verification of the identity of the inquirer, as described in paragraph (j) of this section, will be required to assure that information is disclosed to the proper person. The Agency shall acknowledge the inquiry in writing within 10 days (excluding Saturdays, Sundays, and legal public holidays) and, wherever practicable, the acknowledgment shall supply the information requested. If, for good cause shown, the Agency cannot supply the information within 10 days, the inquirer shall within that time period be notified in writing of the reasons therefor and when it is anticipated the information will be supplied. An acknowledgment will not be provided when the information is supplied within the 10-day period. If the Agency refuses to inform an individual whether a system of records contains a record pertaining to an individual, the inquirer shall be notified in writing of that determination and the reasons therefor, and of the right to obtain review of that determination under the provisions of paragraph (k) of this section.

(g) An individual will be permitted access to records pertaining to such individual contained in any system of records described in the notice of system of records published by this Agency, or access to the accounting of disclosures from such records. The request for access must be made in writing or in person during normal business hours to the person designated for that purpose and at the address set forth in the published notice of system of records. The request for access must be made in writing or in person during normal business hours to the person designated for that purpose and at the address set forth in the published notice of system of records. Copies of such notices, and assistance in preparing a request for access, may be obtained from any Regional Office of the Board or at the Board offices at 1099 14th Street, NW., Washington, DC 20570. Reasonable verification of the identity of the requester, as described in paragraph (j) of this section, shall be required to assure that records are disclosed to the proper person. A request for access to records or the accounting of disclosures from such records shall be acknowledged in writing by the Agency within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) and, wherever practicable, the acknowledgment shall inform the requester whether access will be granted and, if so, the time and location at which the records or accounting will be made available. If access to the record or accounting is to be granted, the record or accounting will normally be provided within 30 days (excluding Saturdays, Sundays, and legal public holidays) of the request, unless for good cause shown the Agency is unable to do so, in which case the individual will be informed in writing within that 30-day period of the reasons therefor and when it is anticipated that access will be granted. An acknowledgment of a request will not be provided if the record is made available within the 10-day period. If an individual's request for access to a record or an accounting of disclosure from such a record under the provisions of this paragraph is

denied, the notice informing the individual of the denial shall set forth the reasons therefor and advise the individual of the right to obtain a review of that determination under the provisions of paragraph (k) of this section.

(h) An individual granted access to records pertaining to such individual contained in a system of records may review all such records. For that purpose the individual may be accompanied by a person of the individual's choosing, or the record may be released to the individual's representative who has written consent of the individual, as described in paragraph (j) of this section. A first copy of any such record or information will ordinarily be provided without charge to the individual or representative in a form comprehensible to the individual. Fees for any other copies of requested records shall be assessed at the rate of 10 cents for each sheet of duplication.

(i) An individual may request amendment of a record pertaining to such individual in a system of records maintained by this Agency.. A request for amendment of a record must be in writing and submitted during normal business hours to the person designated for that purpose and at the address set forth in the published notice for the system of records containing the record of which amendment is sought. Copies of such notices, and assistance in preparing a request for amendment, may be obtained from any Regional Office of the Board or at the Board offices at 1099 14th Street, NW., Washington, DC 20570. The requester must provide verification of identity as described in paragraph (j) of this section, and the request should set forth the specific amendment requested and the reason for the requested amendment. The Agency shall acknowledge in writing receipt of the request within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) and, wherever practicable, the acknowledgment shall advise the individual of the determination of the request. If the review of the request for amendment cannot be completed and a determination made within 10 days, the review shall be completed as soon as possible, normally within 30 days (Saturdays, Sundays, and legal public holidays excluded) of receipt of the request unless unusual circumstances preclude completing the review within that time, in which event the requester will be notified in writing within that 30-day period of the reasons for the delay and when the determination of the request may be expected. If the determination is to amend the record, the requester shall be so notified in writing and the record shall be amended in accordance with that determination. If any disclosures accountable under the provisions of 5 U.S.C. 552a(c) have been made, all previous recipients of the record which was amended shall be advised of the amendment and its substance. If it is determined that the request should not be granted, the requester shall be notified in writing of that determination and of the reasons therefor, and advised of the right to obtain review of the adverse determination under the provisions of paragraph (k) of this section.

(j) Verification of the identification of individuals required under paragraphs (f), (g), (h), and (i) of this section to assure that records are disclosed to the proper person shall be required by the Agency to an extent consistent with the nature, location, and sensitivity of the records being disclosed. Disclosure of a record to an individual in person will normally be made upon the presentation of acceptable identification. Disclosure of records by mail may be made on the basis of the identifying information set forth in the request. Depending on the nature, location, and sensitivity of the requested record, a signed notarized statement verifying identity may be required by the

Agency. Proof of authorization as representative to have access to a record of an individual shall be in writing, and a signed notarized statement of such authorization may be required by the Agency if the record requested is of a sensitive nature.

(k)(1) Review may be obtained with respect to:

(i) A refusal, under paragraph (f) or (l) of this section, to inform an individual if a system of records contains a record concerning that individual,

(ii) A refusal, under paragraph (g) or (l) of this section, to grant access to a record or an accounting of disclosure from such a record, or

(iii) A refusal, under paragraph (i) of this section, to amend a record.The request for review should be made to the Chairman of the Board if the system of records is maintained in the office of a Member of the Board, the office of the Executive Secretary, the office of the Solicitor, the Division of Information, or the Division of Administrative Law Judges. Consonant with the provisions of section 3(d) of the National Labor Relations Act, and the delegation of authority from the Board to the General Counsel, the request should be made to the General Counsel if the system of records is maintained by an office of the Agency other than those enumerated above. Either the Chairman of the Board or the General Counsel may designate in writing another officer of the Agency to review the refusal of the request. Such review shall be completed within 30 days (excluding Saturdays, Sundays, and legal public holidays) from the receipt of the request for review unless the Chairman of the Board or the General Counsel, as the case may be, for good cause shown, shall extend such 30-day period.

(2) If, upon review of a refusal under paragraph (f) or (l), the reviewing officer determines that the individual should be informed of whether a system of records contains a record pertaining to that individual, such information shall be promptly provided. If the reviewing officer determines that the information was properly denied, the individual shall be so informed in writing with a brief statement of the reasons therefor.

(3) If, upon review of a refusal under paragraph (g) or (l), the reviewing officer determines that access to a record or to an accounting of disclosures should be granted, the requester shall be so notified and the record or accounting shall be promptly made available to the requester. If the reviewing officer determines that the request for access was properly denied, the individual shall be so informed in writing with a brief statement of the reasons therefor, and of the right to judicial review of that determination under the provisions of 5 U.S.C. 552a(g)(1)(B).

(4) If, upon review of a refusal under paragraph (i), the reviewing official grants a request to amend, the requester shall be so notified, the record shall be amended in accordance with the determination, and, if any disclosures accountable under the provisions of 5 U.S.C. 552a(c) have been made, all previous recipients of the record which was amended shall be advised of the amendment and its substance. If the reviewing officer determines that the denial of a request for amendment should be sustained, the Agency shall advise the requester of the determination and the reasons therefor, and that the individual may file with the Agency a concise statement of the reason for disagreeing with the determination, and may seek judicial review of the Agency's denial of the request to amend the record. In the event a statement of disagreement is filed, that statement--

(i) Will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Agency, a brief statement summarizing the Agency's reasons for declining to amend the record, and

(ii) Will be supplied, together with any Agency statements, to any prior recipients of the disputed record to the extent that an accounting of disclosure was made.

(l) To the extent that portions of system of records described in notices of Governmentwide systems of records published by the Office of Personnel Management are identified by those notices as being subject to the management of an officer of this Agency, or an officer of this Agency is designated as the official to contact for information, access, or contents of those records, individual requests for access to those records, requests for their amendment, and review of denials of requests for amendment shall be in accordance with the provisions of 5 CFR part 297, subpart A, Sec. 297.101, et seq., as promulgated by the Office of Personnel Management. To the extent that portions of system of records described in notices of Governmentwide system of records published by the Department of Labor are identified by those notices as being subject to the management of an officer of this Agency, or an officer of this Agency is designated as the official to contact for information, access, or contents of those records, individual requests for access to those records, requests for their amendment, and review of denials of requests for amendment shall be in accordance with the provisions of this rule. Review of a refusal to inform an individual whether such a system of records contains a record pertaining to that individual and review of a refusal to grant an individual's request for access to a record in such a system may be obtained in accordance with the provisions of paragraph (k) of this section.

(m) Pursuant to 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of the Inspector General of the National Labor Relations Board that contains Investigative Files shall be exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and 29 CFR **102.117**(c), (d), (f), (g), (h), (i), (j) and (k), insofar as the system contains investigatory material compiled for criminal law enforcement purposes.

(n) Pursuant to 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of the Inspector General of the National Labor Relations Board that contains the Investigative Files shall be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 29 CFR **102.117** (c), (d), (f), (g), (h), (i), (j), and (k), insofar as the system contains investigatory material compiled for law enforcement purposes not within the scope of the exemption at 29 CFR **102.117**(m).

(o) Privacy Act exemptions contained in paragraphs (m) and (n) of this section are justified for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law

enforcement personnel, and their families and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since this system of records is being exempted from subsection (d) of the Act, concerning access to records, this section is inapplicable to the extent that this system of records will be exempted from subsection (d) of the Act.

(3) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him/her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in this system of records could inform the subject of an investigation of an actual or potential criminal violation, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his/her activities, or of the identity of confidential sources, witnesses, and law enforcement personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations and law enforcement because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective law enforcement, OIG investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation, thereby enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances the subject of an

investigation cannot be required to provide information to investigators and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation that could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a Federal Register notice concerning its procedures for notifying an individual, at his/her request, if the system of records contains a record pertaining to him/her, how to gain access to such a record and how to contest its content. Since this system of records is being exempted from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that this system of records will be exempt from subsections (f) and (d) of the Act. Although the system would be exempt from these requirements, OIG has published information concerning its notification, access, and contest procedures because, under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a Federal Register notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although the system will be exempt from this requirement, OIG has published such a notice in broad generic terms.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines ``maintain'' to include the collection of information, complying with this provision could prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which seems unrelated, irrelevant, or incomplete when collected can take on added meaning or significance as the investigation progresses. The

restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(10) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his/her request if any system of records named by the individual contains a record pertaining to him/her. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation were able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since this system would be exempt from subsection (d) of the Act, concerning access to records, the requirements of subsection (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable to the extent that this system of records will be exempted from subsection (d) of the Act. Although this system would be exempt from the requirements of subsection (f) of the Act, OIG has promulgated rules which establish agency procedures because, under certain circumstances, it could be appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(12) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since this system of records would be exempt from subsections (c)(3) and (4), (d), (e)(1), (2), and (3) and (4)(G) through (I), (e)(5), and (8), and (f) of the Act, the provisions of subsection (g) of the Act would be inapplicable to the extent that this system of records will be exempted from those subsections of the Act.

(p) Pursuant to 5 U.S.C. 552a(k)(2), the system of records maintained by the NLRB containing Agency Disciplinary Case Files (Nonemployees) shall be exempted from the provisions of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) insofar as the system contains investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2).

(q) The Privacy Act exemption set forth in paragraph (p) of this section is claimed on the ground that the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of the Privacy Act, if applied to Agency Disciplinary Case Files, would seriously impair the ability of the NLRB to conduct investigations of alleged or suspected violations of the NLRB's misconduct rules, as set forth in paragraphs (o) (1), (3), (4), (7), (8), and (11) of this section.

**Sec. 102.118** *Present and former Board employees prohibited from producing files, records, etc., pursuant to subpoena ad testificandum or subpoena duces tecum; prohibited from testifying in regard thereto; production of witnesses' statements after direct testimony.*—(a)(1) Except as provided in section 102.117 of these rules respecting requests cognizable under the Freedom of Information Act, no present or former Regional Director, field examiner, administrative law judge, attorney, specially designated agent, General Counsel, Member of the Board, or other officer or employee of the Agency shall produce or present any files, documents, reports, memoranda, or records of the Board or of the General Counsel, whether in response to a *subpoena duces tecum* or otherwise, without the written consent of the Board or the Chairman of the Board if the document is in Washington, D.C., and in control of the Board; or of the General Counsel if the document is in a Regional Office of the Agency or is in Washington, D.C., and in the control of the General Counsel. Nor shall any such person testify in behalf of any party to any cause pending in any court or before the Board, or any other board, commission, or other administrative agency of the United States, or of any State, territory, or the District of Columbia, or any subdivisions thereof, with respect to any information, facts, or other matter coming to that person's knowledge in his or her official capacity or with respect to the contents of any files, documents, reports, memoranda, or records of the Board or of the General Counsel, whether in answer to a subpoena or otherwise, without the written consent of the Board or the Chairman of the Board if the person is in Washington, D.C., and subject to the supervision or control of the Board or was subject to such supervision or control when formerly employed at the Agency; or of the General Counsel if the person is in a Regional Office of the Agency or is in Washington, D.C., and subject to the supervision or control of the General Counsel or was subject to such supervision or control when formerly employed at the Agency. A request that such consent be granted shall be in writing and shall identify the documents to be produced, or the person whose testimony is desired, the nature of the pending proceeding, and the purpose to be served by the production of the document or the testimony of the official. Whenever any *subpoena ad testificandum* or *subpoena duces tecum*, the purpose of which is to adduce testimony or require the production of records as described hereinabove, shall have been served on any such person or other officer or employee of the Board, that person will, unless otherwise expressly directed by the Board or the Chairman of the Board or the General Counsel, as the case may be, move pursuant to the applicable procedure, whether by petition to revoke, motion to quash, or otherwise, to have such subpoena invalidated on the ground that the evidence sought is privileged against disclosure by this rule.

(2) No Regional Director, field examiner, administrative law judge, attorney, specially designated agent, General Counsel, Member of the Board, or other officer or employee of the Board shall, by any means of communication to any person or to another agency, disclose personal information about an individual from a record in a system of records maintained by this Agency, as more fully described in the notices of systems of records published by this Agency in accordance with the provisions of section (e)(4) of the

Privacy Act of 1974, 5 U.S.C. Sec. 552a(e)(4), or by the Notices of Government-wide Systems of Personnel Records published by the Civil Service Commission in accordance with those statutory provisions, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be in accordance with the provisions of section (b)(1) through (11), both inclusive, of the Privacy Act of 1974, 5 U.S.C. Sec. 552a(b)(1) through (11).

(b)(1) Notwithstanding the prohibitions of subsection (a) of this section, after a witness called by the General Counsel or by the charging party has testified in a hearing upon a complaint under section 10(c) of the Act, the administrative law judge shall, upon motion of the respondent, order the production of any statement (as hereinafter defined) of such witness in the possession of the General Counsel which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the administrative law judge shall order it to be delivered directly to the respondent for his examination and use for the purpose of cross-examination.

(2) If the General Counsel claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the administrative law judge shall order the General Counsel to deliver such statement for the inspection of the administrative law judge *in camera*. Upon such delivery the administrative law judge shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness except that he may, in his discretion, decline to excise portions which, although not relating to the subject matter of the testimony of the witness, do relate to other matters raised by the pleadings. With such material excised the administrative law judge shall then direct delivery of such statement to the respondent for his use on cross-examination. If, pursuant to such procedure, any portion of such statement is withheld from the respondent and the respondent objects to such withholding, the entire text of such statement shall be preserved by the General Counsel, and, in the event the respondent files exceptions with the Board based upon such withholding, shall be made available to the Board for the purpose of determining the correctness of the ruling of the administrative law judge. If the General Counsel elects not to comply with an order of the administrative law judge directing delivery to the respondent of any such statement, or such portion thereof as the administrative law judge may direct, the administrative law judge shall strike from the record the testimony of the witness.

(c) The provisions of subsection (b) of this section shall also apply after any witness has testified in any postelection hearing pursuant to section 102.69(d) and any party has moved for the production of any statement (as hereinafter defined) of such witness in possession of any agent of the Board which relates to the subject matter as to which the witness has testified. The authority exercised by the administrative law judge under subsection (b) of this section shall be exercised by the hearing officer presiding.

(d) The term “statement” as used in subsections (b) and (c) of this section means: (1) a written statement made by said witness and signed or otherwise adopted or approved by him; or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the party obligated to produce the statement and recorded contemporaneously with the making of such oral statement.

## Subpart L—Post-employment Restriction on Activities by Former Officers and Employees

**Sec. 102.119** *Post-employment Restrictions on Activities by Former Officers and Employees*.— Former officers and employees of the Agency who were attached to any of its Regional Offices or the Washington staff are subject to the applicable post-employment restrictions imposed by 18 U.S.C. 207. Guidance concerning those restrictions may be obtained from the Designated Agency Ethics Officer and any applicable regulations issued by the Office of Government Ethics.

## Subpart M—Construction of Rules

**Sec. 102.121** *Rules to be liberally construed*.—The rules and regulations in this part shall be liberally construed to effectuate the purposes and provisions of the Act.

## Subpart N—Enforcement of Rights, Privileges, and Immunities Granted or Guaranteed Under Section 222(f), Communications Act of 1934, as Amended, to Employees of Merged Telegraph Carriers

**Sec. 102.122** *Enforcement*.—All matters relating to the enforcement of rights, privileges, or immunities granted or guaranteed under section 222(f) of the Communications Act of 1934, as amended, shall be governed by the provisions of subparts A, B, I, J, K, and M of the Rules and Regulations, insofar as applicable, except that reference in subpart B to "unfair labor practices" or "unfair labor practices affecting commerce" shall for the purposes of this article mean the denial of any rights, privileges, or immunities granted or guaranteed under section 222(f) of the Communications Act of 1934, as amended.

## Subpart O—Amendments

**Sec. 102.123** *Amendment or rescission of rules.*—Any rule or regulation may be amended or rescinded by the Board at any time.

**Sec. 102.124** *Petitions for issuance, amendment, or repeal of rules.*—Any interested person may petition the Board, in writing, for the issuance, amendment, or repeal of a rule or regulation. An original and seven copies of such petition shall be filed with the Board in Washington, D.C., and shall state the rule or regulation proposed to be issued, amended, or repealed, together with a statement of grounds in support of such petition.

**Sec. 102.125** *Action on petition.*Upon the filing of such petition, the Board shall consider the same and may thereupon either grant or deny the petition in whole or in part, conduct an appropriate hearing thereon, or make other disposition of the petition. Should the petition be denied in whole or in part, prompt notice shall be given of the denial, accompanied by a simple statement of the grounds unless the denial is self-explanatory.

## Subpart P—Ex Parte Communications

**Sec. 102.126** *Unauthorized communications.*—(a) No interested person outside this Agency shall, in an on-the-record proceeding of the types defined in section 102.128, make or knowingly cause to be made any prohibited *ex parte* communication to Board agents of the categories designated in that section relevant to the merits of the proceeding.

(b) No Board agent of the categories defined in section 102.128, participating in a particular proceeding as defined in that section, shall (i) request any prohibited *ex parte* communications; or (ii) make or knowingly cause to be made any prohibited *ex parte* communications about the proceeding to any interested person outside this Agency relevant to the merits of the proceeding.

**Sec. 102.127** *Definitions.*—When used in this subpart:

(a) The term "person outside this Agency," to whom the prohibitions apply, shall include any individual outside this Agency, partnership, corporation, association, or other entity, or an agent thereof, and the General Counsel or his representative when prosecuting an unfair labor practice proceeding before the Board pursuant to section 10(b) of the Act.

(b) The term "*ex parte* communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, subject, however, to the provisions of sections 102.129 and 102.130.

**Sec. 102.128** *Types of on-the-record proceedings; categories of Board agents; and duration of prohibition.*—Unless otherwise provided by specific order of the Board entered in the proceeding, the prohibition of section 102.126 shall be applicable in the following types of on-the-record proceedings to unauthorized *ex parte* communications made to the designated categories of Board agents who participate in the decision, from the stage of the proceeding specified until the issues are finally resolved by the Board for the purposes of that proceeding under prevailing rules and practices:

(a) In a preelection proceeding pursuant to section 9(c)(1) or 9(e), or in a unit clarification or certification amendment proceeding pursuant to section 9(b) of the Act, in which a formal hearing is held, communications to the Regional Director and members of his staff who review the record and prepare a draft of his decision, and Members of the Board and their legal assistants, from the time the hearing is opened.

(b) In a postelection proceeding pursuant to section 9(c)(1) or 9(e) of the Act, in which a formal hearing is held, communications to the hearing officer, the Regional Director and members of his staff who review the record and prepare a draft of his report or decision, and Members of the Board and their legal assistants, from the time the hearing is opened.

(c) In a postelection proceeding pursuant to section 9(c)(1) or 9(e), or in a unit clarification or certification amendment proceeding pursuant to section 9(b) of the Act, in which no formal hearing is held, communications to Members of the Board and their legal assistants, from the time the Regional Director's report or decision is issued.

(d) In a proceeding pursuant to section 10(k) of the Act, communications to Members of the Board and their legal assistants, from the time the hearing is opened.

(e) In an unfair labor practice proceeding pursuant to section 10(b) of the Act, communications to the administrative law judge assigned to hear the case or to make rulings upon any motions or issues therein and Members of the Board and their legal assistants, from the time the complaint and/or notice of hearing is issued, or the time the communicator has knowledge that a complaint or notice of hearing will be issued, whichever occurs first.

(f) In any other proceeding to which the Board by specific order makes the prohibition applicable, to the categories of personnel and from the stage of the proceeding specified in the order.

**Sec. 102.129** *Communications prohibited.*—Except as provided in section 102.130, *ex parte* communications prohibited by section 102.126 shall include:

(a) Such communications, when written, if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding in accordance with the provisions of section 102.114(a).

(b) Such communications, when oral, unless advance notice thereof is given by the communicator to all parties in the proceeding and adequate opportunity afforded to them to be present.

**Sec. 102.130** *Communications not prohibited.*—*Ex parte* communications prohibited by section 102.126 shall not include:

(a) Oral or written communications which relate solely to matters which the hearing officer, Regional Director, administrative law judge, or Member of the Board is authorized by law or Board rules to entertain or dispose of on an *ex parte* basis.

(b) Oral or written requests for information solely with respect to the status of a proceeding.

(c) Oral or written communications which all the parties to the proceeding agree, or which the responsible official formally rules, may be made on an *ex parte* basis.

(d) Oral or written communications proposing settlement or an agreement for disposition of any or all issues in the proceeding.

(e) Oral or written communications which concern matters of general significance to the field of labor-management relations or administrative practice and which are not specifically related to pending on-the-record proceedings.

(f) Oral or written communications from the General Counsel to the Board when the General Counsel is acting as counsel for the Board.

**Sec. 102.131** *Solicitation of prohibited communications*.—No person shall knowingly and willfully solicit the making of an unauthorized *ex parte* communication by any other person.

**Sec. 102.132** *Reporting of prohibited communications; penalties*.—(a) Any Board agent of the categories defined in section 102.128 to whom a prohibited oral ex parte communication is attempted to be made shall refuse to listen to the communication, inform the communicator of this rule, and advise him that if he has anything to say it should be said in writing with copies to all parties. Any such board agent who receives, or who makes or knowingly causes to be made, an unauthorized *ex parte* communication shall place or cause to be placed on the public record of the proceeding (1) the communication, if it was written, (2) a memorandum stating the substance of the communication, if it was oral, (3) all written responses to the prohibited communication, and (4) memoranda stating the substance of all oral responses to the prohibited communication.

(b) The Executive Secretary, if the proceeding is then pending before the Board, the administrative law judge, if the proceeding is then pending before any such judge, or the Regional Director, if the proceeding is then pending before a hearing officer or the Regional Director, shall serve copies of all such materials placed on the public record of the proceeding on all other parties to the proceeding and on the attorneys of record for the parties. Within 14 days after the mailing of such copies, any party may file with the Executive Secretary, administrative law judge, or Regional Director serving the communication, and serve on all other parties, a statement setting forth facts or contentions to rebut those contained in the prohibited communication. All such responses shall be placed in the public record of the proceeding, and provision may be made for any further action, including reopening of the record which may be required under the circumstances. No action taken pursuant to this provision shall constitute a waiver of the power of the Board to impose an appropriate penalty under section 102.133.

**Sec. 102.133** Penalties and enforcement.—(a) Where the nature and circumstances of a prohibited communication made by or caused to be made by a party to the proceeding are such that the interests of justice and statutory policy may require remedial action, the Board, administrative law judge, or Regional Director, as the case may be, may issue to the party making the communication a notice to show cause, returnable before the Board within a stated period not less than 7 days from the date thereof, why the Board should not determine that the interests of justice and statutory policy require that the claim or interest in the proceeding of a party who knowingly makes a prohibited communication

or knowingly causes a prohibited communication to be made should be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(b) Upon notice and hearing, the Board may censure, suspend, or revoke the privilege of practice before the Agency of any person who knowingly and willfully makes or solicits the making of a prohibited *ex parte* communication. However, before the Board institutes formal proceedings under this subsection, it shall first advise the person or persons concerned in writing that it proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than 7 days from the date thereof, why it should not take such action.

(c) The Board may censure, or, to the extent permitted by law, suspend, dismiss, or institute proceedings for the dismissal of, any Board agent who knowingly and willfully violates the prohibitions and requirements of this rule.

## Subpart Q—Procedure Governing Matters Affecting Employment-Management Agreements Under the Postal Reorganization Act (Chapter 12 of Title 39, United States Code, as Revised)

**Sec. 102.135** *Postal Reorganization Act*.

(a) *Employment-management agreements*.—All matters within the jurisdiction of the National Labor Relations Board pursuant to the Postal Reorganization Act (chapter 12 of title 39, United States Code, as revised) shall be governed by the provisions of subparts A, B, C, D, E, F, G, I, J, K, L, M, O, and P of the Rules and Regulations, insofar as applicable.

(b) *Inconsistencies*.—To the extent that any provision of this subpart Q is inconsistent with any provision of title 39, United States Code, the provision of said title 39 shall govern.

(c) *Exceptions*.—For the purposes of this subpart, references in the subparts of the Rules and Regulations cited above to (1) "employer" shall be deemed to include the Postal Service, (2) "Act" shall in the appropriate context mean "Postal Reorganization Act," (3) "section 9(c) of the Act" and cited paragraphs thereof shall mean "39 U.S.C. § 1203(c) and 1204," and (4) "section 9(b) of the Act" shall mean "39 U.S.C. § 1202."

## Subpart R—Advisory Committees

**Sec. 102.136** *Establishment and utilization of advisory committees.*—Advisory committees may from time to time be established or utilized by the Agency in the interest of obtaining advice or recommendations on issues of concern to the Agency. The establishment, utilization, and functioning of such committees shall be in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. I, sections 1–15, and Office of Management and Budget Circular A–63 (rev. March 27, 1975), Advisory Committee Management Guidance, 39 F.R. 12389–12391, to the extent applicable.

## Subpart S—Open Meetings

**Sec. 102.137** *Public observation of Board meetings.*—Every portion of every meeting of the Board shall be open to public observation, except as provided in section 102.139 of these rules, and Board Members shall not jointly conduct or dispose of Agency business other than in accordance with the provisions of this subpart.

**Sec. 102.138** *Definition of meeting.*—For purposes of this subpart, "meeting" shall mean the deliberations of at least three Members of the full Board, or the deliberations of at least two Members of any group of three Board Members to whom the Board has delegated powers which it may itself exercise, where such deliberations determine or result in the joint conduct or disposition of official Agency business, but does not include deliberations to determine whether a meeting should be closed to public observation in accordance with the provisions of this subpart.

**Sec. 102.139** *Closing of meetings; reasons therefor.*—(a) Except where the Board determines that the public interest requires otherwise, meetings, or portions thereof, shall not be open to public observation where the deliberations concern the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition by the Board of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the Act, or any court proceedings collateral or ancillary thereto.

(b) Meetings, or portions thereof, may also be closed by the Board, except where it determines that the public interest requires otherwise, when the deliberations concern matters or information falling within the reasons for closing meetings specified in 5 U.S.C. Sec. 552b(c)(1) (secret matters concerning national defense or foreign policy); (c)(2) (internal personnel rules and practices); (c)(3) (matters specifically exempted from disclosure by statute); (c)(4) (privileged or confidential trade secrets and commercial or financial information); (c)(5) (matters of alleged criminal conduct or formal censure); (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy); (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes); or (c)(9)(B) (disclosure would significantly frustrate implementation of a proposed Agency action).

**Sec. 102.140** *Action necessary to close meeting; record of votes.*—A meeting shall be closed to public observation under section 102.139, only when a majority of the Members of the Board who will participate in the meeting vote to take such action.

(a) When the meeting deliberations concern matters specified in section 102.139(a), the Board Members shall vote at the beginning of the meeting, or portion thereof, on whether to close such meeting, or portion thereof, to public observation, and on whether the public interest requires that a meeting which may properly be closed should nevertheless be open to public observation. A record of such vote, reflecting the vote of each Member of the Board, shall be kept and made available to the public at the earliest practicable time.

(b) When the meeting deliberations concern matters specified in section 102.139(b), the Board shall vote on whether to close such meeting, or portion thereof, to public observation, and on whether there is a public interest which requires that a meeting which may properly be closed should nevertheless be open to public observation. The vote shall be taken at a time sufficient to permit inclusion of information concerning the open or closed status of the meeting in the public announcement thereof. A single vote may be

taken with respect to a series of meetings at which the deliberations will concern the same particular matters where such subsequent meetings are scheduled to be held within 30 days after the initial meeting. A record of such vote, reflecting the vote of each Member of the Board, shall be kept and made available to the public within 1 day after the vote is taken.

(c) Whenever any person whose interests may be directly affected by deliberations during a meeting, or a portion thereof, requests that the Board close the meeting, or portion thereof, to public observation for any of the reasons specified in 5 U.S.C. section 552b(c)(5) (matters of alleged criminal conduct or formal censure), (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy), or (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes), the Board Members participating in the meeting, upon request of any one of its Members, shall vote on whether to close such meeting, or a portion thereof, for that reason. A record of such vote, reflecting the vote of each Member of the Board participating in the meeting shall be kept and made available to the public within 1 day after the vote is taken.

(d) After public announcement of a meeting as provided in section 102.141 of this part, a meeting, or portion thereof, announced as closed may be opened, or a meeting, or portion thereof, announced as open may be closed, only if a majority of the Members of the Board who will participate in the meeting determine by a recorded vote that Board business so requires and that an earlier announcement of the change was not possible. The change made and the vote of each Member on the change shall be announced publicly at the earliest practicable time.

(e) Before a meeting may be closed pursuant to section 102.139, the solicitor of the Board shall certify that in his or her opinion the meeting may properly be closed to public observation. The certification shall set forth each applicable exemptive provision for such closing. Such certification shall be retained by the Agency and made publicly available as soon as practicable.

**Sec. 102.141** *Notice of meetings; public announcement and publication.*—(a) A public announcement setting forth the time, place, and subject matter of meetings or portions thereof closed to public observation pursuant to the provisions of section 102.139(a) of this part shall be made at the earliest practicable time.

(b) Except for meetings closed to public observation pursuant to the provisions of section 102.139(a) of this part, the Agency shall make public announcement of each meeting to be held at least 7 days before the scheduled date of the meeting. The announcement shall specify the time, place, and subject matter of the meeting, whether it is to be open to public observation or closed, and the name, address, and phone number of an Agency official designated to respond to requests for information about the meeting. The 7-day period for advance notice may be shortened only upon a determination by a majority of the Members of the Board who will participate in the meeting that Agency business requires that such meeting be called at an earlier date, in which event the public announcements shall be made at the earliest practicable time. A record of the vote to schedule a meeting at an earlier date shall be kept and made available to the public.

(c) Within 1 day after the vote to close a meeting, or any portion thereof, pursuant to the provisions of section 102.139(b) of this part, the Agency shall make publicly available a

full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If after public announcement required by paragraph (b) of this section has been made, the time and place of the meeting are changed, a public announcement shall be made at the earliest practicable time. The subject matter of the meeting may be changed after the public announcement only if a majority of the Members of the Board who will participate in the meeting determine that Agency business so requires and that no earlier announcement of the change was possible. When such a change in subject matter is approved a public announcement of the change shall be made at the earliest practicable time. A record of the vote to change the subject matter of the meeting shall be kept and made available to the public.

(e) All announcements or changes thereto issued pursuant to the provisions of paragraphs (b) and (d) of this section, or pursuant to provisions of section 102.140(d), shall be submitted for publication in the Federal Register immediately following their release to the public.

(f) Announcements of meetings made pursuant to the provisions of this section shall be made publicly available by the Executive Secretary.

**Sec. 102.142** *Transcripts, recordings, or minutes of closed meetings; public availability; retention.*—(a) For every meeting or portion thereof closed under the provisions of section 102.139 of this part, the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the Agency. For each such meeting or portion thereof there shall also be maintained a complete transcript or electronic recording of the proceedings, except that for meetings closed pursuant to section 102.139(a) the Board may, in lieu of a transcript or electronic recording, maintain a set of minutes fully and accurately summarizing any action taken, the reasons therefor, and views thereon, documents considered, and the Members' vote on each roll call vote.

(b) The Agency shall make promptly available to the public copies of transcripts, recordings, or minutes maintained as provided in accordance with paragraph (a) of this section, except to the extent the items therein contain information which the Agency determines may be withheld pursuant to the provisions of 5 U.S.C. Sec. 552(c). Copies of transcripts or minutes, or transcriptions of electronic recordings including the identification of speakers, shall, to the extent determined to be publicly available, be furnished to any person, subject to the payment of duplication costs in accordance with the schedule of fees set forth in section 102.117(c)(2)(iv), and the actual cost of transcription.

(c) The Agency shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete set of the minutes for each meeting or portion thereof closed to the public, for a period of at least 1 year after the close of the Agency proceeding of which the meeting was a part, but in no event for a period of less than 2 years after such meeting.

## Subpart T—Awards of Fees and Other Expenses

**Sec. 102.143** *"Adversary adjudication" defined; entitlement to award; eligibility for award.*—(a) The term "adversary adjudication," as used in this subpart, means unfair labor practice proceedings pending before the Board on complaint and backpay proceedings under sections 102.52 to 102.59 of these rules pending before the Board on notice of hearing at any time after October 1, 1984.

(b) A respondent in an adversary adjudication who prevails in that proceeding, or in a significant and discrete substantive portion of that proceeding, and who otherwise meets the eligibility requirements of this section, is eligible to apply for an award of fees and other expenses allowable under the provisions of section 102.145 of these rules.

(c) Applicants eligible to receive an award are as follows:

(1) an individual with a net worth of not more than $2 million;

(2) the sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) a charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) with not more than 500 employees;

(4) a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. § 1141j(a)) with not more than 500 employees; and

(5) any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

(d) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date of the complaint in an unfair labor practice proceeding or the date of the notice of hearing in a backpay proceeding.

(e) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(f) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(g) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless such treatment would be unjust and contrary to the purposes of the Equal Access to Justice Act (94 Stat. 2325) in light of the actual relationship between the affiliated entities. In addition, financial relationships of the applicant other than those described in this paragraph may constitute special circumstances that would make an award unjust.

(h) An applicant that participates in an adversary adjudication primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

**Sec. 102.144** *Standards for awards*.—(a) An eligible applicant may receive an award for fees and expenses incurred in connection with an adversary adjudication or in connection with a significant and discrete substantive portion of that proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that the General Counsel's position in the proceeding was substantially justified.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust.

**Sec. 102.145** *Allowable fees and expenses*.—(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the attorney or agent fees under these rules may exceed $75 per hour. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the following matters shall be considered:

(1) if the attorney, agent, or expert witness is in practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) the prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) the time actually spent in the representation of the applicant;

(4) the time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudicative proceeding; and

(d) The reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate for similar services and the study or other matter was necessary for preparation of the applicant's case.

**Sec. 102.146** *Rulemaking on maximum rates for attorney or agent fees*.—Any person may file with the Board a petition under section 102.124 of these rules for rulemaking to increase the maximum rate for attorney or agent fees. The petition should specify the rate the petitioner believes should be established and explain fully why the higher rate is warranted by an increase in the cost of living or a special factor (such as the limited availability of qualified attorneys or agents for the proceedings involved).

**Sec. 102.147** *Contents of application; net worth exhibit; documentation of fees and expenses*.—(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adversary adjudication for which an award is sought. The application shall state the particulars in which the applicant has prevailed and identify the positions of the General Counsel in that proceeding that the applicant alleges were not substantially justified. Unless the applicant is an individual, the application shall also state the number, category, and work location of employees of the applicant and its affiliates and describe briefly the type and purpose of its organization or business.

(b) The application shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) it attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) it states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. § 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this Agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true.

(f) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in sec. 102.143(g)) when the adversary adjudicative proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The administrative law judge may require an applicant to file such additional information as may be required to determine its eligibility for an award.

(g)(1) Unless otherwise directed by the administrative law judge, the net worth exhibit will be included in the public record of the fee application proceeding. An applicant that objects to public disclosure of information in any portion of the exhibit may submit that portion of the exhibit in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why public disclosure of the information would adversely affect the applicant and why disclosure is not required in the public interest. The exhibit shall be served on the General Counsel but need not be served on any other party to the proceeding. If the administrative law judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding.

(2) If the administrative law judge grants the motion to withhold from public disclosure, the exhibit shall remain sealed, except to the extent that its contents are required to be disclosed at a hearing. The granting of the motion to withhold from public disclosure shall not be determinative of the availability of the document under the Freedom of Information Act in response to a request made under the provisions of section 102.117. Notwithstanding that the exhibit may be withheld from public disclosure, the General Counsel may disclose information from the exhibit to others if required in the course of an investigation to verify the claim of eligibility.

(h) The application shall be accompanied by full documentation of the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the dates and the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

**Sec. 102.148** *When an application may be filed; place of filing; service; referral to administrative law judge; stay of proceeding.*—(a) An application may be filed after entry of the final order establishing that the applicant has prevailed in an adversary adjudication proceeding or in a significant and discrete substantive portion of that proceeding, but in no case later than 30 days after the entry of the Board's final order in that proceeding. The application for an award shall be filed in triplicate with the Board in Washington, D.C., together with a certificate of service. The application shall be served on the Regional Director and on all parties to the adversary adjudication in the same manner as other pleadings in that proceeding, except as provided in section 102.147(g)(1) for financial information alleged to be confidential.

(b) Upon filing, the application shall be referred by the Board to the administrative law judge who heard the adversary adjudication upon which the application is based, or, in the event that proceeding had not previously been heard by an administrative law judge, it shall be referred to the chief administrative law judge for designation of an administrative law judge, in accordance with section 102.34, to consider the application. When the administrative law judge to whom the application has been referred is or becomes unavailable the provisions of sections 102.34 and 102.36 shall be applicable.

(c) Proceedings for the award of fees, but not the time limit of this section for filing an application for an award, shall be stayed pending final disposition of the adversary adjudication in the event any person seeks reconsideration or review of the decision in that proceeding.

(d) For purposes of this section the withdrawal of a complaint by a Regional Director under section 102.18 of these rules shall be treated as a final order, and an appeal under section 102.19 of these rules shall be treated as a request for reconsideration of that final order.

**Sec. 102.149** *Filing of documents; service of documents; motions for extension of time.*—(a) All motions and pleadings after the time the case is referred by the Board to the administrative law judge until the issuance of the administrative law judge's decision shall be filed with the administrative law judge in triplicate together with proof of service. Copies of all documents filed shall be served on all parties to the adversary adjudication.

(b) Motions for extensions of time to file motions, documents, or pleadings permitted by section 102.150 or by section 102.152 shall be filed with the chief administrative law judge in Washington, D.C., the associate chief administrative law judge in San Francisco, California, or the associate chief administrative law judge in New York, New York, or in Atlanta, Georgia, as the case may be, not later than 3 days before the due date of the

document. Notice of the request shall be immediately served on all other parties and proof of service furnished.

**Sec. 102.150** *Answer to application; reply to answer; comments by other parties.*—(a) Within 35 days after service of an application the General Counsel may file an answer to the application. Unless the General Counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file a timely answer may be treated as a consent to the award requested. The filing of a motion to dismiss the application shall stay the time for filing an answer to a date 35 days after issuance of any order denying the motion. Within 21 days after service of any motion to dismiss, the applicant shall file a response thereto. Review of an order granting a motion to dismiss an application in its entirety may be obtained by filing a request therefor with the Board in Washington, D.C., pursuant to section 102.27 of these rules.

(b) If the General Counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate toward a settlement. The filing of such a statement shall extend the time for filing an answer for an additional 35 days.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the General Counsel's position. If the answer is based on alleged facts not already in the record of the adversary adjudication, supporting affidavits shall be provided or a request made for further proceedings under section 102.152.

(d) Within 21 days after service of an answer, the applicant may file a reply. If the reply is based on alleged facts not already in the record of the adversary adjudication, supporting affidavits shall be provided or a request made for further proceedings under section 102.152.

(e) Any party to an adversary adjudication other than the applicant and the General Counsel may file comments on a fee application within 35 days after it is served and on an answer within 21 days after it is served. A commenting party may not participate further in the fee application proceeding unless the administrative law judge determines that such participation is required in order to permit full exploration of matters raised in the comments.

**Sec. 102.151** *Settlement*.—The applicant and the General Counsel may agree on a proposed settlement of the award before final action on the application. If a prevailing party and the General Counsel agree on a proposed settlement of an award before an application has been filed, the proposed settlement shall be filed with the application. All such settlements shall be subject to approval by the Board.

**Sec. 102.152** *Further proceedings*.—(a) Ordinarily, the determination of an award will be made on the basis of the documents in the record. The administrative law judge, however, upon request of either the applicant or the General Counsel, or on his or her own initiative, may order further proceedings, including an informal conference, oral argument, additional written submission, or an evidentiary hearing. An evidentiary hearing shall be held only when necessary for resolution of material issues of fact.

(b) A request that the administrative law judge order further proceedings under this section shall specifically identify the disputed issues and the evidence sought to be adduced, and shall explain why the additional proceedings are necessary to resolve the issues.

(c) An order of the administrative law judge scheduling further proceedings shall specify the issues to be considered.

(d) Any evidentiary hearing held pursuant to this section shall be open to the public and shall be conducted in accordance with sections 102.30 to 102.44 of these rules, except sections 102.33, 102.34, and 102.38.

(e) Rulings of the administrative law judge shall be reviewable by the Board only in accordance with the provisions of section 102.26.

**Sec. 102.153** *Administrative law judge's decision; contents; service; transfer of case to the Board; contents of record in case.*—(a) Upon conclusion of proceedings under sections 102.147 to 102.152, the administrative law judge shall prepare a decision. The decision shall include written findings and conclusions as necessary to dispose of the application. The administrative law judge shall file the original of his decision with the Board and cause a copy thereof to be served on each of the parties. Upon the filing of the decision, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, on all the parties. Service of the administrative law judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

(b) The record in a proceeding on an application for an award of fees and expenses shall include the application and any amendments or attachments thereto, the net worth exhibit, the answer and any amendments or attachments thereto, any reply to the answer, any comments by other parties, motions, rulings, orders, stipulations, written submissions, the stenographic transcript of any oral argument, the stenographic transcript of any hearing, exhibits, and depositions, together with the administrative law judge's decision and exceptions, any cross-exceptions or answering briefs as provided in section 102.46, and the record of the adversary adjudication upon which the application is based.

**Sec. 102.154** *Exceptions to administrative law judge's decision; briefs; action of the Board.*—Procedures before the Board, including the filing of exceptions to the administrative law judge's decision and briefs, and action by the Board, shall be in accordance with sections 102.46, 102.47, 102.48, and 102.50 of these rules. The Board will issue a decision on the application or remand the proceeding to the administrative law judge for further proceedings.

**Sec. 102.155** *Payment of award.*—To obtain payment of an award made by the Board the applicant shall submit to the Director, Division of Administration, a copy of the Board's final decision granting the award, accompanied by a statement that the applicant will not seek court review of the decision. If such statement is filed, the Agency will pay the amount of the award within 60 days, unless judicial review of the award or of the underlying decision has been sought.

## Subpart U--Debt-Collection Procedures by Administrative Offset



**Sec. 102.156** Administrative offset; purpose and scope. The regulations in this subpart specify the Agency procedures that will be followed to implement the administrative offset procedures set forth in the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. 3716.

**Sec. 102.157** Definitions.

(a) The term administrative offset means the withholding of money payable by the United States to, or held by the United States on behalf of, a person to satisfy a debt owed the United States by that person.

(b) The term debtor is any person against whom the Board has a claim.

(c) The term person does not include any agency of the United States, or any state or local government.

(d) The terms claim and debt are synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate Agency official to be owed to the United States from any person, organization, or entity, except another federal agency.

(e) A debt is considered delinquent if it has not been paid by the date specified in the Agency's initial demand letter (§102.161), unless satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy his obligations under a payment agreement with the Agency.

**Sec. 102.158** Agency requests for administrative offsets and cooperation with other Federal agencies.

Unless otherwise prohibited by law, the Agency may request that monies due and payable to a debtor by another Federal agency be administratively offset in order to collect debts owed the Agency by the debtor. In requesting an administrative offset, the Agency will provide the other Federal agency holding funds of the debtor with written certification stating:

(a) That the debtor owes the Board a debt (including the amount of debt); and

(b) That the Agency has complied with the applicable Federal Claims Collection Standards, including any hearing or review.

**Sec. 102.159** Exclusions.

(a) (1) The Agency is not authorized by the Debt Collection Act of 1982 (31 U.S.C. 3716) to use administrative offset with respect to:

(i) Debts owed by any State or local government;

(ii) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(iii) When a statute explicitly provides for or prohibits using administrative offset to collect the claim or type of claim involved.

(2) No claim that has been outstanding for more than 10 years after the Board's right to collect the debt first accrued may be collected by means of administrative offset, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts until within 10 years of the initiation of the collection action. A determination of when the debt first accrued should be made according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415. Unless otherwise provided by contract or law, debts or payments owed the Board which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority, pursuant to this paragraph or Board regulations established pursuant to such other statutory authority.

(b) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

**Sec. 102.160** Agency responsibilities.

(a) The Agency shall provide appropriate written or other guidance to Agency officials in carrying out this subpart, including the issuance of guidelines and instructions, which may be deemed appropriate. The Agency shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this subpart.

(b) Before collecting a claim by means of administrative offset, the Agency must ensure that administrative offset is feasible, allowable and appropriate, and must notify the debtor of the Agency's policies for collecting a claim by means of administrative offset.

(c) Whether collection by administrative offset is feasible is a determination to be made by the Agency on a case-by-case basis, in the exercise of sound discretion. The Agency shall consider not only whether administrative offset can be accomplished, both practically and legally, but also whether administrative offset will further and protect the best interests of the United States Government. In appropriate circumstances, the Agency may give due consideration to the debtor's financial condition, and it is not expected that administrative offset will be used in every available instance, particularly where there is another readily available source of funds. The Agency may also consider whether administrative offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(d) Administrative offset shall be considered by the Agency only after attempting to collect a claim under 31 U.S.C. 3711(a).

**Sec. 102.161** Notification.

(a) The Agency shall send a written demand to the debtor in terms which inform the debtor of the consequences of failure to cooperate. In the demand letter, the Agency shall provide the name of an Agency employee who can provide a full explanation of the claim. When the Agency deems it appropriate to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions.

(b) In accordance with guidelines established by the Agency, the Agency official responsible for collection of the debt shall send written notice to the debtor, informing such debtor as appropriate:

(1) Of the nature and amount of the Board's claim;

(2) Of the date by which payment is to be made (which normally should be not more than 30 days from the date that the initial notification was mailed or hand delivered);

(3) Of the Agency's intention to collect by administrative offset and of the debtor's rights in conjunction with such an offset;

(4) That the Agency intends to collect, as appropriate, interest, penalties, administrative costs and attorneys fees;

(5) Of the rights of such debtor to a full explanation of the claim, of the opportunity to inspect and copy Agency records with respect to the claim and to dispute any information in the Agency's records concerning the claim;

(6) Of the debtor's right to administrative appeal or review within the Agency concerning the Agency's claim and how such review shall be obtained;

(7) Of the debtor's opportunity to enter into a written agreement with the Agency to repay the debt; and

(8) Of the date on which, or after which, an administrative offset will begin.

**Sec. 102.162** Examination and copying of records related to the claim; opportunity for full explanation of the claim.

Following receipt of the demand letter specified in §102.161, and in conformity with Agency guidelines governing such requests, the debtor may request to examine and copy publicly available records pertaining to the debt, and may request a full explanation of the Agency's claim.

**Sec. 102.163** Opportunity for repayment.

(a) The Agency shall afford the debtor the opportunity to repay the debt or enter into a repayment plan which is agreeable to the Agency and is in a written form signed by such debtor. The Agency may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) The Agency has discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of administrative offset.

**Sec. 102.164** Review of the obligation.

(a) The debtor shall have the opportunity to obtain review by the Agency of the determination concerning the existence or amount of the debt as set forth in the notice. In cases where the amount of the debt has been fully liquidated, the review is limited to ensuring that the liquidated amount is correctly represented in the notice.

(b) The debtor seeking review shall make the request in writing to the Agency, not more than 15 days from the date the demand letter was received by the debtor. The request for review shall state the basis for challenging the determination. If the debtor alleges that the Agency's information relating to the debt is not accurate, timely, relevant or complete, the debtor shall provide information or documentation to support this allegation.

(c) The Agency may effect an administrative offset against a payment to be made to a debtor prior to the completion of the due process procedures required by this subpart, if failure to take the offset would substantially prejudice the Agency's ability to collect the debt; for example, if the time before the payment is to be made would not reasonably permit the completion of due process procedures. Administrative offset effected prior to completion of due process procedures must be promptly followed by the completion of those procedures. Amounts recovered by administrative offset, but later found not owed to the Agency, will be promptly refunded.

(d) Upon completion of the review, the Agency's reviewing official shall transmit to the debtor the Agency's decision. If appropriate, this decision shall inform the debtor of the scheduled date on or after which administrative offset will begin. The decision shall also, if appropriate, indicate any changes in information to the extent such information differs from that provided in the initial notification to the debtor under 102.161.

(e) Nothing in this subpart shall preclude the Agency from sua sponte reviewing the obligation of the debtor, including a reconsideration of the Agency's determination concerning the debt, and the accuracy, timeliness, relevance, and completeness of the information on which the debt is based.

**Sec. 102.165** Cost shifting.

Costs incurred by the Agency in connection with referral of debts for administrative offset will be added to the debt and thus increase the amount of the offset. Such costs may include administrative costs and attorneys fees.

**Sec. 102.166** Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the Agency from utilizing any other administrative or legal remedy which may be available.

**Sec. 102.167** Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided for under some other statutory or regulatory authority, the Agency is not required to duplicate those efforts before effecting administrative offset.

## Subpart V--Debt Collection Procedures by Federal Income Tax Refund Offset



**§102.168** Federal income tax refund offset; purpose and scope.

The regulations in this subpart specify the Agency procedures that will be followed in order to implement the federal income tax refund offset procedures set forth in 26 U.S.C. 6402(d) of the Internal Revenue Code (Code), 31 U.S.C. 3720A, and 301.6402-6 of the Treasury Regulations on Procedure and Administration (26 CFR 301.6402-6). This statute and the implementing regulations of the Internal Revenue Service (IRS) at 26 CFR 301.6402-6 authorize the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States. The regulations apply to past-due legally enforceable debts owed to the Agency by individuals and business entities. The regulations are not intended to limit or restrict debtor access to any judicial remedies to which he or she may otherwise be entitled.

**§102.169** Definitions.

(a) Tax refund offset refers to the IRS income tax refund offset program operated under authority of 31 U.S.C. 3720A.

(b) Past-due legally enforceable debt is a delinquent debt administratively determined to be valid, whereon no more than 10 years have lapsed since the date of delinquency (unless reduced to judgment), and which is not discharged under a bankruptcy proceeding or subject to an automatic stay under 11 U.S.C. 362.

(c) Individual refers to a taxpayer identified by a social security number (SSN).

(d) Business entity refers to an entity identified by an employer identification number (EIN).

(e) Taxpayer mailing address refers to the debtor's current mailing address as obtained from IRS.

(f) Memorandum of understanding refers to the agreement between the Agency and IRS outlining the duties and responsibilities of the respective parties for participation in the tax refund offset program.

**§102.170** Agency referral to IRS for tax referral effect; Agency responsibilities.

(a) As authorized and required by law, the Agency may refer past-due legally enforceable debts to the Internal Revenue Service (IRS) for collection by offset from any overpayment of income tax that may otherwise be due to be refunded to the taxpayer. By the date and in the manner prescribed by the IRS, the Agency may refer for tax refund offset past-due legally enforceable debts.

Such referrals shall include the following information:
(1) Whether the debtor is an individual or a business entity;
(2) The name and taxpayer identification number (SSN or EIN) of the debtor who is responsible for the debt;
(3) The amount of the debt;
(4) A designation that the Agency is referring the debt and (as appropriate) Agency account identifiers.
(b) The Agency will ensure the confidentiality of taxpayer information as required by IRS in its Tax Information Security Guidelines.
(c) As necessary, the Agency will submit updated information at the times and in the manner prescribed by IRS to reflect changes in the status of debts or debtors referred for tax refund offset.
(d) Amounts erroneously offset will be refunded by the Agency or IRS in accordance with the Memorandum of Understanding.

**§102.171** Cost shifting.

Costs incurred by the Agency in connection with referral of debts for tax refund offset will be added to the debt and thus increase the amount of the offset. Such costs may include administrative costs and attorneys fees.

**§102.172** Minimum referral amount.

The minimum amount of a debt otherwise eligible for Agency referral to the IRS is $25 for individual debtors and $100 for business debtors. The amount referred may include the principal portion of the debt, as well as any accrued interest, penalties, administrative cost charges, and attorney fees.

**§102.173** Relation to other collection efforts.

(a) Tax refund offset is intended to be an administrative collection remedy to be utilized consistent with IRS requirements for participation in the program, and the costs and benefits of pursuing alternative remedies when the tax refund offset program is readily available. To the extent practical, the requirements of the program will be met by merging IRS requirements into the Agency's overall requirements for delinquent debt collection.
(b) As appropriate, debts of an individual debtor of $100 or more will be reported to a consumer or commercial credit reporting agency before referral for tax refund offset.
(c) Debts owed by individuals will be screened for administrative offset potential using the most current information reasonably available to the Agency, and will not be referred for tax refund offset where administrative offset potential is found to exist.

**§102.174** Debtor notification.

(a) The Agency shall send appropriate written demand to the debtor in terms which inform the debtor of the consequences of failure to repay debts or claims owed the Board.
(b) Before the Agency refers a debt to IRS for tax refund offset, it will make a reasonable attempt to notify the debtor that:
(1) The debt is past-due;
(2) Unless the debt is repaid or a satisfactory repayment agreement is established within 60 days thereafter, the debt will be referred to IRS for offset from any overpayment of tax remaining after taxpayer liabilities of greater priority have been satisfied; and
(3) The debtor will have a minimum of 60 days from the date of notification to present evidence that all or part of the debt is not past due or legally enforceable, and the Agency

will consider this evidence in a review of its determination that the debt is past due and legally enforceable. The debtor will be advised where and to whom evidence is to be submitted.

(c) The Agency will make a reasonable attempt to notify the debtor by using the most recent address information available to the Agency or obtained from the IRS, unless written notification to the Agency is received from the debtor stating that notices from the Agency are to be sent to a different address.

(d) The notification required by paragraph (b) of this section and sent to the address specified in paragraph (c) of this section may, at the option of the Agency, be incorporated into demand letters required by paragraph (a) of this section.

**§102.175** Agency review of the obligation.

(a) The Agency official responsible for collection of the debt will consider any evidence submitted by the debtor as a result of the notification required by §102.174 and notify the debtor of the result. If appropriate, the debtor will also be advised where and to whom to request a review of any unresolved dispute.

(b) The debtor will be granted 30 days from the date of the notification required by paragraph (a) of this section to request a review of the determination of the Agency official responsible for collection of the debt on any unresolved dispute. The debtor will be advised of the result.

**§102.176** Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided under some other statutory or regulatory authority, including administrative offset procedures set forth in Subpart U, the Agency is not required to duplicate those efforts before referring a debt for tax refund offset.

## Subpart W--Misconduct by Attorneys or Party Representatives

**§102.177** Exclusion from hearings; Refusal of witness to answer questions; Misconduct by attorneys and party representatives before the Agency; Procedures for processing misconduct allegations.

(a) Any attorney or other representative appearing or practicing before the Agency shall conform to the standards of ethical and professional conduct required of practitioners before the courts, and the Agency will be guided by those standards in interpreting and applying the provisions of this section.

(b) Misconduct by any person at any hearing before an administrative law judge, hearing officer, or the Board shall be grounds for summary exclusion from the hearing. Notwithstanding the procedures set forth in paragraph (e) of this section for handling allegations of misconduct, the administrative law judge, hearing officer, or Board shall also have the authority in the proceeding in which the misconduct occurred to admonish or reprimand, after due notice, any person who engages in misconduct at a hearing.

(c) The refusal of a witness at any such hearing to answer any question which has been ruled to be proper shall, in the discretion of the administrative law judge or hearing officer, be grounds for striking all testimony previously given by such witness on related matters.

(d) Misconduct by an attorney or other representative at any stage of any Agency proceeding, including but not limited to misconduct at a hearing, shall be grounds for discipline. Such misconduct of an aggravated character shall be grounds for suspension and/or disbarment from practice before the Agency and/or other sanctions.

(e) All allegations of misconduct pursuant to paragraph (d) of this section, except for those involving the conduct of Agency employees, shall be handled in accordance with the following procedures:

(1) Allegations that an attorney or party representative has engaged in misconduct may be brought to the attention of the Investigating Officer by any person. The Investigating Officer, for purposes of this paragraph, shall be the Associate General Counsel, Division of Operations-Management, or his/her designee.

(2) The Investigating Officer or his/her designee shall conduct such investigation as he/she deems appropriate and shall have the usual powers of investigation provided in Section 11 of the Act. Following the investigation, the Investigating Officer shall make a recommendation to the General Counsel, who shall make the determination whether to institute disciplinary proceedings against the attorney or party representative. The General Counsel's authority to make this determination shall not be delegable to the Regional Director or other personnel in the Regional Office. If the General Counsel determines not to institute disciplinary proceedings, all interested persons shall be notified of the determination, which shall be final.

(3) If the General Counsel decides to institute disciplinary proceedings against the attorney or party representative, the General Counsel or his/her designee shall serve the Respondent with a complaint which shall include: a statement of the acts which are claimed to constitute misconduct including the approximate date and place of such acts together with a statement of the discipline recommended; notification of the right to a hearing before an administrative law judge with respect to any material issues of fact or

mitigation; and an explanation of the method by which a hearing may be requested. Such a complaint shall not be issued until the Respondent has been notified of the allegations in writing and has been afforded a reasonable opportunity to respond.

(4) Within 14 days of service of the disciplinary complaint, the respondent shall file an answer admitting or denying the allegations, and may request a hearing. If no answer is filed or no material issue of fact or relevant to mitigation warranting a hearing is raised, the matter may be submitted directly to the Board. If no answer is filed, then the allegations shall be deemed admitted.

(5) Sections 102.24 through 102.51, rules applicable to unfair labor practice proceedings, shall be applicable to disciplinary proceedings under this section to the extent that they are not contrary to the provisions of this section.

(6) The hearing shall be conducted at a reasonable time, date, and place. In setting the hearing date, the administrative law judge shall give due regard to the respondent's need for time to prepare an adequate defense and the need of the Agency and the respondent for an expeditious resolution of the allegations.

(7) The hearing shall be public unless otherwise ordered by the Board or the administrative law judge.

(8) Any person bringing allegations of misconduct or filing a petition for disciplinary proceedings against an attorney or party representative shall be given notice of the scheduled hearing. Any such person shall not be a party to the disciplinary proceeding, however, and shall not be afforded the rights of a party to call, examine or cross- examine witnesses and introduce evidence at the hearing, to file exceptions to the administrative law judge's decision, or to appeal the Board's decision.

(9) The respondent will, upon request, be provided with an opportunity to read the transcript or listen to a recording of the hearing.

(10) The General Counsel must establish the alleged misconduct by a preponderance of the evidence.

(11) At any stage of the proceeding prior to hearing, the respondent may submit a settlement proposal to the General Counsel, who may approve the settlement or elect to continue with the proceedings. Any formal settlement reached between the General Counsel and the respondent, providing for entry of a Board order reprimanding, suspending, disbarring or taking other disciplinary action against the respondent, shall be subject to final approval by the Board. In the event any settlement, formal or informal, is reached after opening of the hearing, such settlement must be submitted to the administrative law judge for approval. In the event the administrative law judge rejects the settlement, either the General Counsel or the respondent may appeal such ruling to the Board as provided in §102.26.

(12) If it is found that the respondent has engaged in misconduct in violation of paragraph (d) of this section, the Board may issue a final order imposing such disciplinary sanctions as it deems appropriate, including, where the misconduct is of an aggravated character, suspension and/or disbarment from practice before the Agency, and/or other sanctions.

(f) Any person found to have engaged in misconduct warranting disciplinary sanctions under paragraph (d) of this section may seek judicial review of the administrative determination.

# Appendix A.—NLRB Official Office Hours

NLRB Headquarters, Business Hours (Local Time):
- Washington, DC ..... 8:30 a.m.–5 p.m.

Division of Judges, Business Hours (Local Time):
- Washington, DC ..... 8:30 a.m.–5 p.m.
- San Francisco ..... 8:30 a.m.–5 p.m.
- New York ..... 8:30 a.m.–5 p.m.
- Atlanta ..... 8 a.m.–4:30 p.m.

Regional Office Business Hours (Local Time):
- 1—Boston ..... 8:30 a.m.–5 p.m
- 2—New York ..... 8:45 a.m.–5:15 p.m.
- 3—Buffalo ..... 8:30 a.m.–5 p.m.
  - Albany ..... 8:30 a.m.–5 p.m.
- 4—Philadelphia ..... 8:30 a.m.–5 p.m
- 5—Baltimore ..... 8:15 a.m.–4:45 p.m.
  - Washington, DC ..... 8:15 a.m.–4:45 p.m.
- 6—Pittsburgh, PA ..... 8:30 a.m.–5 p.m
- 7—Detroit ..... 8:15 a.m.–4:45 p.m.
  - Grand Rapids ..... 8:15 a.m.–4:45 p.m.
- 8—Cleveland ..... 8:15 a.m.–4:45 p.m.
- 9—Cincinnati ..... 8:30 a.m.–5 p.m.
- 10—Atlanta ..... 8 a.m.–4:30 p.m
  - Birmingham ..... 8 a.m.–4:30 p.m.
- 11—Winston-Salem ..... 8 a.m.–4:30 p.m.
- 12—Tampa ..... 8 a.m.–4:30 p.m
  - Jacksonville ..... 8 a.m.–4:30 p.m.
  - Miami ..... 8 a.m.–4:30 p.m.
- 13—Chicago ..... 8:30 a.m.–5 p.m.
- 14—St. Louis ..... 8 a.m.–4:30 p.m
- 15—New Orleans ..... 8 a.m.–4:30 p.m.
- 16—Fort Worth ..... 8:15 a.m.–4:45 p.m.
  - Houston ..... 8 a.m.–4:30 p.m.
  - San Antonio ..... 8 a.m.–4:30 p.m.
- 17—Kansas City ..... 8:15 a.m.–4:45 p.m.
  - Tulsa ..... 8:15 a.m.–4:45 p.m.
- 18—Minneapolis ..... 8 a.m.–4:30 p.m.
  - Des Moines ..... 8 a.m.–4:30 p.m.
- 19—Seattle ..... 8:15 a.m.–4:45 p.m.
  - Anchorage ..... 8:15 a.m.–4:45 p.m.
  - Portland ..... 8 a.m.–4:30 p.m.
- 20—San Francisco ..... 8:30 a.m.–5 p.m.
- 21—Los Angeles ..... 8:30 a.m.–5 p.m.
  - San Diego ..... 8:30 a.m.–5 p.m.
- 22—Newark ..... 8:30 a.m.–5 p.m.
- 24—Puerto Rico ..... 8:30 a.m.–5 p.m.
- 25—Indianapolis ..... 8:30 a.m.–5 p.m.
- 26—Memphis ..... 8 a.m.–4:30 p.m.
  - Little Rock ..... 8 a.m.–4:30 p.m.
  - Nashville ..... 8 a.m.–4:30 p.m.

27—Denver ..... 8:30 a.m.–5 p.m.
28—Phoenix ..... 8:15 a.m.–4:45 p.m.
Albuquerque ..... 8:15 a.m.–4:45 p.m.
El Paso ..... 8:30 a.m.–5 p.m.
Las Vegas ..... 8:30 a.m.–5 p.m.
29—Brooklyn ..... 9 a.m.–5:30 p.m.
30—Milwaukee ..... 8 a.m.–4:30 p.m.
31—Los Angeles ..... 8:30 a.m.–5 p.m.
32—Oakland ..... 8:30 a.m.–5 p.m.
33—Peoria ..... 8:30 a.m.–5 p.m.
34—Hartford ..... 8:30 a.m.–5 p.m.
37—Honolulu ..... 8:00 a.m.–4:30 p.m.

# OTHER RULES—PART 103

## Subpart A—Jurisdictional Standards



## Subpart B—Election Procedures



## Subpart C—Appropriate Bargaining Units



## Subpart F—Remedial Orders

# NATIONAL LABOR RELATIONS BOARD

## OTHER RULES—PART 103

### Subpart A—Jurisdictional Standards

**Sec. 103.1** *Colleges and universities.*—The Board will assert its jurisdiction in any proceeding arising under sections 8, 9, and 10 of the Act involving any private nonprofit college or university which has a gross annual revenue from all sources (excluding only contributions which, because of limitation by the grantor, are not available for use for operating expenses) of not less than $1 million.*

JURISDICTIONAL STANDARDS APPLICABLE TO PRIVATE COLLEGES AND UNIVERSITIES

NOTICE OF ISSUANCE OF RULE

On July 14, 1970, the Board having determined in *Cornell University*, 183 NLRB 329, to assert jurisdiction over private nonprofit colleges and universities as a class published in the Federal Register, Vol. 35, p. 11270, a Notice of Proposed Rule Making which invited interested parties to submit views, data, and recommendations to assist the Board in formulating a standard to be applied in determining whether to assert jurisdiction over specific institutions within the class. Thirty-three responses to the notice were received containing proposals and information. After giving careful consideration to all the responses, the Board has concluded that it will best effectuate the purposes of the Act to apply a $1 million annual gross revenue standard to private, nonprofit colleges and universities. A rule establishing that standard has been issued concurrently with the publication of this notice.

Although it is well settled that the National Labor Relations Act gives to the Board a jurisdictional authority coextensive with the full reach of the commerce clause,[1] it is equally well established that the Board in its discretion may set boundaries on the exercise of that authority.[2] In exercising that discretion, the Board has consistently taken the position "that it would better effectuate the purposes of the Act, and promote the prompt handling of major cases, not to exercise its jurisdiction to the fullest extent possible under the authority delegated to it by Congress, but to limit that exercise to enterprises whose operations have, or at which labor disputes would have, a pronounced impact upon the flow of interstate commerce."[3]

In determining where to draw such a dividing line, the Board here, as in the past, must balance its statutory obligations to extend the rights and protections of the Act to those employers and employees whose labor disputes are likely to have a substantial impact on commerce against the

* The following statement was published by the Board concurrently with the issuance of this rule, 35 F.R. 11270.

[1] See *N.L.R.B. v. Fainblatt, et al.*, 306 U.S. 601.

[2] *Office Employees International Union, Local No. 11 v. N.L.R.B.*, 353 U.S. 313; Sec. 14(c)(1) of the Act.

[3] *Ho11ow Tree Lumber Company*, 91 NLRB 635, 636. See also, e.g., *Floridan Hotel of Tampa, Inc.*, 124 NLRB 261, 264; *Butte Medical Properties, d/b/a Medical Center Properties*, 168 NLRB 266, 268.

need to confine its caseload to manageable proportions. We are satisfied that the standard announced above accommodates these considerations.

In arriving at a $1 million gross revenue figure,[4] the Board considered the nature of the impact upon commerce made by private, nonprofit colleges and universities, as well as the number of employers and employees potentially affected. Thus, statistical projections based on data submitted by responding parties disclosed that adoption of such a standard would bring some 80 percent of all private colleges and universities and approximately 95 percent of all full- and part-time nonprofessional personnel within the reach of the Act. It has been argued that because the current annual gross revenue standards set for other types of enterprises are all lower than $1 million the Board is thereby precluded from adopting, or ought not to adopt, any gross revenue standard higher than the highest current standard which is $500,000 per annum. However, this argument overlooks the interplay between the various relevant considerations.

For example, available data revealed that the $250,000 gross revenue standard established for the hospital industry extended the Board's jurisdiction to approximately 76 percent of the institutions in that field.[5] In adopting a $500,000 annual gross revenue standard for the hotel industry, the Board observed that only 3.5 percent of the employers, but over 60 percent of the hotel employees, would be covered.[6] The same gross revenue standard applied to the retail industry encompassed 6.5 percent of the retail store employees.[7] Thus, although the standard set for private, nonprofit colleges or universities is higher on its face than gross revenue standards currently existing for other enterprises, its practical effect is to extend the protections of the Act to a greater proportion of the employers and employees in the affected class. Further, the industries to which the Board applies gross revenue standards of $500,000 or less conduct their business through large numbers of relatively small units, a substantial number of which must be embraced by the relevant jurisdictional standard if the Board effectively is to regulate the labor relations of the industry. Here, in contrast, effective regulation of the labor relations of the industry can be achieved, in our opinion, under the higher standard. Finally, the Board has rejected contentions that a standard higher than $1 million should be adopted because the Board is satisfied that colleges and universities with gross revenues of $1 million have a substantial impact on commerce; and that the figure selected will not result in an unmanageable increase on the Board's caseload.

We recognize that there remains a small number of colleges and universities and their employees who will be excluded from the coverage of the Act. We are nevertheless satisfied that this standard will bring within the Board's jurisdiction these labor disputes in the industry which exert or tend to exert a pronounced impact on commerce. Moreover, adoption of a particular standard now in light of prevailing conditions does not foreclose future reevaluation and revision of that standard should subsequent circumstances make that appropriate.

There are, of course, criteria other than gross revenue by which to assess the impact of an institution on commerce. For example, responding parties suggested tests based on numbers of employees, numbers of students, or annual expenditures for commercial purposes. However, after

[4] As reflected in the rule, this figure includes revenues from all sources, excepting only contributions which, because of limitations placed thereon by the grantor, are not available for operating expenses. These contributions encompassing, for example, contributions to an endowment fund or building fund, are excluded because of their generally nonrecurring nature (cf. *Magic Mountain, Inc*., 123 NLRB 1170). Income derived from investment of such funds will, however, be counted in determining whether the standard has been satisfied.

[5] *Butte Medical Properties*, 168 NLRB 266.

[6] *Floridan Hotel of Tampa Inc*., 124 NLRB 261, 265.

[7] *Id*. at 265 09266, fn. 19.

considering all the various alternatives, the Board concludes that a gross revenue test is preferable, for it has the advantages of simplicity and ease of application. Board experience has demonstrated that such figures are readily available and relatively easy to produce, thereby reducing the amount of time, energy, and funds expended by the Board and staff as well as imposing less of a burden on the parties involved.

In light of the foregoing considerations, the Board is satisfied that the $1 million annual gross revenue standard announced today will bring uniform and effective regulation of labor relations to labor disputants at private, nonprofit colleges and universities, and at the same time enable the Board to function as a responsive forum for the resolution of those disputes.

**Sec. 103.2** *Symphony orchestras.*—The Board will assert its jurisdiction in any proceeding arising under sections 8, 9, and 10 of the Act involving any symphony orchestra which has a gross annual revenue from all sources (excluding only contributions which are because of limitation by the grantor not available for use for operating expenses) of not less than $1 million.*

JURISDICTIONAL STANDARDS APPLICABLE TO SYMPHONY ORCHESTRAS

NOTICE OF ISSUANCE OF RULE

On August 19, 1972, the Board published in the Federal Register, a Notice of Proposed Rule Making which invited interested parties to submit to it (1) data relevant to defining the extent to which symphony orchestras are in commerce, as defined in section 2(6) of the National Labor Relations Act, and to assessing the effect upon commerce of a labor dispute in those enterprises, (2) statements of views or arguments as to the desirability of the Board exercising jurisdiction, and (3) data and views concerning the appropriate jurisdictional standards which should be established in the event the Board decides to promulgate a rule exercising jurisdiction over those enterprises. The Board received 26 responses to the notice. After careful consideration of all the responses, the Board has concluded that it will best effectuate the purposes of the Act to assert jurisdiction over symphony orchestras and apply a $1 million gross revenue standard, in addition to statutory jurisdiction. A rule establishing that standard has been issued concurrently with the publication of this notice.

It is well settled that the National Labor Relations Act gives to the Board a jurisdiction authority coextensive with the full reach of the commerce clause.[1] It is equally well settled that the Board in its discretion may set boundaries on the exercise of that authority.[2] In exercising that discretion, the Board has consistently taken the position that it would better effectuate the purposes of the Act, and promote the prompt handling of major cases, not to exercise its jurisdiction to the fullest extent possible under the authority delegated to it by Congress, but to limit that exercise to enterprises whose operations have, or at which labor disputes would have, a pronounced impact upon the flow of interstate commerce.[3] The standard announced above, in our opinion, accommodates this position.

* The following statement was published by the Board in the Federal Register on March 19, 1973, 38 F.R. 7289.

[1] See *N.L.R.B. v. Fainblatt*, 306 U.S. 601.

[2] *Office Employees International Union Local No. 11 (Oregon Teamsters) v. N.L.R.B.*, 353 U.S. 313; Sec. 14(c)(1) of the Act.

[3] *Siemons Mailing Service*, 122 NLRB 81; *Hollow Tree Lumber Company*, 91 NLRB 635, 635. See also, e.g., *Floridan Hotel of Tampa Inc.*, 124 NLRB 261, 264; *Butte Medical Properties, d/b/a Medical Center Hospital*, 168 NLRB 266, 268.

The Board, in arriving at a $1 million gross figure,[4] has considered, *inter alia*, the impact of symphony orchestras on commerce and the aspects of orchestra operations as criteria for the exercise of jurisdiction. Symphony orchestras in the United States are classified in four categories: college, community, metropolitan, and major.[5] Community orchestras constitute the largest group with over 1,000 in number and, for the most part, are composed of amateur players. The metropolitan orchestras are almost exclusively professional and it is estimated that there are between 75 and 80 orchestras classified as metropolitan. The annual budget for this category ranges approximately from $250,000 to $1,000,000. The major orchestras are the largest and usually the oldest established musical organizations. All of them are completely professional, and a substantial number operates on a year-round basis. For this category the minimum annual budget is approximately $1 million. Presently, there are approximately 28 major symphony orchestras in the United States. Thus, statistical projections based on data submitted by responding parties, as well as data compiled by the Board, disclose that adoption of such a standard would bring approximately 2 percent of all symphony orchestras, except college, or approximately 28 percent of the professional metropolitan and major orchestras, within reach of the Act. The Board is satisfied that symphony orchestras with gross revenues of $1 million have a substantial impact on commerce and that the figure selected will not result in an unmanageable increase on the Board's workload. The adoption of a $1 million standard, however, does not foreclose the Board from reevaluating and revising that standard should future circumstances deem it appropriate.

In view of the foregoing, the Board is satisfied that the $1 million annual gross revenue standard announced today will result in attaining uniform and effective regulation of labor disputes involving employees in the symphony orchestra industry whose operations have a substantial impact on interstate commerce.

**Sec. 103.3** *Horseracing and dogracing industries.*—The Board will not assert its jurisdiction in any proceeding under sections 8, 9, and 10 of the Act involving the horseracing and dogracing industries.*

### DECLINATION OF ASSERTION OF JURISDICTION

On July 18, 1972, the Board published in the Federal Register a notice of proposed rulemaking which invited interested parties to submit to it (1) data relevant to defining the extent to which the horseracing and dogracing industries are in commerce as defined in section 2(6) of the National Labor Relations Act, and to assessing the effect upon commerce of a labor dispute in those industries, (2) statements of views or arguments as to the desirability of the Board exercising jurisdiction, and (3) data and views concerning the appropriate jurisdictional standards which should be established in the event the Board decides to promulgate a rule exercising jurisdiction over those industries. The Board received 96 responses to the notice. After careful consideration of all the responses, the Board has concluded that it will not assert

[4] As reflected in the rule, this figure includes revenues from all sources, excepting only contributions which, because of limitations placed thereon by the grantor, are not available for operating expenses. These contributions encompassing, for example, contributions to an endowment fund or building fund, are excluded because of their generally nonrecurring nature. (Cf. *Magic Mountain, Inc*., 123 NLRB 1170.) Income derived from investment of such funds will, however, be counted in determining whether the standard has been satisfied.

[5] The latter three categories are defined by the American Symphony Orchestra League principally on the basis of their annual budgets.

* The following statement was published by the Board concurrently with the issuance of this rule, 38 F.R. 9537.

jurisdiction over the horseracing and dogracing industries. A rule declining to assert such jurisdiction has been issued concurrently with the publication of this notice.[1]

The jurisdiction of the National Labor Relations Board under section 9 of the National Labor Relations Act, as amended,[2] to determine questions concerning representation, and under section 10 of the Act to prevent unfair labor practices, extends to all such matters which "affect commerce" as defined in section 2(7) of the Act.[3] Under section 14(c) of the Act,[4] the Board in its discretion may decline to assert jurisdiction over labor disputes involving any class or category of employers if such labor disputes will not have a substantial impact in commerce and provided that it had not asserted jurisdiction over such class or category prior to August 1, 1959. The Board has consistently declined to assert jurisdiction over labor disputes in the horseracing and dogracing industries[5] as well as over labor disputes involving employers whose operations are an integral part of these racing industries.[6] After carefully considering the responses, the Board has decided not to alter its position with respect to the horseracing and dogracing industries and has concluded that it will continue to decline to assert jurisdiction over labor disputes in these industries.

In prior decisions, the Board declined to assert jurisdiction over these industries noting, *inter alia*, the extensive State control over the industries. It appears that State law sets racing dates of the tracks; State law determines the percentage share of the gross wagers that goes to the State; and State law determines the percentage of gross wagers to be retained by the track. In addition, the State licenses employees, exercises close supervision over the industries through State racing commissions, and in many States retains the right to effect the discharge of employees whose conduct jeopardizes the "integrity" of the industry. As the industries constitute a substantial source of revenue to the States, a unique and special relationship has developed between the States and these industries which is reflected by the States continuing interest in and supervision over the industries.

In addition, the sporadic nature of the employment in these industries encourages a high percentage of temporary part-time workers and results in a high turnover of employees and a relatively unstable work force. This is further evidenced by a pattern of short workhours and sporadic and short periods of active employment with any given employer.

Besides minimizing the impact on commerce of the industries, this pattern of short-term employment also gives us pause with respect to the effectiveness of any proposed exercise of our jurisdiction in view of the serious administrative problems which would be posed both by attempts to conduct elections and to make effective any remedies for alleged violations of the Act within the highly compressed timespan of active employment which is characteristic of the industries.

Thus, we have concluded that the operations of these industries continue to be peculiarly related to, and regulated by, local governments and, further that our exercise of jurisdiction would not

[1] See title 29, ch. I, pt. 103, *supra*.
[2] 61 Stat. 140, 143, 146, 29 U.S.C. secs. 158, 159, 160.
[3] 61 Stat. 137, 29 U.S.C. sec. 152(7). See *N.L.R.B. v. Fainblatt et al.*, 306 U.S. 601.
[4] 29 U.S.C. sec. 164.
[5] *Los Angeles Turf Club, Inc*., 90 NLRB 20 (horseracing track); *Jefferson Downs, Inc*., 125 NLRB 386 (horseracing track); *Meadow Stud Inc*., 130 NLRB 1202 (horse owner/breeder); *Hialeah Race Course, Inc*., 125 NLRB 388 (horseracing track); *Walter A. Kelley*, 139 NLRB 744 (horse owners/breeders); *Centennial Turf Club, Inc*., 192 NLRB 698 (horseracing track); *Yonkers Raceway Inc*., 196 NLRB 373 (horseracing track); *Jacksonville Kennel Club*, Case 12–RC–3815, May 5, 1971 (dogracing track) (not reported in NLRB volumes).
[6] *Pinkerton's National Detective Agency*, 114 NLRB 1363; *Hotel & Restaurant Employees & Bartenders International Union, Local 343 (Resort Concessions, Inc.)*, 148 NLRB 208.

substantially contribute to stability in labor relations. We are also not unmindful of the fact that relatively few labor disputes have occurred in these industries in recent years, thus reaffirming the Board's earlier assessment that the impact of labor disputes in these industries is insubstantial and does not warrant the Board's exercise of jurisdiction.[7]

Accordingly, for the above reasons, the Board[8] reaffirms its earlier conclusion and declines to assert jurisdiction over these industries.

Member Fanning does not join in the Board's conclusion to decline to assert its jurisdiction over the said industries, based on the reasons spelled out in his dissenting position in *Centennial Turf Club, Inc.*, 192 NLRB 698.

[7] *Walter A. Kelley*, supra.
[8] Chairman Miller and Members Jenkins, Kennedy, and Penello.

## Subpart B—Election Procedures

Sec. 103.20 *Posting of election notices.*—(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

(d) Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of section 102.69(a).[*]

EXPLANATORY STATEMENTS

On March 11, 1987, a notice of proposed rulemaking was published in the Federal Register (52 FR 7450) wherein the Board proposed to amend its rules to include a provision requiring employers to post a notice of election 3 days before an election is conducted. The proposed rule provided that the employer shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to the commencement of an election. The term "working days" was defined as all days other than Saturdays, Sundays, and holidays. The rule further provided that a party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting, and that an employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office to the contrary at least 5 working days prior to the commencement of the election.

The supplementary information accompanying the proposed rule recognized that the official Board Notice of Election contains important information with respect to employee rights under the Act and that such information should be conveyed to the employees far enough in advance of the election so that employees will be adequately apprised of their rights. By establishing a specific length of time for posting, the provision made clear to the parties their respective responsibilities and obligations with respect to notice posting and attempted to eliminate unnecessary and time-consuming litigation on this issue.

In response to the Board's proposal, nine written comments were received from individuals and organizations. All but one spoke favorably of the Board's proposal and commended its efforts to establish clarity and uniformity in this area. Comments from the Board's Regional Offices noted

[*] The first of the statements that follow was published by the Board in the Federal Register concurrently with the issuance of the rule on July 6, 1987, 52 F.R. 25213–25215, and the second on December 23, 1987, 52 F.R. 48534.

that the proposal was generally in accord with current practice and thus could easily be implemented.

Most of the comments, however, also contained suggestions for amending the proposed rule. Two suggestions clearly had merit. One pointed out that the proposed rule referred, in the summary preceding the rule, only to elections conducted under section 9(c) and thus did not apply to UD elections under section 9(e) and recommended that the rule refer simply to elections conducted under section 9 of the Act. As the Board did not intend that 9(c) elections be conducted differently from 9(e) elections, this suggestion was adopted and the summary, as set forth above, was redrafted accordingly. The other suggestion was that, although the proposed rule implied that the failure to post the notice would be objectionable conduct, the rule should affirmatively state that failure to post will be grounds for setting aside an election upon timely filing of an objection. Such an addition would remove any doubt as to the objectionable nature of the conduct as well as clearly place the burden of raising the failure to post on the other parties to the election thereby eliminating any argument that the Regions should police the rule. The Board agreed with that position. Accordingly, the following sentence has been added as a separate paragraph (d) at the end of § 103.20:

Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of § 102.69(a).

Two nurses' associations suggested that the 3-day period be increased to 5 or 7 days as employees in the health care field frequently do not work a normal 5-day week but instead work long hours for 3 or 4 days and then have 3 to 4 days off. The Board considered this suggestion but still concluded that a posting of 3 full working days is a sufficient period of time to adequately apprise most voters of their rights. The Board was reluctant to complicate the rule by establishing different posting periods for different industries. However, because of other suggestions relating to how the "3 full working days" is defined, as discussed below, we have changed the definition of "working days"; as a practical matter, because of the way "working days" is defined, the actual posting period will normally be longer than 72 hours.

As indicated, several commentators had problems with the language in the proposed rule requiring that notices be posted "at least 3 full working days prior to the commencement of the election." "Working days" was defined in the proposed rule as "all days other than Saturdays, Sundays, and holidays." Commentators thought that the rule was confusing as it was unclear as to whether the day of the election was included in the 3 days and also as to exactly when the 3 days would begin, i.e., 12:01 a.m. on the first day or when employees actually arrived for work on the first day. One commentator suggested that the rule require a period of at least 72 consecutive hours during the preceding 3 working days. The Board considered these suggestions and agreed that the proposed language could be improved to make clear that the rule specifically excludes the day of election. Accordingly, the first sentence in § 103.20(a) has been rewritten to require that notices be posted at least 3 full working days prior to 12:01 a.m. of the day of the election. The Board did not adopt the suggestion that the rule should describe the time period in hours rather than 3 working days because requiring consecutive hours does not allow for Saturdays, Sundays, and holidays. We recognized, however, that the phrase "3 full working days" needed a more precise definition. Accordingly, the definition of "working days" in § 103.20(b) has been revised to equate a full working day with an entire 24-hour period excluding Saturdays, Sundays, and

holidays. As noted above, these changes make longer posting likely, as an employer will no doubt post the day before rather than stay up until 12:01 a.m. of the first day to post the notice.

Two comments took issue with the burdens placed on the employer by the rule. One commentator decried the mandatory nature of the requirement as it includes situations in which the employer has acted in good faith. This commentator argued that such requirement would increase rather than decrease litigation especially over issues such as who removed or tampered with the notice and when. Another opposed the idea that an employer is presumed to have received notices unless it notifies the Regional Office 5 days before the election, and that an employer is presumed to have knowledge of the Board's posting requirements. This commentator suggested that the notice be sent by certified mail.

The Board recognized that the proposed rule does not solve all notice-posting problems and that various issues, including tampering with a timely posted notice, will still have to be litigated if raised. With respect to adequately informing employers of their notice-posting obligations, the Board has again rejected the use of certified mail as it would impose an undue extra burden on the Regions. It was the Board's intention to discuss with the Regional Offices what method of notification would be practicable, and that has now been done. The Board considered adding a footnote to the Decision and Direction of Election, much like the *Excelsior* footnote, describing when the notices would be mailed, the employer's obligation to post the notices when received, and the employer's obligation to notify the Regional Office if not received; or, alternatively, including such information in any cover letter to employers that accompanies the Decision and Direction of Election or the cover letter that is sent to all parties with a copy of the petition. The Board rejected the first suggestion on the grounds that many Decisions and Directions of Election were already rather lengthy and thus should not be further burdened and the second on grounds that not all Regions send a cover letter with the Decision and Direction of Election. The Board did believe, however, that the last suggestion is a good idea in that the cover letter accompanying service of the petition already recites various obligations of the parties with respect to the petition and thus could easily be amended to include reference to the new notice-posting requirement. This makes the employer aware of its obligations at an early date, and the petition and cover letter are already being sent by certified mail and consequently the Region would be assured that the employer had been adequately apprised of its obligations. The Board also has informed the General Counsel's Division of Operations to add a line to the Election Order Sheet (Form 700), which the Board agent would initial when he or she orally reminds the employer of its notice-posting obligations shortly before the notices are mailed.

Lastly, the Board rejected the suggestion made in one of the comments that the rule specifically define the term "conspicuous" as that location normally utilized by an employer to post notices to employees. That the notice be posted in a conspicuous place has long been a requirement of notice posting, and the Board saw no need specifically to describe the term or limit the number of places that could be called "conspicuous."

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On July 6, 1987, a final rule was published in the Federal Register (52 FR 25213–25215) wherein the Board amended its rules to include a provision requiring employers to post a notice of election 3 full working days before an election is conducted.

The Supplementary Information accompanying the final rule stated that the Regional Offices would provide both a written notification to the employer of its notice-posting requirements and an oral reminder. It was anticipated that the written notice would be accomplished by amending the cover letter accompanying the service of a petition to specifically refer to the employer's

notice-posting obligations. Thereafter, the Board agent was to orally remind the employer of the notice-posting rule shortly before the notices were mailed and to indicate such reminder by initialing the Election Order Sheet (Form 700).

Upon further consideration, the Board has decided that a second written notification to the employer, rather than an oral reminder, is a preferable way to apprise employers of their notice-posting obligations. Accordingly, instead of giving an oral reminder, Board Regional Offices will undertake to send out a second written reminder of the notice-posting requirement by attaching a copy of the rule to the Decision and Direction of Election or the approved election agreement at the time these documents are mailed to the employer. For those Regions which send a cover letter with the decision or election agreement, the letter may be amended to include a reference to the attachment. In those instances where it is unnecessary to mail an election agreement, as the parties have already been given a copy of the agreement at the Regional Office, the Region may mail (or otherwise provide) a copy of the rule to the employer as a separate document.

This second reminder, sent at the time of the Decision and Direction of Election or election agreement, together with the first written notification given in the cover letter accompanying the service of the election petition, will help ensure that employers are reminded of their notice-posting obligations. The Board wishes to clarify, however, that both of these reminders are merely an effort by the Board to keep employers apprised of their obligations under the notice-posting rule and in no event will the failure of the Board or its agents to provide such notice be the basis of an election objection or constitute a defense to an election objection based on an employer's failure to post election notices or otherwise perform its obligations as set forth in the Board's rule. The rule itself is not amended or changed in any way by this revision to the Supplementary Information.

## Subpart C—Appropriate Bargaining Units

**Sec. 103.30** *Appropriate bargaining units in the health care industry*.—(a) This portion of the rule shall be applicable to acute care hospitals, as defined in paragraph (f) of this section: Except in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units, for petitions filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B) of the National Labor Relations Act, as amended, except that, if sought by labor organizations, various combinations of units may also be appropriate:

(1) All registered nurses.

(2) All physicians.

(3) All professionals except for registered nurses and physicians.

(4) All technical employees.

(5) All skilled maintenance employees.

(6) All business office clerical employees.

(7) All guards.

(8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards. *Provided That* a unit of five or fewer employees shall constitute an extraordinary circumstance.

(b) Where extraordinary circumstances exist, the Board shall determine appropriate units by adjudication.

(c) Where there are existing non-conforming units in acute care hospitals, and a petition for additional units is filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B), the Board shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in paragraph (a) of this section.

(d) The Board will approve consent agreements providing for elections in accordance with paragraph (a) of this section, but nothing shall preclude regional directors from approving stipulations not in accordance with paragraph (a), as long as the stipulations are otherwise acceptable.

(e) This rule will apply to all cases decided on or after May 22, 1989.

(f) For purposes of this rule, the term:

(1) “Hospital” is defined in the same manner as defined in the Medicare Act, which definition is incorporated herein (currently set forth in 42 U.S.C. 1395x(e), as revised 1988);

(2) “Acute care hospital” is defined as: either a short term care hospital in which the average length of patient stay is less than thirty days, or a short term care hospital in which over 50% of all patients are admitted to units where the average length of patient stay is less than thirty days. Average length of stay shall be determined by reference to the most recent twelve month period preceding receipt of a representation petition for which data is readily available. The term “acute care hospital” shall include those hospitals operating as acute care facilities even if those hospitals

provide such services as, for example, long term care, outpatient care, psychiatric care, or rehabilitative care, but shall exclude facilities that are primarily nursing homes, primarily psychiatric hospitals, or primarily rehabilitation hospitals. Where, after issuance of a subpoena, an employer does not produce records sufficient for the Board to determine the facts, the Board may presume the employer is an acute care hospital.

(3) "Psychiatric hospital" is defined in the same manner as defined in the Medicare Act, which definition is incorporated herein (currently set forth in 42 U.S.C. 1395x(f)).

(4) The term "rehabilitation hospital" includes and is limited to all hospitals accredited as such by either Joint Committee on Accreditation of Healthcare Organizations or by Commission for Accreditation of Rehabilitation Facilities.

(5) A "non-conforming unit" is defined as a unit other than those described in paragraphs (a) (1) through (8) of this section or a combination among those eight units.

(g) Appropriate units in all other health care facilities: The Board will determine appropriate units in other health care facilities, as defined in section 2(14) of the National Labor Relations Act, as amended, by adjudication.

## Subpart F—Remedial Orders

**Sec. 103.100** *Offers of reinstatement to employees in armed forces*.—When an employer is required by a Board remedial order to offer an employee employment, reemployment, or reinstatement, or to notify an employee of his or her entitlement to reinstatement upon application, the employer shall, if the employee is serving in the armed forces of the United States at the time such offer or notification is made, also notify the employee of his or her right to reinstatement upon application in accordance with the Military Selective Service Act after discharge from the armed forces.[*]

EXPLANATORY STATEMENT

When the Board finds that an employer has violated the National Labor Relations Act in such a manner as to cause an employee loss of employment, it requires as a remedy that that employer offer the employee employment, reemployment, or reinstatement, as the case may be. When the employee is in the Armed Forces of the United States at the time the required offer is made, the Board uniformly requires that the employer's offer also notify the employee of his right to reinstatement established by the Military Selective Service Act of 1967.[1] Similarly, when the Board finds that a strike is an unfair labor strike, it requires as a remedy that the employer offer the striking employees reinstatement upon their application and, as to employees precluded from applying because serving in the Armed Forces of the United States, notify them of their right to reinstatement under that statute after their release from service.[2] In these circumstances, the Board's determination of the employee's right to employment, or reinstatement upon application, may be determinative of his right to reinstatement under the Military Selective Service Act of 1967 after release from service.

This proposed rule does not alter those requirements in any way. It is intended rather to simplify the present practice of the Board under which the order and the notice to be posted by an employer must, in each reinstatement situation, include an undertaking to notify the employee if serving in the Armed Forces of his right to reinstatement under the Military Selective Service Act of 1967. If the rule is adopted as here proposed, it is intended to discontinue the practice of including the applicable provision in each order and notice, since publication of the rule will serve as formal notice of the requirement. The regional offices of the Board will, of course, continue to assure this notification requirement is satisfied before the case is closed upon compliance with the Board's order.

[*] The following statement was published by the Board at the time of publication of the notice of proposed rulemaking, 37 F.R. 15710.

[1] 65 Stat. 75, 50 U.S.C. App. Sec. 451, *et seq*., amending and renaming Selective Service Act of 1945, 62 Stat. 604; see also 82 Stat. 790. See, e.g., *Stationers Corporation*, 96 NLRB 196; *Aerovox Corporation*, 102 NLRB 1526. Compare *The Federbush Co., Inc*., 34 NLRB 539, 565.

[2] *Gerhard Landgraf and Peter Landgraf doing business as Bay Standard Products Mfg. Co*., 167 NLRB 340, 341.

**20 F.R. 2175**

## NATIONAL LABOR RELATIONS BOARD

### Revocation of Assignment of Responsibilities to the Associate General Counsels of the Division of Operations and Division of Law, Respectively

Pursuant to the provisions of section 3(a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER notification that:

Assignment of Responsibilities to the Associate General Counsels of the Division of Operations and Division of Law, Respectively, effective December 21, 1954 (19 F.R. 8830, December 23, 1954) was revoked effective at close of business March 31, 1955.

Dated: Washington, D.C., April 1, 1955.

By direction of the Board.

FRANK M. KLEILER,
*Executive Secretary*

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### Authority and Assigned Responsibilities of General Counsel of National Labor Relations Board

Pursuant to the provisions of section 3(a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following board memorandum describing the authority and assigned responsibilities of the general counsel of the National Labor Relations Board (effective April 1, 1955).

Dated: Washington, D.C., April 1, 1955.

By direction of the Board.

FRANK M. KLEILER,
*Executive Secretary*

### Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board (Effective April 1, 1955)

The statutory authority and responsibility of the General Counsel of the Board are defined in section 3(d) of the National Labor Relations Act as follows: "There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other

than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law."

This memorandum is intended to describe the statutory authority and to set forth the prescribed duties and authority of the General Counsel of the Board, effective April 1, 1955:

I. *Case handling*—A. *Complaint cases*. The General Counsel of the Board has full and final authority and responsibility, on behalf of the Board, to accept and investigate charges filed, to enter into and approve informal settlement of charges, to dismiss charges, to determine matters concerning consolidation and severance of cases before complaint issues, to issue complaints and notices of hearing, to appear before Trial Examiners in hearings on complaints and prosecute as provided in the Board's rules and regulations, and to initiate and prosecute injunction proceedings as provided for in section 10(l) of the act. After issuance of Intermediate Report by the Trial Examiner, the General Counsel may file exceptions and briefs and appear before the Board in oral argument, subject to the Board's rules and regulations.

B. *Court litigation*. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to seek and effect compliance with the Board's orders and make such compliance reports to the Board as it may from time to time require.

On behalf of the Board, the General Counsel of the Board will, in full accordance with the directions of the Board, petition for enforcement and resist petitions for review of Board Orders as provided in section 10(e) and (f) of the act, initiate and prosecute injunction proceedings as provided in section 10(j), seek temporary restraining orders as provided in section 10(e) and (f), and take appeals either by writ of error or on petition for certiorari to the Supreme Court: *Provided, however*, That the General Counsel will initiate and conduct injunction proceedings under section 10(j) or under section 10(e) and (f) of the act and contempt proceedings pertaining to the enforcement of or compliance with any order of the Board only upon approval of the Board, and will initiate and conduct appeals to the Supreme Court by writ of error or on petition for certiorari when authorized by the Board.

C. *Representation and other election cases*. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to receive and process, in accordance with the decisions of the Board and with such instructions and rules and regulations as may be issued by the Board from time to time, all petitions filed pursuant

to section 9 of the National Labor Relations Act as amended. He is also authorized and has responsibility to conduct secret ballots pursuant to section 209(b) of the Labor Management Relations Act of 1947, whenever the Board is required to do so by law; and to enter into consent election agreements in accordance with section 9(c)(4) of the act.

The authority and responsibility of the General Counsel of the Board in representation cases shall extend, in accordance with the rules and regulations of the Board, to all phases of the investigation through the conclusion of the hearing provided for in section 9(c) and section 9(e) (if a hearing should be necessary to resolve disputed issues), but all matters involving decisional action after such hearing are reserved by the Board to itself.

In the event a direction of election should issue by the Board, the authority and responsibility of the General Counsel, as herein prescribed, shall attach to the conduct of the ordered election, the initial determination of the validity of challenges and objections to the conduct of the election and other similar matters; except that if appeals shall be taken from the General Counsel's action on the validity of challenges and objections, such appeals will be directed to and decided by the Board in accordance with such procedural requirements as it shall prescribe. If challenged ballots would not affect the election results and if no objections are filed within five days after the conduct of a Board-directed election under the provisions of section 9(c) of the act, the General Counsel is authorized and has responsibility, on behalf of the Board, to certify to the parties the results of the election in accordance with regulations prescribed by the Board.

Appeals from the refusal of the General Counsel of the Board to issue a notice of hearing on any petition, or from the dismissal by the General Counsel of any petition, will be directed to and decided by the Board, in accordance with such procedural requirements as it may prescribe.

In processing election petitions filed pursuant to section 9(e) of the act, the General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to conduct an appropriate investigation as to the authenticity of the 30 percent showing referred to and, upon making his determination to proceed, to conduct a secret ballot. If there are no challenges or objections which require a hearing by the Board, he shall certify the results thereof as provided for in such section, with appropriate copies lodged in the Washington files of the Board.

D. *Jurisdictional dispute cases*. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to perform all functions necessary to the accomplishment of the provisions of section 10(k) of the act, but in connection therewith the Board will, at the request of the General Counsel, assign to him for the purpose of conducting the hearing provided for therein, one of its staff Trial Examiners. This authority and responsibility and the assignment of the Trial Examiner to the General Counsel shall terminate with the close of the hearing. Thereafter the Board will assume

full jurisdiction over the matter for the purpose of deciding the issues in such hearing on the record made and subsequent hearings or related proceedings and will also rule upon any appeals.

II. *Internal regulations.* Procedural and operational regulations for the conduct of the internal business of the Board within the area that is under the supervision and direction of the General Counsel of the Board may be prepared and promulgated by the General Counsel.

III. *State* agreements. When authorized by the Board, the General Counsel may initiate and conduct discussions and negotiations, on behalf of the Board, with appropriate authorities of any of the States or Territories looking to the consummation of agreements affecting any of the States or Territories as contemplated in section 10(a) of the act: Provided, however, That in no event shall the Board be committed in any respect with regard to such discussions or negotiations or the entry into of any such agreement unless and until the Board and the General Counsel have joined with the appropriate authorities of the State or Territory affected in the execution of such agreement.

IV. *Liaison with other governmental agencies*. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison and arrangements with the office of the Secretary of Labor, with reference to the reports required to be filed pursuant to section 9(f) and (g) of the act and availability to the Board and the General Counsel of the contents thereof.

The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison with the Federal Mediation and Conciliation Service and any other appropriate Governmental Agency with respect to functions which may be performed in connection with the provisions of section 209(b) of the act. Any action taken pursuant to the authority and responsibility prescribed in this paragraph shall be promptly reported to the Board.

V. *Anti-communist affidavits*. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to receive the affidavits required under section 9(h) of the act, to maintain an appropriate and adequate file thereof, and to make available to the public, on such terms as he may prescribe, appropriate information concerning such affidavits, but not to make such files open to unsupervised inspection.

VI. *Miscellaneous litigation involving board and/or officials*. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to appear in any court to represent the Board or any of its Members or agents, unless directed otherwise by the Board.

VII. *Personnel*. In order better to ensure the effective exercise of the duties and responsibility described above, the General Counsel of the Board, subject to applicable laws and the rules and regulations of the Civil Service Commission, is authorized and has responsibility, on behalf of the Board, to select, appoint, retain, transfer, promote,

demote, discipline, discharge, and take any other necessary and appropriate personnel action with regard to, all personnel engaged in the field offices and in the Washington office (other than Trial Examiners, Legal Assistants to Board Members, the personnel in the Information Division, the personnel in the Division of Administration, the Solicitor of the Board and personnel in his office, the Executive Secretary of the Board and personnel in his office, including the Docket, Order and Issuance Section, and secretarial, stenographic and clerical employees assigned exclusively to the work of trial examiners and the Board Members); provided, however, that no appointment, transfer, demotion or discharge of any Regional Director or Officer in Charge shall become effective except upon the approval of the Board.

In connection with and in order to effectuate the exercise of the powers herein delegated (but not with respect to those powers herein reserved to the Board), the General Counsel is authorized, using the services of the Division of Administration, to execute such necessary requests, certifications, and other related documents, on behalf of the Board, as may be needed from time to time to meet the requirements of the Civil Service Commission, the Bureau of the Budget, or any other governmental agency. The Board will at all times provide such of the "housekeeping" functions performed by the Division of Administration as are requested by the General Counsel for the conduct of his administrative business, so as to meet the stated requirements of the General Counsel within his statutory and prescribed functions.

The establishment, transfer or elimination of any Regional or Sub-Regional Office shall require the approval of the Board.

VIII. To the extent that the above-described duties, powers and authority rest by statute with the Board, the foregoing statement constitutes a prescription and assignment of such duties, powers and authority, whether or not so specified.

GUY FARMER,
*Chairman*.
ABE MURDOCK,
*Member*.
IVAR H. PETERSON,
*Member*.
PHILIP RAY RODGERS,
*Member*.

NATIONAL LABOR RELATIONS BOARD

April 1, 1955.

**23 F.R. 6966**

## NATIONAL LABOR RELATIONS BOARD

## GENERAL COUNSEL

### Amendment to Board Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following amendment to board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective August 25, 1958). This amends memorandum which appeared at 20 F.R. 2175.



Dated, Washington, D.C., September 8, 1958.
By direction of the Board.

[SEAL] FRANK M. KLEILER,
Executive Secretary.

The Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, is hereby amended by striking the text of Section VII and substituting the following:

In order better to ensure the effective exercise of the duties and responsibilities described above, the General Counsel of the Board, subject to applicable laws and the Rules and Regulations of Civil Service Commission, is delegated full and final authority on behalf of the Board over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects, of all personnel engaged in the field and in the Washington Office (other than personnel in the Board Members' offices, the Division of Trial Examiners, the Division of Information, the Security Office, the Office of the Solicitor, and the Office of the Executive Secretary); provided, however, that no appointment, transfer, demotion or discharge of any Regional Director, or of any Officer in Charge of a Sub-Regional Office shall become effective except upon approval of the Board.

The General Counsel will provide such administrative services and housekeeping services as may be requested by the Board in connection with the conduct of its necessary business, and will submit to the Board a quarterly report on the performance of these administrative functions.

In connection with and in order to effectuate the foregoing, the General Counsel is authorized to execute such necessary requests, certifications, and other related documents

on behalf of the Board, as may be needed from time to time to meet the requirements of Civil Service Commission, the Bureau of the Budget, or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted by the agency, the apportionment and allocation of funds and/or the establishment of personnel ceilings within the agency shall be determined jointly by the Board and the General Counsel.

The establishment, transfer or elimination of any Regional or Sub-Regional Office shall require the approval of the Board.

**24 F.R. 6666**

## NATIONAL LABOR RELATIONS BOARD

## GENERAL COUNSEL

### Amendment to Board Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following further amendment to Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board (effective August 3, 1959). This amends memorandum which appeared at 20 F.R. 2175, as amended at 23 F.R. 6966.

Dated, Washington, D.C., August 12, 1959.

By direction of the Board.

FRANK M. KLEILER,
*Executive Secretary*

The Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended August 25, 1958, is hereby further amended by striking the text of Section VII and substituting the following:

1. In order more fully to release the Board to the expeditious performance of its primary

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function and responsibility of deciding cases, the full authority and responsibility for all administrative functions of the Agency shall be vested in the General Counsel. This authority shall be exercised subject to the limitations contained in paragraph 2 with respect to the personnel of, or directly related to, Board Members, and shall be exercised in conformity with the requirements for joint determination as described in paragraph 4.

2. The General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects, of all personnel engaged in the field and in the Washington Office (other than personnel in the Board Members' offices, the Division of Trial Examiners, the Division of Information, the Security Office, the Office of the Solicitor, and the Office of the Executive Secretary); provided, however, that the establishment, transfer or elimination of any Regional or Sub-Regional Office shall require the approval of the Board.

3. The General Counsel will provide such administrative services and housekeeping services as may be requested by the Board in connection with the conduct of its necessary business, and will submit to the Board a quarterly report on the performance of these administrative functions.

4. In connection with and in order to effectuate the foregoing, the General Counsel is authorized to formulate and execute such necessary requests, certifications, and other related documents on behalf of the Agency, as may be needed from time to time to meet the requirements of Civil Service Commission, the Bureau of the Budget, or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted the Agency, the apportionment and allocation of funds and/or the establishment of personnel ceilings within the Agency shall be determined jointly by the Board and the General Counsel.

**26 F.R. 3911**

## NATIONAL LABOR RELATIONS BOARD

## REGIONAL DIRECTORS

### Delegation of Authority

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following Delegation of Authority to the Regional Directors of the National Labor Relations Board:

Pursuant to section 3(b) of the National Labor Relations Act, as amended, and subject to the amendments to the Board's Statements of Procedure, Series 8, and to its Rules and Regulations, Series 8, effective May 15, 1961, and subject to such further amendments and instructions as may be issued by the Board from time to time, the Board delegates to its Regional Directors "its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof."

Such delegation shall be effective with respect to any petition filed under subsection (c) or (e) of section 9 of the Act on May 15, 1961.

Dated, Washington, D.C., April 28, 1961.

By direction of the Board.

[SEAL]

OGDEN W. FIELDS,
*Executive Secretary.*

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## GENERAL COUNSEL

### Further Amendment to Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following further amendment

to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective on May 15, 1961).[1]

Dated, Washington, D.C., April 28, 1961.

By direction of the Board.

[SEAL]

OGDEN W. FIELDS,
Executive Secretary

The Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 3, 1958 (effective August 25, 1958), and August 12, 1959 (effective August 3, 1959), is hereby further amended as follows:

1. Strike the text of section I C. entitled "Representation and other Election Cases" and substitute the following:

Pursuant to section 3(b) of the Act, and subject to such instructions and rules and regulations as may be issued by the Board from time to time, the Board has delegated to its Regional Directors its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof. Such delegation shall be effective with respect to any petition filed under subsection (c) or (e) of section 9 of the Act on May 15, 1961.

Subject to the foregoing delegation and to the Regional Director's direct responsibility to perform the delegated functions in accord with the Board's rules and regulations and any other implementing directives of the Board, the General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to facilitate the receipt and processing, in accordance with such instructions and rules and regulations as may be issued by the Board from time to time, all petitions filed pursuant to section 9 of the Labor Management Relations Act, as amended. The General Counsel is also authorized and has responsibility to conduct secret ballots pursuant to section 209(b) of the Labor Management Relations Act of 1947, whenever the Board is required to do so by law.

2. Strike paragraph 2, section VII of the amendment dated August 12, 1959 (effective August 3, 1959), and substitute the following:

The General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge, and in all other respects, of all personnel engaged in the field, except that personnel action with respect to Regional Directors and Officers-in-Charge of Subregional offices will be

[1] This amends memorandum which appeared at 20 F.R. 2175, as amended at 23 F.R. 6966 and 24 F.R. 6666.

conducted as hereinafter provided, and in the Washington Office (other than personnel in the Board

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Members' Offices, the Division of Trial Examiners, the Division of Information, the Security Office, the Office of the Solicitor, and the Office of the Executive Secretary): *Provided, however*, That the establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board.

The appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional office shall be made by the General Counsel only upon the approval of the Board.

# NATIONAL LABOR RELATIONS BOARD

## Organization and Functions

The National Labor Relations Board is an independent agency created by the National Labor Relations Act, enacted July 5, 1935 (49 Stat. 449; 29 U.S.C. 151–166); as amended by the Labor Management Relations Act, 1947, enacted June 23, 1947 (61 Stat. 136; 29 U.S.C. 151–166); as amended by an Act of October 21, 1951 (65 Stat. 601; 29 U.S.C. 158, 159, 168); as amended by the Labor-Management Reporting and Disclosure Act of 1959, enacted September 14, 1959 (73 Stat. 519; 29 U.S.C. 141, et seq.); and as amended by an Act of July 26, 1974 (88 Stat. 395–397; 29 U.S.C. 152, et seq.). The responsibilities and functions of the Agency under the statutes are carried out through an organization directed and controlled by the National Labor Relations Board and its General Counsel, who, in addition to independent authority under the statute, exercises other authority by delegation from the Board.

### PART 201—DESCRIPTION OF ORGANIZATION

#### SUBPART A—DESCRIPTION OF CENTRAL ORGANIZATION

**Sec. 201** *The Board.* The Board, composed of five Members, has its central and principal office in Washington, D.C. Each of the Members is appointed by the President, with the approval of the Senate, for a term of 5 years. One Member is designated by the President to serve as Chairman of the Board. The Board is created by virtue of the provisions of the National Labor Relations Act, 49 Stat. 449, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, and the Labor Management Reporting and Disclosure Act, 1959, 73 Stat. 519.

The Board has two principal functions under the National Labor Relations Act: (1) The prevention of statutorily defined unfair labor practices on the part of employers and labor organizations or the agents of either, and (2) the conduct of secret-ballot elections among employees in appropriate collective-bargaining units to determine whether or not they desire to be represented by a labor organization.

The Board is further empowered by the Act:

To conduct secret-ballot elections among employees who have been covered by a union-shop agreement, when requested by 30 percent of the employees, to determine whether or not they wish to revoke their union's authority to make such agreements.

To determine in cases involving jurisdictional disputes which of the competing groups of workers is to be assigned the work task involved.

To conduct secret-ballot elections among employees in national emergency situations.

The Board exercises full and final authority over the Office of the Executive Secretary and the Office of the Solicitor. The Board appoints administrative law judges and, subject to the provisions of the Administrative Procedure Act and section 4(a) of the National Labor Relations Act, exercises authority over the Division of Judges. Each Board Member exercises full and final authority over a staff of legal counsel, each staff being under the immediate supervision of the chief counsel of the respective Board Member.

The Board, with the General Counsel, approves the budget, opens new offices as deemed necessary, and appoints Regional Directors and officers in charge.

The Board establishes and publishes the Agency's Rules and Regulations and Statements of Procedure.

**Sec. 201.1** *The Board's staff*. The Board's staff consists (in addition to its chief counsel and legal counsel referred to in sec. 201, above) of the Office of the Executive Secretary, the Office of the Solicitor, and the Division of Judges.

**Sec. 201.1.1** *Office of the Executive Secretary*. The Executive Secretary, as the chief administrative and judicial management officer of the Board, represents the Board in dealing with parties to cases, and communicates on behalf of the Board with labor organizations, employers, employees, Members of Congress, other agencies, and the public; receives, dockets, and acknowledges all formal documents filed with the Board; issues and serves on the parties to cases all Board Decisions and Orders; and certifies copies of all documents which are a part of the Board's files or records.

**Sec. 201.1.2** *0ffice of the Solicitor*. The Solicitor is the Board's chief legal officer and advises the Board on questions of law and policy; adoption, revision, or rescission of Rules and Regulations and Statements of Procedure; pending legislation amending or affecting the Act; litigation affecting the Board, etc. The Office of the Solicitor drafts advisory opinions and declaratory orders for the Board concerning whether the Board would assert jurisdiction in a particular case.

**Sec. 201.1.3** *Division of Judges*. The Chief Administrative Law Judge supervises the operations of this division. Administrative law judges are responsible for the conduct of all hearings and for the preparation of all administrative law judges' decisions in unfair labor practice cases. The Chief Administrative Law Judge has final authority to designate administrative law judges who conduct hearings and make rulings; to assign dates for hearings presided over by administrative law judges; and to rule upon requests for extensions of time within which to file briefs, proposed findings, and conclusions.

**Sec. 201.1.4** *Division of Information*. The Information Office coordinates the Agency's information and public relations programs by conducting briefings and disseminating information of Agency activities through all news media and to companies, unions, law firms, academic groups, and others; and arranges for distribution of decisions and summaries of decisions.

**Sec. 202** *The General Counsel.* The General Counsel is appointed by the President, with the approval of the Senate, for a term of 4 years. The General Counsel derives specific authority for some functions of the office from the provisions of section 3(d) of the National Labor Relations Act, and derives certain other authority by delegation from the Board (20 Fed. Reg. 2175, as amended at 23 Fed. Reg. 6966, 24 Fed. Reg. 6666, and 26 Fed. Reg. 3911). By virtue of these combined authorities, the General Counsel exercises general supervision over attorneys employed by the Board (other than administrative law judges, legal counsel to Board Members, the Executive Secretary, and the Solicitor), and over the officers and employees in the Regional Offices. The General Counsel has final authority, on behalf of the Board, in respect to the investigation of charges and issuance of complaints under section 10 and in respect to the prosecution of such complaints before the Board; prosecutes, on behalf of the Board, injunction proceedings pursuant to section 10(e) and 10(j) of the Act; handles court of appeals proceedings to enforce or review Board orders, other miscellaneous court litigation, and efforts to obtain compliance with Board orders; and is responsible for the processing by field personnel of representation petitions under section 9 of the Act and jurisdictional dispute cases under section 10(k), and in the conduct of employee referenda under sections 209(b) and 203(c) of the Labor Management Relations Act, 1947.

The Deputy General Counsel is vested with the authority to speak and act for the General Counsel in all phases of the responsibilities of the office to the full extent permitted by law and is responsible for overall coordination of the General Counsel's organization. The Deputy General Counsel position is a "first assistant" for purposes of section 3345(a)(1) of the Federal Vacancies Reform Act. References to the General Counsel hereinafter may refer to either the General Counsel or Deputy General Counsel collectively.

**Sec. 202.1** *The General Counsel's Washington Staff.* The General Counsel's Washington staff, reporting to the General Counsel and the Deputy General Counsel, consists of four main divisions: Division of Operations Management, Division of Advice, Division of Enforcement Litigation, and Division of Administration.

**Sec. 202.1.1** *Division of Operations Management*. The Associate General Counsel for Operations Management assists in the coordination and integration of all operations in Washington and of Washington operations with the field offices; develops systematic methods for the integration of case processing activities in all field and Washington operational units and for the implementation of General Counsel and Board policies,

including time and quality standards for case processing at all stages; and is responsible for continuing liaison with field offices and for supervising and coordinating both substantive and administrative phases of their operations.

**Sec. 202.1.2** *Division of Advice.* The Associate General Counsel for Advice is responsible for legal research on and analysis of broad areas of labor law administration, for legal advice to Regional Directors on all unfair labor practice cases involving novel or difficult legal issues, including questions involving mandatory or discretionary injunction proceedings, for litigating injunction cases on appeal from a district court adjudication, for legal information retrieval systems, and for analyses and digests to be used by both the Agency staff and the public.

**Sec. 202.1.3** *Division of Enforcement Litigation.* The Associate General Counsel for Enforcement Litigation is responsible for all Agency litigation in the United States Courts of Appeals and the Supreme Court of the United States, whether within the General Counsel's statutory authorization or delegated by the Board, including contempt litigation and enforcement and review of Decisions and Orders of the Board, and is also responsible for miscellaneous litigation in Federal and state courts to protect the Agency's processes and functions.

The Office of Appeals is another principal part of the Division of Enforcement Litigation. This office reviews appeals from Regional Directors' refusals to issue complaints in unfair labor practice cases and recommends the action to be taken thereon by the General Counsel. Pursuant to request, the Director of the office may also hear informal oral presentations in Washington of argument by counsel or other representatives of the parties in support of, or in opposition to, the appeals.

**Sec. 202.1.4** *Division of administration.* The Director of Administration is responsible generally for the administrative management, support services, and fiscal functions of the General Counsel. These activities are carried out with the assistance of branches dealing with financial management, personnel, facilities and services, data systems, management and audit, security and safety, and library services. These functions, as applicable, are also performed on behalf of the Board and its Members.

## SUBPART B—DESCRIPTION OF FIELD ORGANIZATION

**Sec. 203** *Regional Offices.* There are 33 Regional Offices through which the Board conducts its business. Certain of the Regions have Subregional Offices or Resident Offices in addition to the central Regional Office. The areas constituting the Regions and the location of the Regional, Subregional, and Resident Offices are set forth in an appendix hereto. Each Regional Office staff is headed by a Regional Director appointed by the Board on the recommendation of the General Counsel and includes a Regional

Attorney, Assistant to the Regional Director, field attorneys, field examiners, and clerical staff. Each Subregional Office is headed by an officer in charge appointed in the same manner as the Regional Directors. Each Resident Office is headed by a Resident Officer.

**Sec. 203.1** *Regional Directors.* Under the general supervision of the Office of the General Counsel, the Regional Directors supervise a staff of attorneys and field examiners in the processing of representation, unfair labor practice, and jurisdictional dispute cases. The Regional Directors are empowered to issue notices of hearing in representation cases; issue complaints in unfair labor practice cases; conduct elections pursuant to agreement of the parties or direct elections pursuant to the decision-making authority delegated by the Board to them under section 3(b) of the Act, and issue certification of representatives or certify the results of elections where appropriate; conduct employee referenda under section 209(b) and 203(c) of the Labor Management Relations Act; obtain settlement of unfair labor practice charges; obtain compliance with administrative law judge, Board, and court decisions; investigate and report on, or decide, objections to elections and challenges to determinative ballots; and otherwise act in behalf of the General Counsel in the discharge of the statutory and delegated functions of that office.

In addition, Regional Directors may initiate and prosecute in the district courts injunctions under section 10(l) of the Act. They also have authority to process petitions for unit clarification, for amendment of certification, and for rescission of a labor organization's authority to make an agreement pursuant to the proviso of section 8(a)(3).

Regional Directors are also responsible for the administrative management of their offices and of any Subregional and Resident Offices in their Regions and make initial determinations of FOIA requests for materials in their custody.

**Sec. 203.2** *Regional Attorneys.* The Regional Attorneys are the principal legal advisers to the Regional Directors and, as the chief legal officers in the Regions, exercise supervisory authority over office attorneys and field examiners in various aspects of their work. They may exercise any authority given attorneys and field examiners in the Regions.

**Sec. 203.3** *Assistants to the Regional Directors.* The Assistants to the Regional Directors are responsible for overall supervision and coordination of investigations and compliance, exercise supervisory authority over office attorneys and field examiners in various aspects of their work, and provide assistance to the Regional Director with respect to various administrative functions.

**Sec. 203.4** *Field attorneys.* The field attorneys are charged in general with the duty of performing all necessary legal services for the Regional Directors in the Regions. They

are directly responsible to the Regional Attorneys, and through them to the Regional Directors, for performance of these services. Under the direction of the Regional Attorneys, they:

(a) Investigate petitions concerning the representation of employees (including the taking of secret ballots of employees) in accordance with section 9(c) of the National Labor Relations Act;

(b) Conduct hearings in proceedings under section 9 of the National Labor Relations Act and section 7(b) of the Fair Labor Standards Act;

(c) Investigate charges of unfair labor practices under section 8 of the Act;

(d) Appear and participate as counsel in Board hearings and, when designated, in other Board litigation and proceedings;

(e) Prosecute any inquiry necessary to the functions of the General Counsel, have access to and the right to copy evidence, administer oaths and affirmations, examine witnesses, and receive evidence;

(f) Perform all necessary acts required of them in connection with the foregoing and the published Rules and Regulations of the Board.

**Sec. 203.5** *Field examiners.* The field examiners in the Regional Offices are directly responsible to the Regional Directors and work under their direction. Essentially, they:

(a) Investigate petitions concerning the representation of employees, in accordance with section 9 of the National Labor Relations Act, and conduct secret-ballot elections where such procedure is required under the Act;

(b) Investigate charges of unfair labor practices under section 8 of the Act, have access to and the right to copy evidence, administer oaths and affirmations, examine witnesses, and receive evidence;

(c) Conduct hearings in proceedings under section 9 of the National Labor Relations Act and section 7(d) of the Fair Labor Standards Act;

(d) Perform all necessary acts required of them in connection with the foregoing and the published Rules and Regulations of the Board.

**Sec. 203.6** *Officers in Charge and Resident Officers.* The officer in charge of a Subregional Office or the Resident Officer and, under his direction, supervises the processing of cases arising within the geographical area of the office. Under special delegation from the General Counsel, an officer in charge may be authorized to exercise the functions of the Regional Director, subject to statutory limitations.

*Effective date.* This amended Description of Organization shall be effective as of June 14, 1979.

# Appendix—Regional and Subregional Offices

Alphabetical list of States showing location in relation to Regions and Subregions. (Note that respective Region number follows Subregion number to facilitate locating areas serviced.)

| | ***Region and Subregion Nos.*** |
|---|---|
| Alabama | 10, 15 |
| Alaska | 19 |
| Arizona | 28 |
| Arkansas | 16, 26 |
| California | 20, 21, 31, 32 |
| Colorado | 27 |
| Connecticut | 34 |
| Delaware | 4, 5 |
| District of Columbia | 5 |
| Florida | 12, 15 |
| Georgia | 10, 12 |
| Hawaii | S-37 (20) |
| Idaho | 19, 27 |
| Illinois | 13, 14, 33 |
| Indiana | 9, 13, 25 |
| Iowa | 17, 18, 33 |
| Kansas | 17 |
| Kentucky | 9, 25, 26 |
| Louisiana | 15 |
| Maine | 1 |
| Maryland | 5 |
| Massachusetts | 1 |
| Michigan | 7, 30 |
| Minnesota | 18 |
| Mississippi | 15, 26 |
| Missouri | 14, 17 |
| Montana | 19, 27 |
| Nebraska | 17, 27 |
| Nevada | 28, 32 |
| New Hampshire | 1 |
| New Jersey | 4, 22 |
| New Mexico | 28 |
| New York | 2, 3, 29 |
| North Carolina | 11 |
| North Dakota | 18 |
| Ohio | 8, 9 |
| Oklahoma | 17 |
| Oregon | S-36 (19) |
| Pennsylvania | 4, 5, 6 |
| Rhode Island | 1 |
| South Carolina | 11 |
| South Dakota | 18 |
| Tennessee | 10, 11, 26 |
| Texas | 16, 28 |
| Utah | 27 |
| Vermont | 1 |
| Virginia | 5, 11 |

## AREAS SERVED BY REGIONAL AND SUBREGIONAL OFFICES*

(Listed in numerical order except that Subregions appear directly under respective Regions.)

*Region 1.* Boston, Massachusetts. Services **Maine, New Hampshire, Vermont, Massachusetts,** and **Rhode Island.**

*Region 2.* New York, New York. In **New York**, services the boroughs of Manhattan and the Bronx in New York City; and Orange, Putnam, Rockland, and Westchester Counties.

*Region 3.* Buffalo, New York. Services all **New York State** counties except the New York City metropolitan area counties serviced by Regions 2 and 29.

Persons may also obtain service at the Resident Office located in Albany, New York.

*Region 4.* Philadelphia, Pennsylvania. In **Pennsylvania**, services Berks, Bucks, Carbon, Chester, Delaware, Lackawanna Lancaster, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Philadelphia, Pike, Susquehanna, Wayne, and Wyoming Counties; in **New Jersey**, services Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem Counties.

*Region 5.* Baltimore, Maryland. Services **Maryland** and the **District of Columbia**; in **Delaware**, services Kent, New Castle, and Sussex Counties; in **Pennsylvania**, services Adams, Cumberland, Franklin, and York Counties; in **Virginia**, services Accomack, Albemarle, Amelia Arlington, Augusta, Brunswick, Buckingham, Caroline, Charles City, Chesterfield, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Greene, Greensville, Hanover, Henrico, Highland, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenberg, Madison, Mathews, Middlesex, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Rockingham, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, and York Counties, and the independently incorporated Virginia cities not part of, but located within or adjacent to, the territory defined by these Virginia counties;

* Address and telephone numbers of the field offices can be found on pp. 219–223.

and in **West Virginia**, services Berkeley Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, and Pendleton Counties.

Persons may also obtain service at the Resident Office located in Washington, D.C.

*Region 6.* Pittsburgh, Pennsylvania In **Pennsylvania**, services Allegheny, Armstrong, Beaver, Bedford, Blair, Bradford, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Dauphin, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Lebanon, Lycoming, McKean, Mercer, Mifflin, Montour, Northumberland, Potter, Somerset, Sullivan, Union, Venango, Warren, Washington, and Westmoreland Counties; and in **West Virginia**, services Barbour, Braton, Brooke, Calhoun, Doddridge, Gilmer, Hancock, Harrison, Lewis, Marion, Marshall, Monongalia, Ohio, Perry, Pleasants, Pocahontas, Preston, Randolph, Ritchie, Schuylkill, Snyder, Taylor, Tioga, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, and Wood Counties.

*Region 7.* Detroit, Michigan. In **Michigan**, services Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Lenawee, Livingston, Luce, Mackinac, Macomb, Manistee, Mason, Mecosta, Midland, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, St. Clair, St. Joseph, Sanilac, Schoolcraft, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford Counties.

Persons may also obtain service at the Resident Office located in Grand Rapids, Michigan.

*Region 8.* Cleveland, Ohio. In **Ohio**, services Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Columbiana, Coshocton, Crawford, Cuyahoga, Defiance, Delaware, Erie, Fulton, Geauga, Guernsey, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Knob, Lake, Licking, Logan, Lorain, Lucas, Mahoning, Marion, Medina, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Washington, Wayne, Williams, Wood, and Wyandot Counties.

*Region 9.* Cincinnati, Ohio. In **Ohio**, services Adams, Athens, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Lawrence, Madison, Meigs, Mercer, Miami, Montgomery, Perry, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Vinton, and Warren Counties; in **Indiana**, services Clark, Dearborn, and Floyd Counties; in **West Virginia**, services Boone, Cabell, Clay, Fayette, Jackson, Kanawha, Lincoln, Logan, McDowell, Mason, Mingo, Nicholas, Putnam, Raleigh, Roane, Wayne, and Wyoming Counties; and in Kentucky, services Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Bullitt, Campbell, Carroll, Carter, Casey, Clark, Clay, Elliott, Estill,

Fayette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Greenup, Hardin, Harlan, Harrison, Henry, Jackson, Jefferson, Jessamine, Johnson, Kenton, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Marion, Martin, Mason, Meade, Menifee, Mercer, Montgomery, Morgan, Nelson, Nicholas, Oldham, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Shelby, Spencer, Taylor, Trimble, Washington, Whitley, Wolfe, and Woodford Counties.

*Region 10.* Atlanta, Georgia. In **Georgia,** services Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Bryan, Bulloch, Burke, Butts, Calhoun, Candler, Carroll, Catoosa, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Cobb, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, De Kalb, Dodge, Dooly, Dougherty, Douglas, Early, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Gordon, Greene, Gwinnett, Habersham, Hall, Hancock:, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jefferson, Jenkins, Johnson, Jones, Lamar, Laurens, Lee, Liberty, Lincoln, Long, Lumpkin, Mc Duffie, Mc Intosh, Macon, Madison, Marion, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Pauldine, Peach, Pickens, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Spalding, Stevens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Warren, Washington, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, and Worth Counties; in **Tennessee**, services Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Unicoi, Union, and Washington Counties; and in **Alabama,** services Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, De Kalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston Counties. Persons may also obtain service at the Resident Office in Birmingham, Alabama.

*Region 11.* Winston-Salem, North Carolina. Services **North Carolina** and **South Carolina;** in **Tennessee,** services the city of Bristol in Sullivan County; in **Virginia**, services Alleghany, Amherst, Appomattox, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Charlotte, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Halifax, Henry, Lee, Mecklenburg, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, and

Wythe Counties, and the independently incorporated Virginia cities not part of, but located within or adjacent to, the territory by these Virginia counties; and in **West Virginia,** services Greenbriar, Mercer, Monroe, and Summers Counties.

*Region 12.* Tampa, Florida. In **Florida,** services Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, Dade, De Soto, Dixie, Duval, Flagler, Gadsden, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, and Wakulla Counties; and in **Georgia**, services Appling, Atkinson, Bacon, Brantley, Brooks, Camden, Charlton, Clinch, Coffee, Decatur, Echols, Glynn, Grady, Jeff Davis, Lanier, Lowndes, Pierce, Seminole, Thomas, Ware, and Wayne Counties.

Persons may also obtain service at the Resident Offices in Miami and Jacksonville, Florida.

*Region 13.* Chicago, Illinois. Services Cools, Du Page, Kane, Lake, and Will Counties in **Illinois,** and Lake County in **Indiana.**

*Region 14.* St. Louis, Missouri. In **Illinois** services Adams, Alexander, Bond, Brown, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Perry, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Scott, Shelby, Union, Wabash, Washington, Wayne, White, and Williamson Counties; and in **Missouri,** services Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Knox, Lewis, Lincoln, Madison, Maries, Marion, Mississippi, Monroe, Montgomery, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, St. Genevieve, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne Counties, and the Independent City of St. Louis.

*Region 15.* New Orleans, Louisiana. Services **Louisiana;** in **Mississippi,** services Adams, Amite, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Newton, Pearl River, Perry, Pike, Rankin Scott, Sharkey, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, and Yazoo Counties; in **Alabama,** services Baldwin, Barbour, Bullock, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Escambia, Geneva, Henry, Houston, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery Pike, Russell, Washington, and Wilcox Counties; and in **Florida,** services Bay, Calhoun, Escambia, Franklin, Gulf, Holmes,

Jackson, Liberty, Okaloosa, Santa Rosa, Walton, and Washington Counties.

*Region 16*. Fort Worth, Texas. Services the entire **State of Texas** with the exception of Culberson, and Hudspeth Counties, and services Miller County in Arkansas.

Persons may also obtain service at the Resident Offices located in Houston and San Antonio.

*Region 17*. Kansas City, Kansas. Services **Oklahoma** and **Kansas**; in Missouri, services Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Camden, Carroll, Cass, Cedar, Chariton, Chris tian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, De Kalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Linn, Livingstone, McDonald, Macon, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polls, Pulaski, Putnam, Randolph, Ray, St. Clair, Saline, Schuyler, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, and Wright Counties; in **Iowa**, services Fremont, Mills, and Pottawattamie; and in **Nebraska**, services Adams, Antelope, Arthur, Blaine, Boone, Boyd, Brown, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cherry, Clay, Colfax, Cuming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Dundy, Filmore, Franklin, Frontier, Furnas, Gage, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Knox, Lancaster, Lincoln, Logan, Loup, McPherson, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Plate, Polls, Red Willow, Richardson, Rock, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thomas, Thurston, Valley, Washington, Wayne, Webster, Wheeler, and York Counties.

Persons may also obtain service at the Resident Office in Tulsa, Oklahoma.

*Region 18*. Minneapolis, Minnesota. Services **North Dakota**, **South Dakota**, and **Minnesota**; in **Iowa**, services Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Crawford, Dallas, Davis, Decatur, Delaware, Dickinson, Emmett, Fayette, Floyd, Franklin, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Linn, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mitchell, Monona, Monroe, Montgomery, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Polk, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Woodbury, Worth, and Wright Counties; and in **Wisconsin**, services Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark,

Douglas, Dunn, Eau Claire, Iron, Jackson, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Trempealeau, and Washburn Counties.

Persons may also obtain service at the Resident Office located in Des Moines, Iowa.

*Region 19*. Seattle, Washington. Services **Alaska** and all counties in **Washington** except Clark; in **Idaho**, services Adams, Benewah, Bonner, Boundary, Clark, Clearwater, Custer, Fremont, Idaho, Kootenai, Latah, Lemhi, Lewis, Nez Perce, Shoshone, and Valley Counties; and in **Montana**, services Beaverhead, Broadwater, Cascade, Deer Lodge, Flathead, Gallatin, Glacia, Granite, Jefferson, Lake, Lewis, and Clark, Liberty, Lincoln, Madison, Meagher, Mineral, Missoula, Pondera, Powell, Ravatti, Sanders, Silver Bow, Teton, and Toole Counties.

*Subregion 36*. Portland, Oregon. Services **Oregon** and Clark County in **Washington**.

Persons may also obtain service at the Resident Office located in Anchorage, Alaska.

*Region 20*. San Francisco, California. In **California**, services Butte, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Francisco, San Mateo, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba Counties.

*Subregion 37*. Honolulu, Hawaii. Services **Hawaii**.

*Region 21*. Los Angeles, California. In **California,** services Imperial, Orange, Riverside, and San Diego Counties and that portion of Los Angeles County lying east of Harbor Freeway and Gaffey Street, south and east of Pasadena Freeway and Arroyo Parkway, and south of Foothill Freeway and Baseline Road (State Route 30).

Persons may also obtain service at the Resident Office located in San Diego, California.

*Region 22*. Newark, New Jersey. In **New Jersey**, services Bergen, Essex, Hudson, Hunterdo, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Unions, and Warren Counties.

*Region 24*. Hato Rey, Puerto Rico. Services **Puerto Rico** and the **U.S. Virgin Islands.**

*Region 25.* Indianapolis, Indiana. Services **Indiana**, with the exception of Clark, Dearborn, Floyd, and Lake Counties; and in **Kentucky**, services Daviess and Henderson Counties.

*Region 26.* Memphis, Tennessee. Services an of **Arkansas** except for Miller County; in **Tennessee**, services Bedford, Benton, Bledsoe, Cannon, Carroll, Cheatham Chester, Clay, Coffee, Crockett, Cumberland, Davidson, Decatur, De Kalb, Dickson, Dyer, Fayette, Fentress, Franklin, Gibson, Giles, Grundy, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Marion, McNairy, Macon, Madison, Marshall, Maury, Mont-

gomery, Moore, Obion, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Sequatchie, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Van Buren, Warren, Wayne, Weakley, White, Williamson, and Wilson Counties; in **Mississippi,** services Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Holmes, Humphreys, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, Winston, and Yalobusha Counties; and in **Kentucky**, services Adair, Allen, Ballard, Barren, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittenden, Cumberland, Edmondson, Fulton, Graves, Grayson, Green, Hancock, Hart, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, and Webster Counties.

Persons may also obtain service at the Resident Offices in Little Rock, Arkansas, and in Nashville, Tennessee.

*Region 27*. Denver, Colorado. Services **Wyoming, Colorado**, and **Utah**; in **Nebraska**, services Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux Counties; in Idaho, services Ada, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Butte, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Teton, Twin Falls, and Washington Counties; and in **Montana**, services Big Horn, Blaine, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Treasure, Valley, Wheatland, Wibaux, and Yellowstone Counties.

*Region 28*. Phoenix, Arizona. Services **Arizona** and **New Mexico**; in **Texas**, services Culberson, and Hudspeth Counties; and in **Nevada**, services Clark, Lincoln, and Nye Counties.

Persons may also obtain service at the Resident Offices in Albuquerque, New Mexico; E1 Paso, Texas; and Las Vegas, Nevada.

*Region 29*. Brooklyn, New York. In **New York**, services the boroughs of Brooklyn, Queens, and Staten Island in New York City; and Kings, Nassau, Queens, Richmond, and Suffolk Counties.

*Region 30*. Milwaukee, Wisconsin. In **Wisconsin**, services Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Oneida, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Vilas, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood Counties; and in **Michigan**, services

Alger, Baraga, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon Counties.

*Region 31*. Los Angeles, California. In **California**, services Inyo, Kern, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties and that portion of Los Angeles County lying west of Harbor Freeway and Coffey Street, north and west of Pasadena Freeway and Arroyo Parkway, and north of Foothill Freeway and Baseline Road (State Route 30).

*Region 32*. Oakland, California. In **California**, services Alameda, Alpine, Amador, Calaveras, Contra Costa, El Dorado, Fresno, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Joaquin, Santa Clara, Santa Cruz, Stanislaus, Tulare, and Tuolumne Counties; and in **Nevada**, services Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Ormsby, Pershing, Storey, Washoe, and White Pine Counties.

*Subregion 33*. Peoria, Illinois. In **Illinois**, services Boone, Bureau, Carroll, Cass, Champaign, De Kalb, De Witt, Douglas, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kankakee, Kendall, Knox, La Salle, Lee, Livingston, Logan, Macon, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Morgan, Moultrie, Ogle, Peoria, Piatt, Putnam, Rock Island, Sangamon, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Winnebago, and Woodford Counties; and in **Iowa**, services Clinton, Des Moines, Dubuque, Jackson, Lee, Louisa, Muscatine, and Scott Counties.

*Region 34*. Hartford, Connecticut. Services **Connecticut.**

## NATIONAL LABOR RELATIONS BOARD

### Field Offices

| | |
|---|---|
| Albany, New York 12207–2350<br>Leo W. O'Brien Federal Building, Rm. 342<br>Clinton Avenue at North Pearl Street | (518) 431-4155 |
| Albuquerque, New Mexico 87102–2181<br>505 Marquette Avenue, NW.<br>Suite 1820 | (505) 248-5125 |
| Anchorage, Alaska 99501-1936<br>1007 W. Third Ave.<br>Suite 206 | (907) 271–5015 |
| Atlanta, Georgia 30303-1531<br>233 Peachtree Street, NE<br>Harris Tower, Suite 1000 | (404) 331–2896 |
| Baltimore, Maryland 21202–4026<br>The Appraisers Building, Eighth Floor<br>103 South Gay Street | (410) 962–2822 |
| Birmingham, Alabama 35205-2870<br>3400 Ridge Park Place<br>1130 South 22nd Street | (205) 731–1062 |
| Boston, Massachusetts 02222–1072<br>Boston Federal Office Building, Sixth Floor<br>10 Causeway Street | (617) 565–6700 |
| Brooklyn, New York 11201–4201<br>One MetroTech Center, 10th Floor<br>Jay Street & Mytle Ave. | (718) 330–7713 |
| Buffalo, New York 14202–2387<br>Federal Building, Rm. 901<br>111 West Huron Street | (716) 551-4931 |
| Chicago, Illinois 60606–5208<br>200 West Adams Street<br>Suite 800 | (312) 353–7570 |
| Cincinnati, Ohio 45202–3721<br>Federal Office Building, Rm. 3003<br>550 Main Street | (513) 684–3686 |
| Cleveland, Ohio 44199–2086<br>Anthony J. Celebrezze Federal Building, Rm. 1695<br>1240 East Ninth Street | (216) 522–3716 |

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| Commonwealth of the Northern Mariana Islands (CNMI)<br>Saipan, c/o U.S. Dept. of Labor, lst Floor Kallingal Building<br>AAA-4035 Box 100001, Saipan, MP 96950 | (607) 233-NLRB<br>(6572) |
| Denver, Colorado 80202–5433<br>7th Floor, North Tower<br>600 17th Street | (303) 844–3551 |
| Des Moines, Iowa 50309–2103<br>Federal Building, Rm. 439<br>210 Walnut Street | (515) 284–4391 |
| Detroit, Michigan 48226–2569<br>Patrick V. McNamara Federal Building, Rm. 300<br>477 Michigan Avenue | (313) 226–3200 |
| E1 Paso, Texas 79923<br>Federal Building, Suite C403<br>700 East San Antonio Avenue | (915) 565-2470 |
| Fort Worth, Texas 76102–6178<br>Federal Office Building Rm. 8A24<br>819 Taylor Street | (817) 978-2921 |
| Grand Rapids, Michigan 49503–3022<br>Rm. 330<br>82 Ionia NW. | (616) 456–2679 |
| Hartford, Connecticut 06103–3599<br>21st Floor<br>280 Trumbull Street | (860) 240–3522 |
| Hato Rey, Puerto Rico 00918–1720<br>Federico Degatau Federal Building<br>U.S. Courthouse, Rm. 591<br>150 Carlos E. Chardon Avenue | (809) 766–5347 |
| Honolulu, Hawaii 96850–4980<br>Rm. 7245<br>300 Ala Moana Boulevard | (808) 541-2818 |
| Houston, Texas 77002–2649<br>Mickey Leland Federal Building<br>1919 Smith Street, Suite 1545 | (713) 209-4888 |
| Indianapolis, Indiana 46204–1577<br>Minton-Capehart Federal Building, Rm. 238<br>575 North Pennsylvania Street | (317) 269–7430 |

| | |
|---|---|
| Jacksonville, Florida 32202–4412<br>Federal Building, Rm. 214<br>400 West Bay Street<br>Box 35091 | (904) 232-3768 |
| Las Vegas, Nevada 89101–6637<br>Suite 400<br>600 Las Vegas Boulevard South | (702) 388–6416 |
| Little Rock, Arkansas 72201–3489<br>TCBY Tower, Suite 375<br>425 West Capitol Ave. | (501) 324-6311 |
| Los Angeles, California 90064<br>11150 W. Olympic Boulevard<br>Suite 700 | (310) 235-7352 |
| Los Angeles, California 90024–5449<br>888 South Figueroa Street<br>Ninth Floor | (213) 894-5200 |
| Memphis, Tennessee 38104–3627<br>Mid-Memphis Tower Building, Suite 800<br>1407 Union Avenue | (901) 544-0018 |
| Miami, Florida 33130–1608<br>Federal Building, Rm. 1320<br>51 SW. First Avenue | (305) 536–5391 |
| Milwaukee, Wisconsin 53203–2211<br>Henry S. Reuse Federal Plaza, Suite 700<br>310 W. Wisconsin Avenue | (414) 297–3861 |
| Minneapolis, Minnesota 55401–2221<br>Towle Building, Suite 790<br>330 Second Ave., South | (612) 348–1757 |
| Nashville, Tennessee 37203–3816<br>810 Broadway,<br>Third Floor | (615) 736–5921 |
| Newark, New Jersey 07102–2570<br>20 Washington Place<br>Fifth Floor | (973) 645-2100 |
| New Orleans, Louisiana 70112–3723<br>Rm. 610<br>1515 Poydras Street | (504) 589–6361 |

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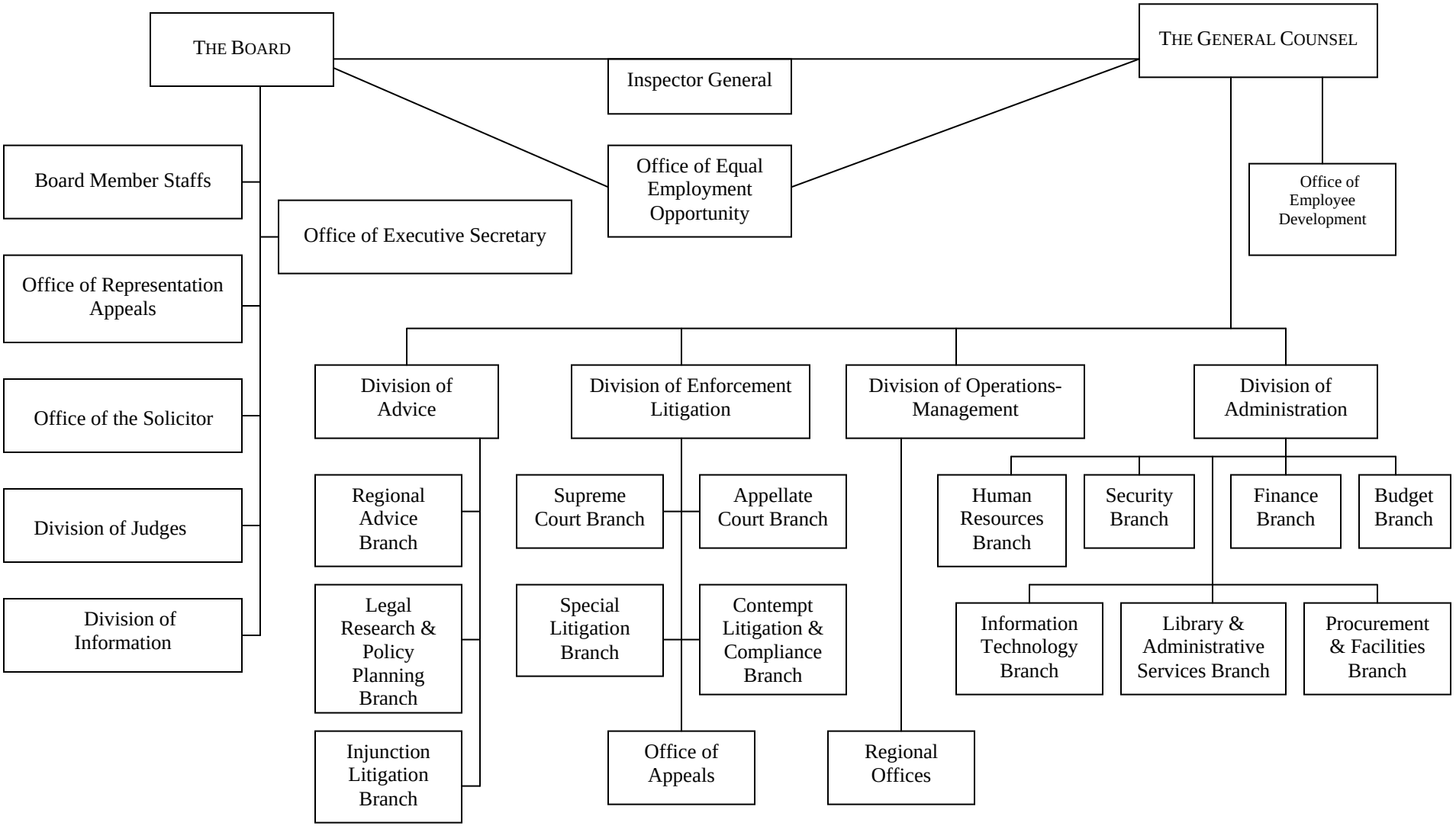
|---|---|
| New York, New York 10278–0104<br>Jacob K Javits Federal Building, Rm. 3614<br>26 Federal Plaza | (212) 264–0300 |
| Oakland, California 94612–5211<br>Room 300N<br>1301 Clay Street | (510) 637-3300 |
| Overland Park, Kansas 66212-4677<br>Suite 100<br>8600 Farley Street | (913) 967-3000 |
| Peoria, Illinois 61602–1246<br>Suite 200<br>300 Hamilton Boulevard | (309) 671–7080 |
| Philadelphia, Pennsylvania 19106–4404<br>One Independence Mall<br>Seventh Floor<br>615 Chestnut Street | (215) 597–7601 |
| Phoenix, Arizona 85004-3099<br>Suite 1800<br>2600 North Central Ave. | (602) 640-2160 |
| Pittsburgh, Pennsylvania 15222–4173<br>William S. Moorehead Federal Building, Rm. 1501<br>1000 Liberty Avenue | (412) 395-4400 |
| Portland, Oregon 97204-3170<br>601 SW Second Avenue<br>Suite 1910 | (503) 326–3085 |
| St. Louis, Missouri 63103–2829<br>Room 8.302<br>1222 Spruce Street | (314) 539-7770 |
| San Antonio, Texas 78205–2040<br>615 East Houston Street<br>Room 565 | (210) 472-6140 |
| San Diego, California 92101–2939<br>Suite 418<br>555 W. Beech Street | (619) 557–6184 |
| San Juan, Puerto Rico<br>LaTorre de Plaza, Suite 1002<br>525 F.D. Roosevelt Ave. | (787) 766-5347 |

| | |
|---|---|
| San Francisco, California 94103–1735<br>901 Market Street<br>Suite 400 | (415) 356-5130 |
| Seattle, Washington 98174–1078<br>Henry M. Jackson Federal Building<br>Rm. 2948<br>915 Second Avenue | (206) 220-6300 |
| Tampa, Florida 33602-5824<br>South Trust Plaza, Suite 530<br>201 E. Kennedy Boulevard | (813) 228–2641 |
| Tulsa, Oklahoma 74103-3027<br>Room 318<br>224 South Boulder Avenue | (918) 581–7951 |
| Washington, D.C. 20037–1560<br>Franklin Court Building, Suite 5530<br>1099 14th Street | (202) 208-3000 |
| Winston-Salem, North Carolina 27106-3325<br>Republic Square, Suite 200<br>4035 University Parkway<br>or P.O. Box 11467<br>Winston-Salem, NC 27116-1467 | (336) 63l–5201 |

# NATIONAL LABOR RELATIONS BOARD



# NATIONAL LABOR RELATIONS ACT

Also cited NLRA or the Act; 29 U.S.C. §§ 151–169

[Title 29, Chapter 7, Subchapter II, United States Code]

FINDINGS AND POLICIES

**Section 1. [§ 151.]** The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred

by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

**Sec. 2. [§ 152.]** When used in this Act [subchapter]—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11 of the United States Code [under title 11], or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act [45 U.S.C. § 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

[Pub. L. 93–360, § 1(a), July 26, 1974, 88 Stat. 395, deleted the phrase "or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual" from the definition of "employer."]

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act [this subchapter] explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [45 U.S.C. § 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8 [section 158 of this title].

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board provided for in section 3 of this Act [section 153 of this title].

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term "professional employee" means—

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a profess-

sional person to qualify himself to become a professional employee as defined in paragraph (a).

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(14) The term "health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.

[Pub. L. 93–360, § 1(b), July 26, 1974, 88 Stat. 395, added par. (14).]

NATIONAL LABOR RELATIONS BOARD

**Sec. 3. [§ 153.] (a) [Creation, composition, appointment, and tenure; Chairman; removal of members]** The National Labor Relations Board (hereinafter called the "Board") created by this Act [subchapter] prior to its amendment by the Labor Management Relations Act, 1947 [29 U.S.C. § 141 et seq.], is continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

**(b) [Delegation of powers to members and regional directors; review and stay of actions of regional directors; quorum; seal]** The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 9 [section 159 of this title] to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 [section 159 of this title] and certify the results thereof, except that upon the filling of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members

to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

**(c) [Annual reports to Congress and the President]** The Board shall at the close of each fiscal year make a report in writing to Congress and to the President summarizing significant case activities and operations for that fiscal year.

**(d) [General Counsel; appointment and tenure; powers and duties; vacancy]** There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than administrative law judges and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10 [section 160 of this title], and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.

[The title "administrative law judge" was adopted in 5 U.S.C. § 3105.]

**Sec. 4. [§ 154. Eligibility for reappointment; officers and employees; payment of expenses]** (a) Each member of the Board and the General Counsel of the Board shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No administrative law judge's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no administrative law judge shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommen-

dations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act [subchapter] shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

[The title "administrative law judge" was adopted in 5 U.S.C. § 3105.]

(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

**Sec. 5. [§ 155. Principal office, conducting inquiries throughout country; participation in decisions or inquiries conducted by member]** The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

**Sec. 6. [§ 156. Rules and regulations]** The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act [by subchapter II of chapter 5 of title 5], such rules and regulations as may be necessary to carry out the provisions of this Act [subchapter].

RIGHTS OF EMPLOYEES

**Sec. 7. [§ 157.]** Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].

UNFAIR LABOR PRACTICES

**Sec. 8. [§ 158.]** (a) [Unfair labor practices by employer] It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [section 157 of this title];

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 [section 156 of this title], an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act [subchapter], or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act [in this subsection] as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a) [section 159(a) of this title], in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) [section 159(e) of this title] within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act [subchapter];

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a) [section 159(a) of this title].

**(b) [Unfair labor practices by labor organization]** It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 [section 157 of this title]: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership

therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) [of subsection (a)(3) of this section] or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a) [section 159(a) of this title];

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e) [subsection (e) of this section];

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 [section 159 of this title]: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 [section 159 of this title];

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

*Provided*, That nothing contained in this subsection (b) [this subsection] shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act [subchapter]: *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) to require of employees covered by an agreement authorized under subsection (a)(3) [of this section] the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act [subchapter] any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act [section 159(c) of this title],

(B) where within the preceding twelve months a valid election under section 9(c) of this Act [section 159(c) of this title] has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) [section 159(c) of this title] being filed within a reasonable period of time not to exceed thirty days from the commencement of

such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) [section 159(c)(1) of this title] or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b) [this subsection].

**(c) [Expression of views without threat of reprisal or force or promise of benefit]** The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act [subchapter], if such expression contains no threat of reprisal or force or promise of benefit.

**(d) [Obligation to bargain collectively]** For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) [paragraphs (2) to (4) of this subsection] shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a) [section 159(a) of this title], and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within any notice period specified in this subsection, or who engages in any strike within the appropriate period specified in subsection (g) of this section, shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act [sections 158, 159, and 160 of this title], but such loss of status for such employee shall terminate if and when he is reemployed by such employer. Whenever the collective bargaining involves employees of a health care institution, the provisions of this section 8(d) [this subsection] shall be modified as follows:

(A) The notice of section 8(d)(1) [paragraph (1) of this subsection] shall be ninety days; the notice of section 8(d)(3) [paragraph (3) of this subsection] shall be sixty days; and the contract period of section 8(d)(4) [paragraph (4) of this subsection] shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in section 8(d)(3) [in paragraph (3) of this subsection].

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

[Pub. L. 93–360, July 26, 1974, 88 Stat. 395, amended the last sentence of Sec. 8(d) by striking the words "the sixty-day" and inserting the words "any notice" and by inserting before the words "shall lose" the phrase ", or who engages in any strike within the appropriate period specified in subsection (g) of this section." It also amended the end of paragraph Sec. 8(d) by adding a new sentence "Whenever the collective bargaining . . . aiding in a settlement of the dispute."]

**(e) [Enforceability of contract or agreement to boycott any other employer; exception]** It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: *Provided*, That nothing in this subsection (e) [this subsection] shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further*, That for the purposes of this subsection (e) and section 8(b)(4)(B) [this subsection and subsection (b)(4)(B) of this section] the terms "any employer," "any person engaged in commerce or an industry affecting commerce," and "any person" when used in relation to the terms "any other producer, processor, or manufacturer," "any other employer," or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further*, That nothing in this Act [subchapter] shall prohibit the enforcement of any agreement which is within the foregoing exception.

**(f) [Agreements covering employees in the building and construction industry]** It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act [subsection (a) of this section] as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act [section 159 of this title] prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify

such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to section 8(a)(3) of this Act [subsection (a)(3) of this section]: *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or 9(e) [section 159(c) or 159(e) of this title].

**(g) [Notification of intention to strike or picket at any health care institution]** A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of section 8(d) of this Act [subsection (d) of this section]. The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties.

[Pub. L. 93–360, July 26, 1974, 88 Stat. 396, added subsec. (g).]

REPRESENTATIVES AND ELECTIONS

**Sec. 9 [§ 159.] (a) [Exclusive representatives; employees' adjustment of grievances directly with employer]** Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

**(b) [Determination of bargaining unit by Board]** The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act [subchapter], the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes

if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit votes against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) **[Hearings on questions affecting commerce; rules and regulations]** (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a) [subsection (a) of this section], or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a) [subsection (a) of this section]; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a) [subsection (a) of this section]; the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10(c) [section 160(c) of this title].

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act [subchapter] in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) [of this section] the extent to which the employees have organized shall not be controlling.

**(d) [Petition for enforcement or review; transcript]** Whenever an order of the Board made pursuant to section 10(c) [section 160(c) of this title] is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10(e) or 10(f) [subsection (e) or (f) of section 160 of this title], and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

**(e) [Secret ballot; limitation of elections]** (1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and labor organization made pursuant to section 8(a)(3) [section 158(a)(3) of this title], of a petition alleging they desire that such authorization be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

PREVENTION OF UNFAIR LABOR PRACTICES

**Sec. 10. [§ 160.] (a) [Powers of Board generally]** The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 [section 158 of this title]) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agree-

ment, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominately local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act [subchapter] or has received a construction inconsistent therewith.

**(b) [Complaint and notice of hearing; six-month limitation; answer; court rules of evidence inapplicable]** Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to section 2072 of title 28, United States Code [section 2072 of title 28].

**(c) [Reduction of testimony to writing; findings and orders of Board]** The testimony taken by such member, agent, or agency, or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall

state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without backpay, as will effectuate the policies of this Act [subchapter]: *Provided*, That where an order directs reinstatement of an employee, backpay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2) [subsection (a)(1) or (a)(2) of section 158 of this title], and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any backpay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an administrative law judge or judges thereof, such member, or such judge or judges, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become affective as therein prescribed.

[The title "administrative law judge" was adopted in 5 U.S.C. § 3105.]

**(d) [Modification of findings or orders prior to filing record in court]** Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

**(e) [Petition to court for enforcement of order; proceedings; review of judgment]** The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceeding,

as provided in section 2112 of title 28, United States Code [section 2112 of title 28]. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to question of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

**(f) [Review of final order of Board on petition to court]** Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code [section 2112 of title 28]. Upon the filing of such petition, the court shall proceed in the same manner

as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

**(g) [Institution of court proceedings as stay of Board's order]** The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

**(h) [Jurisdiction of courts unaffected by limitations prescribed in chapter 6 of this title]** When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by sections 101 to 115 of title 29, United States Code [chapter 6 of this title] [known as the "Norris-LaGuardia Act"].

**(i) Repealed.**

**(j) [Injunctions]** The Board shall have power, upon issuance of a complaint as provided in subsection (b) [of this section] charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

**(k) [Hearings on jurisdictional strikes]** Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b) [section 158(b) of this title], the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

**(l) [Boycotts and strikes to force recognition of uncertified labor organizations; injunctions; notice; service of process]** Whenever it is charged that any person has engaged in an unfair labor practice within

the meaning of paragraph (4)(A), (B), or (C) of section 8(b) [section 158(b) of this title], or section 8(e) [section 158(e) of this title] or section 8(b)(7) [section 158(b)(7) of this title], the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any United States district court within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further*, That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) [section 158(b)(7) of this title] if a charge against the employer under section 8(a)(2) [section 158(a)(2) of this title] has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D) [section 158(b)(4)(D) of this title].

**(m) [Priority of cases]** Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 8 [section 158 of this title], such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under subsection (1) [of this section].

**Sec. 11. [§ 161.]** For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10 [sections 159 and 160 of this title]—

**(1) [Documentary evidence; summoning witnesses and taking testimony]** The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

**(2) [Court aid in compelling production of evidence and attendance of witnesses]** In case on contumacy or refusal to obey a subpoena issued to any person, any United States district court or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

**(3) Repealed.**

[Immunity of witnesses. See 18 U.S.C. § 6001 et seq.]

**(4) [Process, service and return; fees of witnesses]** Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served either personally or by

registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered or certified and mailed or when telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

**(5) [Process, where served]** All process of any court to which application may be made under this Act [subchapter] may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

**(6) [Information and assistance from departments]** The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

**Sec. 12. [§ 162. Offenses and penalties]** Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act [subchapter] shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

**Sec. 13. [§ 163. Right to strike preserved]** Nothing in this Act [subchapter], except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike or to affect the limitations or qualifications on that right.

**Sec. 14. [§ 164. Construction of provisions] (a) [Supervisors as union members]** Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act [subchapter] shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

**(b) [Agreements requiring union membership in violation of State law]** Nothing in this Act [subchapter] shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

**(c) [Power of Board to decline jurisdiction of labor disputes; assertion of jurisdiction by State and Territorial courts]** (1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act [to subchapter II of chapter 5 of title 5], decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this Act [subchapter] shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

**Sec. 15. [§ 165.] Omitted.**

[Reference to repealed provisions of bankruptcy statute.]

**Sec. 16. [§ 166. Separability of provisions]** If any provision of this Act [subchapter], or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act [subchapter], or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**Sec. 17. [§ 167. Short title]** This Act [subchapter] may be cited as the "National Labor Relations Act."

**Sec. 18. [§ 168.] Omitted.**

[Reference to former sec. 9(f), (g), and (h).]

INDIVIDUALS WITH RELIGIOUS CONVICTIONS

**Sec. 19. [§ 169.]** Any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required in a contract between such employee's employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation under section 501(c)(3) of title 26 of the Internal Revenue Code [section 501(c)(3) of title 26], chosen by such employee from a list of at least three such funds, designated in such contract or if the contract fails to designate such funds, then to any such fund chosen by the employee. If such employee who holds conscientious objections pursuant to this section

requests the labor organization to use the grievance-arbitration procedure on the employee's behalf, the labor organization is authorized to charge the employee for the reasonable cost of using such procedure.

[Sec. added, Pub. L. 93–360, July 26, 1974, 88 Stat. 397, and amended, Pub. L. 96–593, Dec. 24, 1980, 94 Stat. 3452.]

# LABOR MANAGEMENT RELATIONS ACT

Also cited LMRA; 29 U.S.C. §§ 141–197

[Title 29, Chapter 7, United States Code]

SHORT TITLE AND DECLARATION OF POLICY

**Section 1. [§ 141.]** (a) This Act [chapter] may be cited as the "Labor Management Relations Act, 1947." [Also known as the "Taft-Hartley Act."]

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act [chapter], in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

**TITLE I**, Amendments to

NATIONAL LABOR RELATIONS ACT

29 U.S.C. §§ 151–169 (printed above)

**TITLE II**

[Title 29, Chapter 7, Subchapter III, United States Code]

CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE;

NATIONAL EMERGENCIES

**Sec. 201. [§ 171. Declaration of purpose and policy]** It is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interest of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of con-

ference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may by advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

**Sec. 202. [§ 172. Federal Mediation and Conciliation Service]**

**(a) [Creation; appointment of Director]** There is created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service," except that for sixty days after June 23, 1947, such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall not engage in any other business, vocation, or employment.

**(b) [Appointment of officers and employees; expenditures for supplies, facilities, and services]** The Director is authorized, subject to the civil service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with sections 5101 to 5115 and sections 5331 to 5338 of title 5, United States Code [chapter 51 and subchapter III of chapter 53 of title 5], and may, without regard to the provisions of the civil service laws, appoint such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.

**(c) [Principal and regional offices; delegation of authority by Director; annual report to Congress]** The principal office of the Service shall be in the District of Columbia, but the Director may establish regional ofiices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act [chapter] to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

**(d) [Transfer of all mediation and conciliation services to Service; effective date; pending proceedings unaffected]** All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 51 [repealed] of title 29, United States Code [this title], and all functions of the United States Conciliation Service under any other law are transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after June 23, 1947. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

FUNCTIONS OF THE SERVICE

**Sec. 203. [§ 173. Functions of Service] (a) [Settlement of disputes through conciliation and mediation]** It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

**(b) [Intervention on motion of Service or request of parties; avoidance of mediation of minor disputes]** The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

**(c) [Settlement of disputes by other means upon failure of conciliation]** If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lockout, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act [chapter].

**(d) [Use of conciliation and mediation services as last resort]** Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

**(e) [Encouragement and support of establishment and operation of joint labor management activities conducted by committees]** The Service is authorized and directed to encourage and support the establishment and operation of joint labor management activities conducted by plant, area, and industrywide committees designed to improve labor management relationships, job security and organizational effectiveness, in accordance with the provisions of section 205A [section 175a of this title].

[Pub. L. 95–524, § 6(c)(1), Oct. 27, 1978, 92 Stat. 2020, added subsec. (e).]

**Sec. 204. [§ 174. Co-equal obligations of employees, their representatives, and management to minimize labor disputes]** (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act [chapter] for the purpose of aiding in a settlement of the dispute.

**Sec. 205. [§175. National Labor-Management Panel; creation and composition; appointment, tenure, and compensation; duties]** (a) There

is created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be elected from among persons outstanding in the field of management and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of $25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

**Sec. 205A. [§ 175a. Assistance to plant, area, and industrywide labor management committees]**

**(a) [Establishment and operation of plant, area, and industrywide committees]** (1) The Service is authorized and directed to provide assistance in the establishment and operation of plant, area and industrywide labor management committees which—

(A) have been organized jointly by employers and labor organizations representing employees in that plant, area, or industry; and

(B) are established for the purpose of improving labor management relationships, job security, organizational effectiveness, enhancing economic development or involving workers in decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.

(2) The Service is authorized and directed to enter into contracts and to make grants, where necessary or appropriate, to fulfill its responsibilities under this section.

**(b) [Restrictions on grants, contracts, or other assistance]** (1) No grant may be made, no contract may be entered into and no other assistance may be provided under the provisions of this section to a plant labor management committee unless the employees in that plant are represented by a labor organization and there is in effect at that plant a collective bargaining agreement.

(2) No grant may be made, no contract may be entered into and no other assistance may be provided under the provisions of this section to

an area or industrywide labor management committee unless its participants include any labor organizations certified or recognized as the representative of the employees of an employer participating in such committee. Nothing in this clause shall prohibit participation in an area or industrywide committee by an employer whose employees are not represented by a labor organization.

(3) No grant may be made under the provisions of this section to any labor management committee which the Service finds to have as one of its purposes the discouragement of the exercise of rights contained in section 7 of the National Labor Relations Act (29 U.S.C. § 157) [section 157 of this title], or the interference with collective bargaining in any plant, or industry.

**(c) [Establishment of office]** The Service shall carry out the provisions of this section through an office established for that purpose.

**(d) [Authorization of appropriations]** There are authorized to be appropriated to carry out the provisions of this section $10,000,000 for the fiscal year 1979, and such sums as may be necessary thereafter.

[Pub. L. 95–524, § 6(c)(2), Oct. 27, 1978, 92 Stat. 2020, added Sec. 205A.]

NATIONAL EMERGENCIES

**Sec. 206. [§ 176. Appointment of board of inquiry by President; report; contents; filing with Service]** Whenever in the opinion of the President of the United States, a threatened or actual strike or lockout affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

**Sec. 207. [§ 177. Board of inquiry]**

**(a) [Composition]** A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

**(b) [Compensation]** Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) [**Powers of discovery**] For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 49 and 50 of title 15, United States Code [sections 49 and 50 of title 15] (relating to the attendance of witnesses and the production of books, papers, and documents) are made applicable to the powers and duties of such board.

**Sec. 208. [§ 178. Injunctions during national emergency]**

**(a) [Petition to district court by Attorney General on direction of President]** Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lockout or the continuing thereof, and if the court finds that such threatened or actual strike or lockout—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate.

**(b) [Inapplicability of chapter 6]** In any case, the provisions of sections 101 to 115 of title 29, United States Code [chapter 6 of this title] [known as the "Norris-LaGuardia Act"] shall not be applicable.

**(c) [Review of orders]** The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code [section 1254 of title 28].

**Sec. 209. [§ 179. Injunctions during national emergency; adjustment efforts by parties during injunction period]**

**(a) [Assistance of Service; acceptance of Service's proposed settlement]** Whenever a district court has issued an order under section 208 [section 178 of this title] enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act [chapter]. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

**(b) [Reconvening of board of inquiry; report by board; contents; secret ballot of employees by National Labor Relations Board; certification of results to Attorney General]** Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry

shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer, as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

**Sec. 210. [§ 180. Discharge of injunction upon certification of results of election or settlement; report to Congress]** Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

COMPILATION OF COLLECTIVE-BARGAINING AGREEMENTS, ETC.

**Sec. 211. [§ 181.]** (a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes. Such file shall be open to inspection under appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

EXEMPTION OF RAILWAY LABOR ACT

**Sec. 212. [§ 182.]** The provisions of this title [subchapter] shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act [45 U.S.C. § 151 et seq.], as amended from time to time.

CONCILIATION OF LABOR DISPUTES IN THE HEALTH CARE INDUSTRY

**Sec. 213. [§ 183.] (a) [Establishment of Boards of Inquiry; membership]** If, in the opinion of the Director of the Federal Mediation and

Conciliation Service, a threatened or actual strike or lockout affecting a health care institution will, if permitted to occur or to continue, substantially interrupt the delivery of health care in the locality concerned, the Director may further assist in the resolution of the impasse by establishing within 30 days after the notice to the Federal Mediation and Conciliation Service under clause (A) of the last sentence of section 8(d) [section 158(d) of this title] (which is required by clause (3) of such section 8(d) [section 158(d) of this title]), or within 10 days after the notice under clause (B), an impartial Board of Inquiry to investigate the issues involved in the dispute and to make a written report thereon to the parties within fifteen (15) days after the establishment of such a Board. The written report shall contain the findings of fact together with the Board's recommendations for settling the dispute, with the objective of achieving a prompt, peaceful and just settlement of the dispute. Each such Board shall be composed of such number of individuals as the Director may deem desirable. No member appointed under this section shall have any interest or involvement in the health care institutions or the employee organizations involved in the dispute.

(**b) [Compensation of members of Boards of Inquiry]** (1) Members of any board established under this section who are otherwise employed by the Federal Government shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out its duties under this section.

(2) Members of any board established under this section who are not subject to paragraph (1) shall receive compensation at a rate prescribed by the Director but not to exceed the daily rate prescribed for GS–18 of the General Schedule under section 5332 of title 5, United States Code [section 5332 of title 5], including travel for each day they are engaged in the performance of their duties under this section and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

**(c) [Maintenance of status quo]** After the establishment of a board under subsection (a) of this section and for 15 days after any such board has issued its report, no change in the status quo in effect prior to the expiration of the contract in the case of negotiations for a contract renewal, or in effect prior to the time of the impasse in the case of an initial bargaining negotiation, except by agreement, shall be made by the parties to the controversy.

**(d) [Authorization of appropriations]** There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

## TITLE III

[Title 29, Chapter 7, Subchapter IV, United States Code]

SUITS BY AND AGAINST LABOR ORGANIZATIONS

**Sec. 301. [§ 185.] (a) [Venue, amount, and citizenship]** Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act [chapter], or between any such labor organization, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(**b) [Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments]** Any labor organization which represents employees in an industry affecting commerce as defined in this Act [chapter] and any employer whose activities affect commerce as defined in this Act [chapter] shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

**(c) [Jurisdiction]** For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal offices, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

**(d) [Service of process]** The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

**(e) [Determination of question of agency]** For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

**Sec. 302. [§ 186.] (a) [Payment or lending, etc., of money by employer or agent to employees, representatives, or labor organizations]** It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or

deliver, or agree to pay, lend, or deliver, any money or other thing of value—

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce;

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

**(b) [Request, demand, etc., for money or other thing of value]**

(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) [of this section].

(2) It shall be unlawful for any labor organization, or for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle (as defined in part II of the Interstate Commerce Act [49 U.S.C. § 301 et seq.]) employed in the transportation of property in commerce, or the employer of any such operator, any money or other thing of value payable to such organization or to an officer, agent, representative or employee thereof as a fee or charge for the unloading, or in connection with the unloading, of the cargo of such vehicle: *Provided*, That nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

**(c) [Exceptions]** The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint,

grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply

to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, (B) child care centers for preschool and school age dependents of employees, or (C) financial assistance for employee housing: *Provided*, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: *Provided further*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: *Provided further*, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, or this Act [under subchapter II of this chapter or this chapter]; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. § 401 et seq.]; or (9) with respect to money or other things of value paid by an employer to a plant, area or industrywide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978.

[Sec. 302(c)(7) was added by Pub. L. 91–86, Oct. 14, 1969, 83 Stat. 133; Sec. 302(c)(8) by Pub. L. 93–95, Aug. 15, 1973, 87 Stat. 314; Sec. 302(c)(9) by Pub. L. 95–524, Oct. 27, 1978, 92 Stat. 2021; and Sec. 302(c)(7) was amended by Pub. L. 101–273, Apr. 18, 1990, 104 Stat. 138.]

**(d) [Penalty for violations]** Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

**(e) [Jurisdiction of courts]** The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of rule 65 of the Federal Rules of Civil Procedure [section 381 (repealed) of title 28] (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 7 of title 15 and section 52

of title 29, United States Code [of this title] [known as the "Clayton Act"], and the provisions of sections 101 to 115 of title 29, United States Code [chapter 6 of this title] [known as the "Norris-LaGuardia Act"].

**(f) [Effective date of provisions]** This section shall not apply to any contract in force on June 23, 1947, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

**(g) [Contributions to trust funds]** Compliance with the restrictions contained in subsection (c)(5)(B) [of this section] upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c)(5)(A) [of this section] be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

**Sec. 303. [§ 187.]** (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8(b)(4) of the National Labor Relations Act [section 158(b)(4) of this title].

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) [of this section] may sue therefor in any district court of the United States subject to the limitation and provisions of section 301 hereof [section 185 of this title] without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

RESTRICTION ON POLITICAL CONTRIBUTIONS

**Sec. 304. Repealed.**

[See sec. 316 of the Federal Election Campaign Act of 1972, 2 U.S.C. § 441b.]

**Sec. 305.[ § 188.] Strikes by Government employees. Repealed.**

[See 5 U.S.C. § 7311 and 18 U.S.C. § 1918.]

## TITLE IV

[Title 29, Chapter 7, Subchapter V, United States Code]

CREATION OF JOINT COMMITTEE TO STUDY AND REPORT ON BASIC PROBLEMS AFFECTING FRIENDLY LABOR RELATIONS AND PRODUCTIVITY

**Secs. 401–407. [§§ 191–197.]** Omitted.

# TITLE V

[Title 29, Chapter 7, Subchapter I, United States Code]

DEFINITIONS

**Sec. 501. [§ 142.]** When used in this Act [chapter]—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(3) The terms "commerce," "labor disputes," "employer," "employee," "labor organization," "representative," "person," and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act [in subchapter II of this chapter].

SAVING PROVISION

Sec. 502. [§ 143.] [Abnormally dangerous conditions] Nothing in this Act [chapter] shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act [chapter] be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act [chapter].

SEPARABILITY

Sec. 503. [§ 144.] If any provision of this Act [chapter], or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act [chapter], or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.