

**§101.41 Informal procedures for obtaining opinions 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.

**§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 a 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.

(b) A petition to obtain a declaratory Board order may be filed only by the General Counsel. It 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 §102.106 of the Board's Rules and Regulations. None of the information sought relates to the merits of the dispute. The petition may be withdrawn any time before the Board issues its declaratory order deciding whether it would or would not assert jurisdiction over the cases.

**§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.

**PART 102—RULES AND REGULATIONS, SERIES 8**

**Subpart A—Definitions**

- Sec.
- 102.1 Terms defined in section 2 of the Act.
  - 102.2 Act; Board; Board agent.
  - 102.3 General counsel.
  - 102.4 Region; subregion.
  - 102.5 Regional director; officer-in-charge, regional attorney.
  - 102.6 Administrative law judge; hearing officer.
  - 102.7 State.
  - 102.8 Party.

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

**CHARGE**

- 102.9 Who may file; withdrawal and dismissal.
- 102.10 Where to file.
- 102.11 Forms; jurat; or declaration.
- 102.12 Contents.
- 102.13 [Reserved]
- 102.14 Service of charge.

**COMPLAINT**

- 102.15 When and by whom issued; contents; service.
- 102.16 Hearing; change of date or place.
- 102.17 Amendment.
- 102.18 Withdrawal.
- 102.19 Appeal to the general counsel from refusal to issue or reissue.

## National Labor Relations Board

Pt. 102

### ANSWER

- 102.20 Answer to complaint; time for filing; contents; allegations not denied deemed admitted.
- 102.21 Where to file; service upon the parties; form.
- 102.22 Extension of time for filing.
- 102.23 Amendment.

### MOTIONS

- 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response; summary judgment procedures.
- 102.25 Ruling on motions.
- 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.
- 102.27 Review of granting of motion to dismiss entire complaint; reopening of the record.
- 102.28 Filing of answer or other participation in proceedings not a waiver of rights.

### INTERVENTION

- 102.29 Intervention; requisites; rulings on motions to intervene.

### WITNESSES, DEPOSITIONS, AND SUBPOENAS

- 102.30 Examination of witnesses; deposition.
- 102.31 Issuance of subpoenas; petitions to revoke subpoenas; rulings on claim of privilege against self-incrimination; subpoena enforcement proceedings; right to inspect and copy data.
- 102.32 Payment of witness fees and mileage; fees of persons taking depositions.

### TRANSFER, CONSOLIDATION, AND SEVERANCE

- 102.33 Transfer of charge and proceeding from region to region; consolidation of proceedings in same region; severance.

### HEARINGS

- 102.34 Who shall conduct; to be public unless otherwise ordered.
- 102.35 Duties and powers of administrative law judges; assignment and powers of settlement judges.
- 102.36 Unavailability of administrative law judge.
- 102.37 Disqualification of administrative law judge.
- 102.38 Rights of parties.
- 102.39 Rules of evidence controlling so far as practicable.
- 102.40 Stipulations of fact admissible.
- 102.41 Objection to conduct of hearing; how made; objections not waived by further participation.

- 102.42 Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing.
- 102.43 Continuance and adjournment.

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

- 102.45 Administrative law judge's decision; contents; service; transfer of the case to the Board; contents of record in case.

### EXCEPTIONS TO THE RECORD AND PROCEEDINGS

- 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.
- 102.47 Filing of motion after transfer of case to Board.

### PROCEDURE BEFORE THE BOARD

- 102.48 Action of the Board upon expiration of time to file exceptions to the administrative law judge's decision; decisions by the Board; extraordinary postdecisional motions.
- 102.49 Modification or setting aside of order of Board before record filed in court; action thereafter.
- 102.50 Hearings before Board or member thereof.
- 102.51 Settlement or adjustment of issues.

### BACK-PAY PROCEEDINGS

- 102.52 Compliance with Board order; notification of compliance determination.
- 102.53 Review by the General Counsel of compliance determination; appeal to the Board of the General Counsel's decision.
- 102.54 Initiation of formal compliance proceedings; issuance of compliance specification and notice of hearing.
- 102.55 Contents of compliance specification.
- 102.56 Answer to compliance specification.
- 102.57 Extension of date of hearing.
- 102.58 Withdrawal.
- 102.59 Hearing; posthearing procedure.

### Subpart C—Procedure Under Section 9(c) of the Act for the Determination of Questions Concerning Representation of Employees and for Clarification of Bargaining Units and for Amendment of Certifications Under Section 9(b) of the Act

- 102.60 Petitions.
- 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.
- 102.62 Consent-election agreements.

- 102.63 Investigation of petition by regional director; notice of hearing; service of notice; withdrawal of notice.
- 102.64 Conduct of hearing.
- 102.65 Motions; interventions.
- 102.66 Introduction of evidence; rights of parties at hearing; subpoenas.
- 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.
- 102.68 Record; what constitutes; transmission to Board.
- 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.
- 102.70 Runoff election.
- 102.71 Dismissal of petition; refusal to proceed with petition; requests for review by the Board of action of the regional director.
- 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.

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

- 102.73 Initiation of proceedings.
- 102.74 Complaint and formal proceedings.
- 102.75 Suspension of proceedings on the charge where timely petition is filed.
- 102.76 Petition; who may file; where to file; contents.
- 102.77 Investigation of petition by regional director; directed election.
- 102.78 Election procedure; method of conducting balloting; postballoting procedure.
- 102.79 Consent-election agreements.
- 102.80 Dismissal of petition; refusal to process petition under expedited procedure.
- 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 the general counsel of refusal to proceed on related charge.
- 102.82 Transfer, consolidation, and severance.

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

- 102.83 Petition for referendum under section 9(e)(1) of the Act; who may file; where to file; withdrawal.
- 102.84 Contents of petition to rescind authority.
- 102.85 Investigation of petition by regional director; consent referendum; directed referendum.
- 102.86 Hearing; posthearing procedure.
- 102.87 Method of conducting balloting; postballoting procedure.
- 102.88 Refusal to conduct referendum; appeal to Board.

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

- 102.89 Initiation of proceedings.
- 102.90 Notice of filing of charge; notice of hearing; hearing; proceedings before the Board; briefs; determination of dispute.
- 102.91 Compliance with determination; further proceedings.
- 102.92 Review of determination.
- 102.93 Alternative procedure.

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

- 102.94 Expeditious processing of section 10(j) cases.
- 102.95 Priority of cases pursuant to section 10(l) and (m) of the Act.
- 102.96 Issuance of complaint promptly.
- 102.97 Expeditious processing of section 10 (l) and (m) cases in successive stages.

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

- 102.98 Petition for advisory opinion; who may file; where to file.
- 102.99 Contents of petition for advisory opinion; contents of request for administrative advice.
- 102.100 Notice of petition; service of petition.
- 102.101 Response to petition; service of response.
- 102.102 Intervention.
- 102.103 Proceedings before the Board; briefs; advisory opinions.
- 102.104 Withdrawal of petition.
- 102.105 Petitions for declaratory orders; who may file; where to file; withdrawal.
- 102.106 Contents of petition for declaratory order.
- 102.107 Notice of petition; service of petition.
- 102.108 Response to petition; service of response.
- 102.109 Intervention.

## National Labor Relations Board

Pt. 102

102.110 Proceedings before the Board; briefs; declaratory orders.

### Subpart I—Service and Filing of Papers

102.111 Time computation.  
102.112 Date of service; date of filing.  
102.113 Methods of service of process and papers by the Agency; proof of service.  
102.114 Filing and service of papers by parties; form of papers; manner and proof of filing or service.

### Subpart J—Certification and Signature of Documents

102.115 Certification of papers and documents.  
102.116 Signature of orders.

### Subpart K—Records and Information

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.  
102.118 Present and former Board employees prohibited from producing files, records, etc., pursuant to subpoena ad testificandum or subopena duces tecum; prohibited from testifying in regard thereto; production of witnesses' statements after direct testimony.

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

102.119 Post-employee restrictions on activities by former Officers and employees.

### Subpart M—Construction of Rules

102.121 Rules to be liberally construed.

### 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

102.122 Enforcement.  
102.123 Amendment or rescission of rules.

### Subpart O—Amendments

102.124 Petitions for issuance, amendment, or repeal of rules.  
102.125 Action on petition.

### Subpart P—Ex Parte Communications

102.126 Unauthorized communications.  
102.127 Definitions.

102.128 Types of on-the-record proceedings; categories of Board agents; and duration of prohibition.

102.129 Communications prohibited.  
102.130 Communications not prohibited.  
102.131 Solicitation of prohibited communications.  
102.132 Reporting of prohibited communications; penalties.  
102.133 Penalties and enforcement.

### Subpart Q—Procedure Governing Manners Affecting Employment-Management Agreements Under the Postal Reorganization Act

102.135 Employment-management agreements.

### Subpart R—Advisory Committees

102.136 Establishment and utilization of advisory committees.

### Subpart S—Open Meetings

102.137 Public observation of Board meetings.  
102.138 Definition of meeting.  
102.139 Closing of meetings; reasons therefor.  
102.140 Action necessary to close meetings; record of votes.  
102.141 Notice of meetings; public announcement and publication.  
102.142 Transcripts, recordings or minutes of closed meetings; public availability; retention.

### Subpart T—Awards of Fees and Other Expenses

102.143 "Adversary adjudication" defined; entitlement to award; eligibility for award.  
102.144 Standards for awards.  
102.145 Allowable fees and expenses.  
102.146 Rulemaking on maximum rates for attorney or agent fees.  
102.147 Contents of application; net worth exhibit; documentation of fees and expenses.  
102.148 When an application may be filed; place of filing; service; referral to administrative law judge; stay of proceeding.  
102.149 Filing of documents; service of documents; motions for extension of time.  
102.150 Answer to application; reply to answer; comments by other parties.  
102.151 Settlement.  
102.152 Further proceedings.  
102.153 Administrative law judge's decision; contents; service; transfer of case to the Board; contents of record in case.  
102.154 Exceptions to administrative law judge's decision; briefs; action of Board.  
102.155 Payment of award.

§ 102.1

29 CFR Ch. I (7–1–98 Edition)

**Subpart U—Debt-Collection Procedures by Administrative Offset**

- 102.156 Administrative offset; purpose and scope.
- 102.157 Definitions.
- 102.158 Agency requests for administrative offsets and cooperation with other Federal agencies.
- 102.159 Exclusions.
- 102.160 Agency responsibilities.
- 102.161 Notification.
- 102.162 Examination and copying of records related to the claim; opportunity for full explanation of the claim.
- 102.163 Opportunity for repayment.
- 102.164 Review of the obligation.
- 102.165 Cost shifting.
- 102.166 Additional administrative collection action.
- 102.167 Prior provision of rights with respect to debt.

**Subpart V—Debt Collection Procedures by Federal Income Tax Refund Offset**

- 102.168 Federal income tax refund offset; purpose and scope.
- 102.169 Definitions.
- 102.170 Agency referral to IRS for tax referral effect; Agency responsibilities.
- 102.171 Cost shifting.
- 102.172 Minimum referral amount.
- 102.173 Relation to other collection efforts.
- 102.174 Debtor notification.
- 102.175 Agency review of the obligation.
- 102.176 Prior provision of rights with respect to debt.

**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.

**APPENDIX A TO PART 102—NLRB OFFICIAL OFFICE HOURS**

AUTHORITY: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 552a (j) and (k) of the Privacy Act (5 U.S.C. 552a (j) and (k)). Sections 102.143 through 102.155 also issued under sec. 504(c)(1) of the Equal Access to Justice Act as amended (5 U.S.C. 504(c)(1)).

SOURCE: 24 FR 9102, Nov. 7, 1959, unless otherwise noted.

**Subpart A—Definitions**

**§ 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.

**§ 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.

**§ 102.3 General counsel.**

The term *general counsel* as used herein shall mean the general counsel under section 3(d) of the Act.

**§ 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.

[29 FR 15918, Nov. 28, 1964]

**§ 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.

[29 FR 15919, Nov. 28, 1964]