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in the region to which the transfer was made.

(c) The regional director may exercise the powers in paragraph (a)(2) and (4) of this section with respect to proceedings pending in his region.

[32 FR 9550, July 1, 1967]

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.

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 charges, giving it the priority specified in subpart G of this part.

§ 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 §§ 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 § 102.19, including the provisions for appeal to the general counsel, shall be applicable unless an election has been directed under §§ 102.77 and 102.78, in which event the provisions of § 102.81 shall be applicable.

§ 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.

§ 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 §§ 102.60 and 102.61, insofar as applicable: *Provided, however,* That if a charge under § 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.

§ 102.77 Investigation of petition by regional director; directed election.

(a) Where a petition has been filed pursuant to § 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 § 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 §§ 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.

[24 FR 9102, Nov. 7, 1959, as amended at 26 FR 3892, May 4, 1961]

§ 102.78 Election procedure; method of conducting balloting; postballoting procedure.

If no agreement such as that provided in § 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 §§ 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 upon. 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.

§ 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 § 102.62(a), insofar as applicable.

§ 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 § 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 § 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 § 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 this part 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 §§ 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 upon. 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