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§ 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Any compliance specification and notice of hearing may be withdrawn before the hearing by the Regional Director upon his or her own motion.

[53 FR 37756, Sept. 28, 1988]

§ 102.59 Hearing; posthearing procedure.

After the issuance of a compliance specification and notice of hearing, the procedures provided in §§ 102.24 to 102.51 shall be followed insofar as applicable.

[53 FR 37756, Sept. 28, 1988]

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

§ 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 paragraph (a) of this section shall be followed.

[29 FR 15919, Nov. 28, 1964, as amended at 60 FR 56235, Nov. 8, 1995; 67 FR 658, Jan. 7, 2002]

§ 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 establishments involved.

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

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

(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, affiliation, if any, and 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, affiliation, if any, and 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 date.

(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) Petitions for decertification shall contain the following:

(1) The name of the employer.

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

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

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

(5) 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 date 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.

[26 FR 3887, May 4, 1961, as amended at 29 FR 15919, Nov. 28, 1964]

§ 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 §§ 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 individuals 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 post election procedure shall be consistent with that followed by the regional director in conducting elections pursuant to §§ 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 §§ 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