

## Federal Labor Relations Authority

## § 2430.11

four copies, and served on all parties to the unfair labor practice proceeding. Service of the application shall be in the same manner as prescribed in §§ 2429.22 and 2429.27. Upon filing, the application shall be referred by the Authority to the Administrative Law Judge who heard the proceeding upon which the application is based, or, in the event the 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, to consider the application. When the Administrative Law Judge to whom the application has been referred is or becomes unavailable, the provisions of § 2423.20 shall be applicable.

(b) Proceedings for the award of fees and other expenses, but not the time limit of this section for filing an application for an award, shall be stayed pending final disposition of the case, in the event any persons seeks Authority reconsideration or court review of the Authority decision that forms the basis for the application for fees and expenses.

### § 2430.8 Filing and service of documents.

All pleadings or documents after the time the case is referred by the Authority to an Administrative Law Judge, until the issuance of the Judge's decision, shall be filed in an original and four copies with the Administrative Law Judge and served on all parties to the proceeding. Service of such documents shall be in the same manner as prescribed in §§ 2429.22 and 2429.27.

### § 2430.9 Answer to application; reply to answer; comments by other parties; extensions of time to file documents.

(a) Within 30 days after service of an application, the General Counsel may file an answer to the application. The filing of a motion to dismiss the application shall stay the time for filing an answer to a date thirty (30) days after issuance of any order denying the motion.

(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 30 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 proceeding, supporting affidavits shall be provided or a request made for further proceedings under § 2430.11.

(d) Within fifteen (15) 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 proceeding, supporting affidavits shall be provided or a request made for further proceedings under § 2430.11.

(e) Any party to a proceeding other than the applicant and the General Counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in the proceeding on the application unless the Administrative Law Judge determines that such participation is required in order to permit full exploration of matters raised in the comments.

(f) Motions for extensions of time to file documents permitted by this section or § 2430.11 shall be filed with the Administrative Law Judge not less than five (5) days before the due date of the document.

### § 2430.10 Settlement.

The applicant and the General Counsel may agree on a proposed settlement of the award before final action on the application. If an applicant 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 Authority.

### § 2430.11 Further proceedings.

(a) The determination of an award may be made on the basis of the documents in the record, or the Administrative Law Judge, upon request of either the applicant or the General Counsel, or on his or her own initiative, may order further proceedings. Such further

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proceedings may include, but shall not be limited to, an informal conference, oral argument, additional written submissions, or an evidentiary hearing.

(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 oral argument, additional written submissions, or an evidentiary hearing, shall specify the issues to be considered in such argument, submission, or hearing.

(d) Any evidentiary hearing held pursuant to this section shall be conducted not earlier than forty-five (45) days after the date on which the application is served. In all other respects, such hearing shall be conducted in accordance with §§ 2423.14, 2423.16, 2423.17, 2423.19 through 2423.21, 2423.23, and 2423.24, insofar as these sections are consistent with the provisions of this part.

**§ 2430.12 Administrative Law Judge's decision; contents; service; transfer of case to the Authority; contents of record in case.**

(a) Upon conclusion of proceedings under §§ 2430.6 to 2430.11, the Administrative Law Judge shall prepare a decision. The decision shall include written findings and conclusions on the applicant's status as a prevailing party and eligibility, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The Administrative Law Judge shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administra-

tive Law Judge shall transmit the case to the Authority, including the judge's decision and the record. 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 consist of the application for an award of fees and expenses 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 oral argument, the stenographic transcript of the hearing, exhibits and depositions, together with the Administrative Law Judge's decision, and the exceptions and briefs as provided in § 2430.13, and the record of the unfair labor practice proceeding upon which the application is based.

**§ 2430.13 Exceptions to Administrative Law Judge's decision; briefs; action of Authority.**

Procedures before the Authority, including the filing of exceptions to the administrative law judge's decision rendered pursuant to § 2430.12, and action by the Authority, shall be in accordance with §§ 2423.26(c), 2423.27, and 2423.28 of these rules. The Authority's review of the matter shall be in accordance with § 2423.29(a).

**§ 2430.14 Payment of award.**

To obtain payment of an award made by the Authority the applicant shall submit to the Executive Director of the Authority a copy of the Authority's final decision granting the award, accompanied by a statement that the applicant will not seek court review of the decision. The amount awarded will then be paid unless judicial review of the award, or of the underlying decision, has been sought by the applicant or any other party to the proceeding.