

Federal Reserve System

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also adduce facts pertaining to the jurisdiction of the panel and the timeliness of the charge. If the charge is untimely on its face, no investigation shall be required except to determine whether or not attending circumstances warrant waiving the time requirements, set forth in §269b.110. The investigator may request the appearance of parties and witnesses, may cause, the production of relevant document, and may take or cause depositions to be taken.

(b) When the investigation has been completed, the Center shall issue a written determination whether the charging party has established a prima facie case, whether the charge was timely filed, and whether the charge is within the jurisdiction of the panel, and reasons therefor. This determination shall be served upon the panel and all parties. The panel shall receive also the complete report of the investigator.

APPEAL FROM THE CENTER'S DETERMINATION

§ 269b.310 Appeal rights.

Where the investigator has found that a prima facie case does not exist, a party, including an intervenor but excluding the respondent or other parties having the same interest as the respondent, within 5 days after receiving the Center's determination may petition the panel to set aside the determination and to cause formal proceedings, set forth in §269b.410, to be invoked. The panel may grant such petition only on grounds that the Center or its agents were arbitrary, capricious, or acted contrary to law or the policy, or that the investigator's determination is clearly erroneous. The filing requirements for such a petition shall be the same as that for the filing of a charge, as set forth in §269b.111.

§ 269b.320 Proceedings before the panel.

The panel shall issue its decision within 15 days after the receipt of the petition provided for in §269b.310 or by the end of that period shall announce that it will require briefs by the parties. Such announcement shall specify the requirements as to contents of the

briefs, and the time for submission, which shall vary to meet the circumstances of the matter appealed. The panel, at such time, may also require oral argument or the production of evidence or may so order oral argument and/or the production of evidence after examination of the briefs. The panel shall issue its final decision within 20 days after briefs have been filed, evidence has been produced, or oral argument has been conducted.

FORMAL PROCEEDINGS

§ 269b.410 Notice of hearing.

If formal proceedings are found to be needed under the above procedures, and if no satisfactory settlement has been reached within 5 days after finding that a prima facie case exists, the Secretary of the panel, unless there is cause for granting an extension of time, shall issue and cause to be served upon the parties a notice of hearing. The panel shall appoint, pursuant to §269b.420, a hearing officer to hold a hearing and issue a report to the panel containing findings of fact, conclusions of law, and recommendations including, where appropriate, remedial action to be taken and notices to be posted. The Secretary shall furnish to the hearing officer the investigator's report and all other relevant information in the panel's possession.

§ 269b.420 Designation of hearing officer.

(a) The panel, absent special circumstances, shall employ the center to select the hearing officer to conduct the hearing at a site most convenient to the parties and witnesses. The individual who performed the investigation, pursuant to §269b.210, shall be barred from acting as a hearing officer on the same matter, unless all parties in interest agree to his participation. The selection of the hearing officer, to the extent practicable, shall be done with the concurrence of the parties.

(b) Any party may request the hearing officer, at any time following his designation and before the filing of his decision, to withdraw on grounds of previously demonstrated personal bias,

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conflict of interest, or prejudice 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 hearing officer, such affidavit is filed with due diligence and is sufficient on its face, he shall forthwith disqualify himself and withdraw from the proceeding. If he does not so withdraw, 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 the issuance of his decision, and his ruling shall be subject to the same review by the panel that is given to the rest of his decision.

(c) The costs of conducting the hearing and of the hearing officer shall be borne by the panel. Witness fees and expenses shall be paid by the party at whose instance the witnesses appear.

§ 269b.430 Contents of notice of hearing.

The notice of hearing shall include:

(a) A copy of the charge;

(b) A statement of the time of the hearing which shall be not less than 10 days after service of the notice of hearing, except in extraordinary circumstances. All charges involving a "refusal to bargain" allegation and all charges, if sustained, that would require the setting aside of an election, or the conducting of a new election shall be given first priority;

(c) A statement of the place and nature of hearing;

(d) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(e) A reference to the particular section of the policy and rules and regulations of this chapter involved;

(f) A copy of the determination, if any, made causing the invocation of these formal proceedings.

§ 269b.440 Conduct of hearing.

(a) Hearing shall be public unless otherwise ordered by the hearing officer or the panel. An official reporter shall make the only official transcript of such proceedings.

(b) Copies of the official transcript will not be provided to the parties, but

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may be purchased by arrangement with the official reporter or with such costs as the panel may otherwise assess, or may be examined in the offices of the panel and/or the hearing officer subject to such conditions as the panel may prescribe.

(c) A charging party in asserting that an unfair labor practice has been committed within the meaning of the policy, shall have the burden of proving the allegations of the charge, or the amended charge, by a preponderance of the evidence.

(d) The parties shall not be bound by the technical rules of evidence, but the hearing officer, may, in his discretion, exclude any evidence or offer of proof if he finds that its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion.

§ 269b.441 Rights of parties.

(a) 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 as may be required for a full and true disclosure of the facts, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing officer. Five copies of such documentary evidence shall be submitted unless the hearing officer permits a reduced number for good cause shown.

(b) 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.

(c) Any party shall be entitled to file a brief to the hearing officer within 10 days after the close of the hearing, but no reply brief may be filed except upon special permission of the hearing officer. A party filing a brief must file the original and one copy with the hearing officer along with proof of service of a copy of such brief to all parties. Requests for extension of time to file briefs must be made to the hearing officer who must receive the request at least 3 days prior to the expiration of time fixed for filing of briefs and notice