

§ 102.9

agent from limiting any party to participate in the proceedings to the extent of his interest only.

**Subpart B—Procedure Under Section 10 (a) to (i) of the Act for the Prevention of Unfair Labor Practices<sup>1</sup>**

CHARGE

**§ 102.9 Who may file; withdrawal and dismissal.**

A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person. Any such charge may be withdrawn, prior to the hearing, only with the consent of the regional director with whom such charge was filed; at the hearing and until the case has been transferred to the Board pursuant to §102.45, upon motion, with the consent of the administrative law judge designated to conduct the hearing; and after the case has been transferred to the Board pursuant to §102.45, upon motion, with the consent of the Board. Upon withdrawal of any charge, any complaint based thereon shall be dismissed by the regional director issuing the complaint, the administrative law judge designated to conduct the hearing, or the Board.

**§ 102.10 Where to file.**

Except as provided in §102.33 such charge shall be filed with the regional director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the regional director for any of such regions.

**§ 102.11 Forms; jurat; or declaration.**

Such charges 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

<sup>1</sup>Procedure under sec. 10(j) to (l) of the Act is governed by subparts F and G of this part. Procedure for unfair labor practice cases and representation cases under sec. 8(b)(7) of the Act is governed by subpart D of this part.

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 such charge shall be filed. A party filing a charge 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.

[67 FR 658, Jan. 7, 2002]

**§ 102.12 Contents.**

Such charge shall contain the following:

- (a) The full name and address of the person making the charge.
- (b) If the charge is filed by a labor organization, the full name and address of any national or international labor organization of which it is an affiliate or constituent unit.
- (c) The full name and address of the person against whom the charge is made (hereinafter referred to as the "respondent").
- (d) A clear and concise statement of the facts constituting the alleged unfair labor practices affecting commerce.

**§ 102.13 [Reserved]**

**§ 102.14 Service of charge.**

(a) *Charging party's obligation to serve; methods of service.* Upon the filing of a charge, the charging party shall be responsible for the timely and proper service of a copy thereof upon the person against whom such charge is made. Service may be made personally, or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the charge, service may be made by facsimile transmission or by any other agreed-upon method.

(b) *Service as courtesy by Regional Director.* The Regional Director will, as a matter of courtesy, cause a copy of such charge to be served by regular mail on the person against whom the charge is made. Such charges may, with the permission of the person receiving the charge, be served by the Regional Director by facsimile transmission. In this event the receipt printed upon the Agency's copy by the

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Agency's own facsimile machine, showing the phone number to which the charge was transmitted and the date and time of receipt shall be proof of service of the same. However, whether serving by facsimile, by regular mail, or otherwise, the Regional Director shall not be deemed to assume responsibility for such service.

(c) *Date of service of charge.* In the case of service of a charge by mail or private delivery service, the date of service is the date of deposit with the post office or other carrier. In the case of service by other methods, including hand delivery or facsimile transmission, the date of service is the date of receipt.

[60 FR 56235, Nov. 8, 1995]

### COMPLAINT

#### § 102.15 When and by whom issued; contents; service.

After a charge has been filed, if it appears to the regional director that formal proceedings in respect thereto should be instituted, he shall issue and cause to be served on all other parties a formal complaint in the name of the Board stating the unfair labor practices and containing a notice of hearing before an administrative law judge at a place therein fixed and at a time not less than 14 days after the service of the complaint. The complaint shall contain:

(a) A clear and concise statement of the facts upon which assertion of jurisdiction by the Board is predicated, and

(b) A clear and concise description of the acts which are claimed to constitute unfair labor practices, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed.

[51 FR 23745, July 1, 1986]

#### § 102.16 Hearing; change of date or place.

(a) Upon his own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may extend the date of such hearing or may change the place at which it is to be held, except that the authority of the Regional Director to

extend the date of a hearing shall be limited to the following circumstances:

(1) Where all parties agree or no party objects to extension of the date of hearing;

(2) Where a new charge or charges have been filed which, if meritorious, might be appropriate for consolidation with the pending complaint;

(3) Where negotiations which could lead to settlement of all or a portion of the complaint are in progress;

(4) Where issues related to the complaint are pending before the General Counsel's Division of Advice or Office of Appeals; or

(5) Where more than 21 days remain before the scheduled date of hearing.

(b) In circumstances other than those set forth in subsection (a) of this section, motions to reschedule the hearing should be filed with the Division of Judges in accordance with § 102.24(a). When a motion to reschedule has been granted, the Regional Director issuing the complaint shall retain the authority to order a new date for hearing and retain the responsibility to make the necessary arrangements for conducting such hearing, including its location and the transcription of the proceedings.

[54 FR 51197, Dec. 13, 1989; 54 FR 52506, Dec. 21, 1989]

#### § 102.17 Amendment.

Any such complaint may be amended upon such terms as may be deemed just, prior to the hearing, by the regional director issuing the complaint; at the hearing and until the case has been transferred to the Board pursuant to § 102.45, upon motion, by the administrative law judge designated to conduct the hearing; and after the case has been transferred to the Board pursuant to § 102.45, at any time prior to the issuance of an order based thereon, upon motion, by the Board.

#### § 102.18 Withdrawal.

Any such complaint may be withdrawn before the hearing by the regional director on his own motion.

#### § 102.19 Appeal to the general counsel from refusal to issue or reissue.

(a) If, after the charge has been filed, the Regional Director declines to issue