

National Labor Relations Board

§ 102.42

law judge for the purpose of further hearing or other appropriate action.

(49 Stat. 449; 29 U.S.C. 151-166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151-167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141-168), (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[45 FR 51193, Aug. 1, 1980, as amended at 62 FR 1668, Jan. 13, 1997]

§ 102.37 Disqualification of administrative law judge.

An administrative law judge may withdraw from a proceeding whenever he deems himself disqualified. Any party may request the administrative law judge, at any time following his designation and before filing of his decision, to withdraw on ground of personal bias or disqualification, 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 administrative law judge, such affidavit is filed with due diligence and is sufficient on its face, he shall forthwith disqualify himself and withdraw from the proceeding. If the administrative law judge does not disqualify himself and withdraw from the proceeding, 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 issuance of his decision, and the provisions of § 102.26, with respect to review of rulings of administrative law judges, shall thereupon apply.

(49 Stat. 449; 29 U.S.C. 151-166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151-167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141-168), (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[45 FR 51193, Aug. 1, 1980]

§ 102.38 Rights of parties.

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, and to introduce into the record documentary or other evidence, except that the participation of any party shall be limited to the extent permitted by the administrative law judge: *And provided further*, That docu-

mentary evidence shall be submitted in duplicate.

§ 102.39 Rules of evidence controlling so far as practicable.

Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934, (title 28 U.S.C., secs. 723-B, 723-C).

§ 102.40 Stipulations of fact admissible.

In any such proceeding stipulations of fact may be introduced in evidence with respect to any issue.

§ 102.41 Objection to conduct of hearing; how made; objections not waived by further participation.

Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

§ 102.42 Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which may include presentation of proposed findings and conclusions, and shall be included in the stenographic report of the hearing. In the discretion of the administrative law judge, any party may, upon request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge, who may fix a reasonable time for such filing, but not in excess of 35 days from the close of the hearing. Requests for further extensions of time shall be made to the chief administrative law judge in Washington, D.C., to the associate chief judge in San Francisco, California, to the associate chief judge in New York, New York, or to the

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associate chief judge in Atlanta, Georgia, as the case may be. Notice of the request for any extension shall be immediately served on all other parties, and proof of service shall be furnished. Three copies of the brief or proposed findings and conclusions shall be filed with the administrative law judge, and copies shall be served on the other parties, and a statement of such service shall be furnished. In any case in which the administrative law judge believes that written briefs or proposed findings of fact and conclusions may not be necessary, he or she shall notify the parties at the opening of the hearing or as soon thereafter as practicable that he or she may wish to hear oral argument in lieu of briefs.

[61 FR 6942, Feb. 23, 1996, as amended at 62 FR 1668, Jan. 13, 1997]

§ 102.43 Continuance and adjournment.

In the discretion of the administrative law judge, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement thereof at the hearings by the administrative law judge, or by other appropriate notice.

ADMINISTRATIVE LAW JUDGE'S DECISION AND TRANSFER OF CASE TO THE BOARD

§ 102.45 Administrative law judge's decision; contents; service; transfer of case to the Board; contents of record in case.

(a) After hearing for the purpose of taking evidence upon a complaint, the administrative law judge shall prepare a decision. Such decision shall contain findings of fact, conclusions, and the reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record, and shall contain recommendations as to what disposition of the case should be made, which may include, if it be found that the respondent has engaged in or is engaging in the alleged unfair labor practices, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act. The administrative law judge shall file the original of his decision with the Board and cause a copy thereof to be served on each of the parties. If the ad-

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ministrative law judge delivers a bench decision, promptly upon receiving the transcript the judge shall certify the accuracy of the pages of the transcript containing the decision; file with the Board a certified copy of those pages, together with any supplementary matter the judge may deem necessary to complete the decision; and cause a copy thereof to be served on each of the parties. Upon the filing of the decision, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, on all the parties. 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 charge upon which the complaint was issued and any amendments thereto, the complaint and any amendments thereto, notice of hearing, answer and any amendments thereto, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, together with the administrative law judge's decision and exceptions, and any cross-exceptions or answering briefs as provided in § 102.46, shall constitute the record in the case.

[28 FR 7973, Aug. 6, 1963, as amended at 59 FR 65945, Dec. 22, 1994; 61 FR 6942, Feb. 23, 1996]

EXCEPTIONS TO THE RECORD AND PROCEEDINGS

§ 102.46 Exceptions, cross-exceptions, briefs, answering briefs; time for filing; where to file; service on the parties; extension of time; effect of failure to include matter in exceptions; reply briefs; oral arguments.

(a) Within 28 days, or within such further period as the Board may allow, from the date of the service of the order transferring the case to the Board, pursuant to § 102.45, any party may (in accordance with section 10(c) of the Act and §§ 102.111 and 102.112 of these rules) file with the Board in Washington, DC, exceptions to the administrative law judge's decision or to any other part of the record or proceedings (including rulings upon all motions or objections), together with a brief in support of said exceptions. Any party may, within the same period, file a brief in support of the administrative