

National Labor Relations Board

§ 101.21

investigation in which the primary interest of the Board's agents is to ensure that the record contains as full a statement of the pertinent facts as may be necessary for determination of the case. The parties are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions. In most cases a substantial number of the relevant facts are undisputed and stipulated. The parties are permitted to argue orally on the record before the hearing officer.

§ 101.21 Procedure after hearing.

(a) Pursuant to section 3(b) of the Act, the Board has delegated to its Regional Directors its powers under section 9 of the Act to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof. These powers include the issuance of such decisions, orders, rulings, directions, and certifications as are necessary to process any representation or deauthorization petition. Thus, by way of illustration and not of limitation, the Regional Director may dispose of petitions by administrative dismissal or by decision after formal hearing; pass upon rulings made at hearings and requests for extensions of time for filing of briefs; rule on objections to elections and challenged ballots in connection with elections Directed by the Regional Director or the Board, after administrative investigation or formal hearing; rule on motions to amend or rescind any certification issued after the effective date of the delegation; and entertain motions for oral argument. The Regional Director may at any time transfer the case to the Board for decision, but until such action is taken, it will be presumed that the Regional Director will decide the case. In the event the Regional Director decides the issues in a case, the decision is final subject to the review procedure set forth in the Board's Rules and Regulations.

(b) Upon the close of the hearing, the entire record in the case is forwarded

to the Regional Director or, upon issuance by the Regional Director of an order transferring the case, to the Board in Washington, DC. The hearing officer also transmits an analysis of the issues and the evidence, but makes no recommendations in regard to resolution of the issues. All parties may file briefs with the Regional Director or, if the case is transferred to the Board at the close of the hearing, with the Board, within 7 days after the close of the hearing. If the case is transferred to the Board after the close of the hearing, briefs may be filed with the Board within the time prescribed by the Regional Director. The parties may also request to be heard orally. Because of the nature of the proceedings, however, permission to argue orally is rarely granted. After review of the entire case, the Regional Director or the Board issues a decision, either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner already described in § 101.19.

(c) With respect to objections to the conduct of the election and challenged ballots, the Regional Director has discretion (1) to issue a report on such objections and/or challenged ballots and transmit the issues to the Board for resolution, as in cases involving stipulated elections to be followed by Board certifications, or (2) to decide the issues on the basis of the administrative investigation or after a hearing, with the right to transfer the case to the Board for decision at any time prior to disposition of the issues on the merits. In the event the Regional Director adopts the first procedure, the parties have the same rights, and the same procedure is followed, as has already been described in connection with the postelection procedures in cases involving stipulated elections to be followed by Board certifications. In the event the Regional Director adopts the second procedure, the parties have the same rights, and the same procedure is followed, as has already been described in connection with hearings before elections.

(d) The parties have the right to request review of any final decision of

the Regional Director, within the times set forth in the Board's Rules and Regulations, on one or more of the grounds specified therein. Any such request for review must be a self-contained document permitting the Board to rule on the basis of its contents without the necessity of recourse to the record, and must meet the other requirements of the Board's Rules and Regulations as to its contents. The Regional Director's action is not stayed by the filing of such a request or the granting of review, unless otherwise ordered by the Board. Thus, the Regional Director may proceed immediately to make any necessary arrangements for an election, including the issuance of a notice of election. However, unless a waiver is filed, the Director will normally not schedule an election until a date between the 25th and 30th days after the date of the decision, to permit the Board to rule on any request for review which may be filed. As to administrative dismissals prior to the close of hearing, see §101.18(c).

(e) If the election involves two or more labor organizations and if the election results are inconclusive because no choice on the ballot received the majority of valid votes cast, a runoff election is held as provided in the Board's Rules and Regulations.

Subpart D—Unfair Labor Practice and Representation Cases Under Sections 8(b)(7) and 9(c) of the Act

§ 101.22 Initiation and investigation of a case under section 8(b)(7).

(a) The investigation of an alleged violation of section 8(b)(7) of the Act is initiated by the filing of a charge. The manner of filing such charge and the contents thereof are the same as described in §101.2. In some cases, at the time of the investigation of the charge, there may be pending a representation petition involving the employees of the employer named in the charge. In those cases, the results of the investigation of the charge will determine the cause of the petition.

(b) The investigation of the charge is conducted in accordance with the provisions of §101.4, insofar as they are applicable. If the investigation reveals

that there is merit in the charge, a complaint is issued as described in §101.8, and an application is made for an injunction under section 10(1) of the Act, as described in §101.37. If the investigation reveals that there is no merit in the charge, the Regional Director, absent a withdrawal of the charge, dismisses it, subject to appeal to the General Counsel. However, if the investigation reveals that issuance of a complaint may be warranted but for the pendency of a representation petition involving the employees of the employer named in the charge, action on the charge is suspended pending the investigation of the petition as provided in §101.23.

§ 101.23 Initiation and investigation of a petition in connection with a case under section 8(b)(7).

(a) A representation petition¹ involving the employees of the employer named in the charge is handled under an expedited procedure when the investigation of the charge has revealed that:

- (1) The employer's operations affect commerce within the meaning of the Act;
- (2) Picketing of the employer is being conducted for an object proscribed by section 8(b)(7) of the Act;
- (3) Subparagraph (C) of that section of the Act is applicable to the picketing; and
- (4) The petition has been filed within a reasonable period of time not to exceed 30 days from the commencement of the picketing.

In these circumstances, the member of the Regional Director's staff to whom the matter has been assigned investigates the petition to ascertain further: the unit appropriate for collective bargaining; and whether an election in that unit would effectuate the policies of the Act.

(b) If, based on such investigation, the Regional Director determines that an election is warranted, the Director

¹The manner of filing of such petition and the contents thereof are the same as described in §101.17, except that the petitioner is not required to allege that a claim was made on the employer for recognition or that the union represents a substantial number of employees.