

§ 102.133

(1) The communication, if it was written,

(2) A memorandum stating the substance of the communication, if it was oral,

(3) All written responses to the prohibited communication, and

(4) Memoranda stating the substance of all oral responses to the prohibited communication.

(b) The executive secretary, if the proceeding is then pending before the Board, the administrative law judge, if the proceeding is then pending before any such judge, or the regional director, if the proceeding is then pending before a hearing officer or the regional director, shall serve copies of all such materials placed on the public record of the proceeding on all other parties to the proceeding and on the attorneys of record for the parties. Within 14 days after the mailing of such copies, any party may file with the executive secretary, administrative law judge, or regional director serving the communication, and serve on all other parties, a statement setting forth facts or contentions to rebut those contained in the prohibited communication. All such responses shall be placed in the public record of the proceeding, and provision may be made for any further action, including reopening of the record which may be required under the circumstances. No action taken pursuant to this provision shall constitute a waiver of the power of the Board to impose an appropriate penalty under § 102.133.

[51 FR 32919, Sept. 17, 1986]

§ 102.133 Penalties and enforcement.

(a) Where the nature and circumstances of a prohibited communication made by or caused to be made by a party to the proceeding are such that the interests of justice and statutory policy may require remedial action, the Board, administrative law judge, or regional director, as the case may be, may issue to the party making the communication a notice to show cause, returnable before the Board within a stated period not less than 7 days from the date thereof, why the Board should not determine that the interests of justice and statutory policy require that the claim or interest

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in the proceeding of a party who knowingly makes a prohibited communication or knowingly causes a prohibited communication to be made, should be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(b) Upon notice and hearing, the Board may censure, suspend, or revoke the privilege of practice before the agency of any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication. However, before the Board institutes formal proceedings under this subsection, it shall first advise the person or persons concerned in writing that it proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than 7 days from the date thereof, why it should be take such action.

(c) The Board may censure, or, to the extent permitted by law, suspend, dismiss, or institute proceedings for the dismissal of, any Board agent who knowingly and willfully violates the prohibitions and requirements of this rule.

[42 FR 15410, Mar. 22, 1977]

Subpart Q—Procedure Governing Matters Affecting Employment-Management Agreements Under the Postal Reorganization Act

§ 102.135 Employment-management agreements.

(a) *Employment-management agreements.* All matters within the jurisdiction of the National Labor Relations Board pursuant to the Postal Reorganization Act (chapter 12 of title 39, U.S. Code, as revised) shall be governed by the provisions of subparts A, B, C, D, F, G, I, J, K, L, M, O, and P of the rules and regulations insofar as applicable.

(b) *Inconsistencies.* To the extent that any provision of this subpart Q is inconsistent with any provision of title 39, United States Code, the provision of said title 39 shall govern.

(c) *Exceptions.* For the purposes of this subpart, references in the subparts of the rules and regulations cited above