

National Labor Relations Board

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financial information alleged to be confidential.

(b) Upon filing, the application shall be referred by the Board to the administrative law judge who heard the adversary adjudication upon which the application is based, or, in the event that proceeding had not previously been heard by an administrative law judge, it shall be referred to the chief administrative law judge for designation of an administrative law judge, in accordance with § 102.34, to consider the application. When the administrative law judge to whom the application has been referred is or becomes unavailable the provisions of §§ 102.34 and 102.36 shall be applicable.

(c) Proceedings for the award of fees, but not the time limit of this section for filing an application for an award, shall be stayed pending final disposition of the adversary adjudication in the event any person seeks reconsideration or review of the decision in that proceeding.

(d) For purposes of this section the withdrawal of a complaint by a regional director under § 102.18 of these rules shall be treated as a final order, and an appeal under § 102.19 of these rules shall be treated as a request for reconsideration of that final order.

§ 102.149 Filing of documents; service of documents; motions for extension of time.

(a) All motions and pleadings after the time the case is referred by the Board to the administrative law judge until the issuance of the judge's decision shall be filed with the administrative law judge in triplicate together with proof of service. Copies of all documents filed shall be served on all parties to the adversary adjudication.

(b) Motions for extensions of time to file motions, documents, or pleadings permitted by section 102.150 or by section 102.152 shall be filed with the chief administrative law judge in Washington, D.C., the associate chief judge in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be, not later than 3 days before the due date of the document. Notice of the request shall be immediately served on

all other parties and proof of service furnished.

[46 FR 48087, Sept. 30, 1981, as amended at 62 FR 1668, Jan. 13, 1997]

§ 102.150 Answer to application; reply to answer; comments by other parties.

(a) Within 35 days after service of an application the general counsel may file an answer to the application. Unless the general counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file a timely answer may be treated as a consent to the award requested. The filing of a motion to dismiss the application shall stay the time for filing an answer to a date 35 days after issuance of any order denying the motion. Within 21 days after service of any motion to dismiss, the applicant shall file a response thereto. Review of an order granting a motion to dismiss an application in its entirety may be obtained by filing a request therefor with the Board in Washington, DC, pursuant to § 102.27 of these rules.

(b) If the General Counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate toward a settlement. The filing of such a statement shall extend the time for filing an answer for an additional 35 days.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the General Counsel's position. If the answer is based on alleged facts not already in the record of the adversary adjudication supporting affidavits shall be provided or a request made for further proceedings under § 102.152.

(d) Within 21 days after service of an answer, the applicant may file a reply. If the reply is based on alleged facts not already in the record of the adversary adjudication, supporting affidavits shall be provided or a request made for further proceedings under § 102.152.

(e) Any party to an adversary adjudication other than the applicant and the general counsel may file comments on a fee application within 35 days after it is served and on an answer

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within 21 days after it is served. A commenting party may not participate further in the fee application proceeding unless the administrative law judge determines that such participation is required in order to permit full exploration of matters raised in the comments.

[46 FR 48087, Sept. 30, 1981, as amended at 51 FR 23750, July 1, 1986; 51 FR 32919, Sept. 17, 1986]

§ 102.151 Settlement.

The applicant and the General Counsel may agree on a proposed settlement of the award before final action on the application. If a prevailing party and the General Counsel agree on a proposed settlement of an award before an application has been filed, the proposed settlement shall be filed with the application. All such settlements shall be subject to approval by the Board.

§ 102.152 Further proceedings.

(a) Ordinarily the determination of an award will be made on the basis of the documents in the record. The administrative law judge, however, upon request of either the applicant or the General Counsel, or on his or her own initiative, may order further proceedings, including an informal conference, oral argument, additional written submissions or an evidentiary hearing. An evidentiary hearing shall be held only when necessary for resolution of material issues of fact.

(b) A request that the administrative law judge order further proceedings under this section shall specifically identify the disputed issues and the evidence sought to be adduced, and shall explain why the additional proceedings are necessary to resolve the issues.

(c) An order of the administrative law judge scheduling further proceedings shall specify the issues to be considered.

(d) Any evidentiary hearing held pursuant to this section shall be open to the public and shall be conducted in accordance with §§ 102.30 to 102.44 of these rules, except §§ 102.33, 102.34 and 102.38.

(e) Rulings of the administrative law judge shall be reviewable by the Board only in accordance with the provisions of § 102.26.

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

(a) Upon conclusion of proceedings under §§ 102.147 to 102.152, the administrative law judge shall prepare a decision. The decision shall include written findings and conclusions as necessary to dispose of the application. 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. 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 record in a proceeding on an application for an award of fees and expenses shall include the application and any amendments or attachments thereto, the net worth exhibit, the answer and any amendments or attachments thereto, any reply to the answer, any comments by other parties, motions, rulings, orders, stipulations, written submissions, the stenographic transcript of any oral argument, the stenographic transcript of any hearing, exhibits and depositions, together with the administrative law judge's decision and exceptions, any cross-exceptions or answering briefs as provided in § 102.46, and the record of the adversary adjudication upon which the application is based.

§ 102.154 Exceptions to administrative law judge's decision; briefs; action of Board.

Procedures before the Board, including the filing of exceptions to the administrative law judge's decision and briefs, and action by the Board, shall be in accordance with §§ 102.46, 102.47, 102.48 and 102.50 of these rules. The Board will issue a decision on the application or remand the proceeding to the administrative law judge for further proceedings.