

§ 102.81

as a stay of any action by the regional director.

[24 FR 9102, Nov. 7, 1959, as amended at 26 FR 3892, May 4, 1961]

§ 102.81 Review by the general counsel of refusal to proceed on charge; resumption of proceedings upon charge held during pendency of petition; review by the general counsel of refusal to proceed on related charge.

(a) Where an election has been directed by the regional director or the Board in accordance with the provisions of §§ 102.77 and 102.78, the regional director shall decline to issue a complaint on the charge, and he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making the charge may obtain a review of such action by filing an appeal with the general counsel in Washington, DC, and filing a copy of the appeal with the regional director, within 7 days from the service of the notice of such refusal by the regional director. In all other respects the appeal shall be subject to the provisions of § 102.19. Such appeal shall not operate as a stay of any action by the regional director.

(b) Where an election has not been directed and the petition has been dismissed in accordance with the provisions of § 102.80, the regional director shall resume investigation of the charge and shall proceed in accordance with § 102.74.

(c) If in connection with an 8(b)(7) proceeding, unfair labor practice charges under other sections of the act have been filed and the regional director upon investigation has declined to issue a complaint upon such charges, he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making such charges may obtain a review of such action by filing an appeal with the general counsel in Washington, DC, and filing a copy of the appeal with the regional director, within 7 days from the service of the notice of such refusal by the regional director.

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In all other respects the appeal shall be subject to the provisions of § 102.19.

[32 FR 9550, July 1, 1967, as amended at 51 FR 23749, July 1, 1986]

§ 102.82 Transfer, consolidation, and severance.

The provisions of §§ 102.33 and 102.72, respecting the filing of a charge or petition with the general counsel and the transfer, consolidation, and severance of proceedings, shall apply to proceedings under this subpart, except that the provisions of §§ 102.73 to 102.81, inclusive, shall govern proceedings before the general counsel.

Subpart E—Procedure for Referendum Under Section 9(e) of the Act

§ 102.83 Petition for referendum under section 9(e)(1) of the Act; who may file; where to file; withdrawal.

A petition to rescind the authority of a labor organization to make an agreement requiring as a condition of employment membership in such labor organization may be filed by an employee or group of employees on behalf of 30 percent or more of the employees in a bargaining unit covered by such an agreement. The petition 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 the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. One original of the petition shall be filed with the Regional Director wherein the bargaining unit exists or, if the unit exists in two or more Regions, with the Regional Director for any of such Regions. A person filing a petition 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. The petition may be withdrawn only with the approval of the Regional Director with whom such petition was filed, except that if the proceeding has been transferred to the Board, pursuant to § 102.67, the petition may be

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withdrawn only with the consent of the Board. Upon approval of the withdrawal of any petition the case shall be closed.

[67 FR 658, Jan. 7, 2002]

§ 102.84 Contents of petition to rescind authority.

- (a) The name of the employer.
- (b) The address of the establishments involved.
- (c) The general nature of the employer's business.
- (d) A description of the bargaining unit involved.
- (e) The name and address of the labor organization whose authority it is desired to rescind.
- (f) The number of employees in the unit.
- (g) Whether there is a strike or picketing in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.
- (h) The date of execution and of expiration of any contract in effect covering the unit involved.
- (i) The name and address of the person designated to accept service of documents for petitioners.
- (j) Any other relevant facts.

§ 102.85 Investigation of petition by regional director; consent referendum; directed referendum.

Where a petition has been filed pursuant to §102.83 and it appears to the regional director that the petitioner has made an appropriate showing, in such form as the regional director may determine, that 30 percent or more of the employees within a unit covered by an agreement between their employer and a labor organization requiring membership in such labor organization desire to rescind the authority of such labor organization to make such an agreement, he shall proceed to conduct a secret ballot of the employees involved on the question whether they desire to rescind the authority of the labor organization to make such an agreement with their employer: *Provided, however,* That in any case in which it appears to the regional director that the proceeding raises questions which cannot be decided without

a hearing, he may issue and cause to be served on the parties a notice of hearing before a hearing officer at a time and place fixed therein. The regional director shall fix the time and place of the election, eligibility requirements for voting, and other arrangements of the balloting, but the parties may enter into an agreement, subject to the approval of the regional director, fixing such arrangements. In any such consent agreements, provision may be made for final determination of all questions arising with respect to the balloting by the regional director or by the Board.

[26 FR 3892, May 4, 1961]

§ 102.86 Hearing; posthearing procedure.

The method of conducting the hearing and the procedure following the hearing, including transfer of the case to the Board, shall be governed, insofar as applicable, by §§102.63 to 102.68, inclusive.

§ 102.87 Method of conducting balloting; postballoting procedure.

The method of conducting the balloting and the postballoting procedure shall be governed by the provisions of §102.69, insofar as applicable.

§ 102.88 Refusal to conduct referendum; appeal to Board.

If, after a petition has been filed, and prior to the close of the hearing, it shall appear to the regional director that no referendum should be conducted, he shall dismiss the petition by administrative action. Such dismissal shall be in writing and accompanied by a simple statement of the procedural or other grounds. The petitioner may obtain a review of such action by filing a request therefor with the Board in Washington, DC, and filing a copy of such request with the regional director and the other parties within 14 days from the service of notice of such dismissal. The request shall contain a complete statement setting forth the facts and reasons upon which the request is based.

[51 FR 30636, Aug. 28, 1986]