

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Revisions of Regulations Governing Stipulated Records Filed With the Board or With the Board's Administrative Law Judges

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is amending its regulations governing stipulated record cases to delete an outdated procedure for filing stipulated records with its Administrative Law Judges and to substitute an alternative procedure governing stipulated record cases filed either with the Board or with an Administrative Law Judge.

DATES: Effective: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, (202) 273-1936.

SUPPLEMENTARY INFORMATION: Section 102.35(a)(9) of the National Labor Relations Board's rules provides for a limited form of stipulation before Administrative Law Judges in which, following a hearing, transcripts are dispensed with and exceptions to findings of fact are waived. 29 CFR 102.35(a)(9). This provision was adopted several decades ago. It is never used today and was not used much at the time it was adopted. For this reason, the Board has decided to eliminate this procedure from its rules.

The Board has, on occasion, permitted parties to file stipulated records directly with it along with requests that the stipulated cases be decided without an evidentiary hearing. Typically these are cases in which the facts are not in dispute and the parties wish expedited consideration of what they perceive to be purely legal issues. Because this practice has never been memorialized in the Board's rules, the Board is adding it now. The same practice will also be made available in proceedings before Administrative Law Judges.

In describing the procedures for submitting a stipulation of facts, the rule states that a statement of the issues presented should be set forth in the stipulation and that each party should also submit a short statement (no more than three pages) of its position on the issues. The Board's experience with stipulations of facts has been that, while the parties know the contested issues and their positions on those issues, a mere stipulation of facts by itself may not be sufficient to convey that

important information to the Board. Including a statement of issues in the stipulation of facts and submitting a short statement of each party's position on those issues will assist the Board in determining whether it wishes to decide a case without the benefit of a full hearing and a judge's decision.

For these reasons, the Board has decided to eliminate the former Section 102.35(a)(9) and substitute for it a brief statement outlining the procedures for submitting stipulated records to it or to its Administrative Law Judges.

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely permit parties to a Board proceeding to submit requests to have cases decided on a stipulated record.

Executive Order 12866

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, the proposed changes in the Board's rules would not be classified as "significant rules" under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth in the preamble, the National Labor Relations Board is amending 29 CFR Chapter I, Part 102, as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for part 102 continues to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 442a(j) and (k) of the Privacy Act (5 U.S.C. 552a(j) and (k)). Sections 102.143 through 102.155 also issued under sec. 504(c)(1) of the Equal Access to Justice Act as amended (5 U.S.C. 504(c)(1)).

2. Section 102.35 is amended by revising the heading and by further revising paragraph (a)(9) to read as follows:

§ 102.35 Duties and powers of administrative law judges; stipulations of cases to administrative law judges or to the Board; assignment and powers of settlement judges.

(a) * * *

(9) To approve stipulations, including stipulations of facts that waive a hearing and provide for a decision by the administrative law judge. Alternatively, the parties may agree to waive a hearing and decision by an administrative law judge and submit directly to the Executive Secretary a stipulation of facts, which, if approved, provides for a decision by the Board. A statement of the issues presented should be set forth in the stipulation of facts and each party should also submit a short statement (no

more than three pages) of its position on the issues. If the administrative law judge (or the Board) approves the stipulation, the administrative law judge (or the Board) will set a time for the filing of briefs. In proceedings before an administrative law judge, no further briefs shall be filed except by special leave of the administrative law judge. In proceedings before the Board, answering briefs may be filed within 14 days, or such further period as the Board may allow, from the last date on which an initial brief may be filed. No further briefs shall be filed except by special leave of the Board. At the conclusion of the briefing schedule, the judge (or the Board) will decide the case or make other disposition of it.

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Dated, Washington, DC, December 21, 2001.

By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules Eliminating Requirement to File Extra Copies of Unfair Labor Practice Charges and Representation Petitions With the National Labor Relations Board

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is revising its rules that govern filing extra copies of unfair labor practice charges and representation petitions with the Board. The revisions are being adopted in order to relieve persons filing charges and petitions from the requirement of having to file extra copies which, as a practical matter, the Board no longer needs. The intended effect of the revisions is to relieve members of the public of paperwork burdens without adversely affecting case processing.

EFFECTIVE DATE: February 6, 2002.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Telephone: (202) 273-1936.

SUPPLEMENTARY INFORMATION: At present, the rules of the National Labor Relations Board (NLRB) provide that

parties filing unfair labor practice charges (section 102.11, 29 CFR 102.11), petitions for certification or decertification (section 102.60(a), 29 CFR 102.60(a)), and petitions for referendum under 29 U.S.C. sec. 9(e)(1) of the National Labor Relations Act (section 102.83, 29 CFR 102.83) must file an original and at least four additional copies of such charges or petitions. Although the number of copies required has changed slightly over the years, the requirement to file extra copies of charges and petitions dates to the inception of the NLRB in 1936, a time predating modern photocopy methods. In those days, extra copies were required in order to facilitate service of those documents by the Board on other parties as well as for the Board to maintain extra copies that its staff needed when processing the charges or petitions. Upon receipt of the charge or petition, a Board employee would assign a case number to the incoming document, stamp that number on each of the copies, and then serve or distribute those copies as needed.

At the present time, Regional Offices of the Board generally find that it is simpler and more cost-efficient just to enter the date and the number of the case on the original of the filed charge or petition and then photocopy that document for service and distribution. This practice was implicitly recognized when the Board's Rules were amended in 1995 to permit filing charges and petitions by facsimile transmission and not to require extra copies filed in that manner, beyond the requirement to send in a signed original in addition to the document filed by facsimile. The amendments the Board is now making remove the requirements to file extra copies of charges or petitions filed in any manner.

Finally, in reviewing this proposal, we found that we had omitted to include in § 102.83 a reference to the requirement that persons who file petitions covered by that section by facsimile transmission shall also file an original for the Agency's records. We now amend § 102.83 to include that reference.

Executive Order 12866

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, the proposed changes in the Board's rules would not be classified as "significant rules" under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers,

individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$ 100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely relieve members of the public of an unnecessary requirement to file extra copies of charges or petitions with the NLRB.

Paperwork Reduction Act

These rules are not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since they do not contain any new information collection requirements.

Small Business Regulatory Enforcement Fairness Act

Because these rules relate to Agency procedure and practice and merely modify the agency's filing procedures, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

To relieve members of the public of the unnecessary burden of filing extra copies of charges or petitions with the NLRB, the Board amends 29 CFR part 102 as follows: