

## National Labor Relations Board

## § 102.128

rights, privileges, or immunities granted or guaranteed under section 222(f) of the Communications Act of 1934, as amended.

### § 102.123 Amendment or rescission of rules.

Any rule or regulation may be amended or rescinded by the Board at any time.

### Subpart O—Amendments

#### § 102.124 Petitions for issuance, amendment, or repeal of rules.

Any interested person may petition the Board, in writing, for the issuance, amendment, or repeal of a rule or regulation. An original and seven copies of such petition shall be filed with the Board in Washington, DC, and shall state the rule or regulation proposed to be issued, amended, or repealed, together with a statement of grounds in support of such petition.

[29 FR 15922, Nov. 28, 1964]

#### § 102.125 Action on petition.

Upon the filing of such petition, the Board shall consider the same and may thereupon either grant or deny the petition in whole or in part, conduct an appropriate hearing thereon, or make other disposition of the petition. Should the petition be denied in whole or in part, prompt notice shall be given of the denial, accompanied by a simple statement of the grounds unless the denial is self-explanatory.

### Subpart P—Ex Parte Communications

AUTHORITY: Sec. 6, National Labor Relations Act, as amended (49 Stat. 452; 29 U.S.C. 156).

SOURCE: 42 FR 13113, Mar. 8, 1977, unless otherwise noted.

#### § 102.126 Unauthorized communications.

(a) No interested person outside this agency shall, in an on-the-record proceeding of the types defined in § 102.128, make or knowingly cause to be made any prohibited ex parte communication to Board agents of the categories des-

ignated in that section relevant to the merits of the proceeding.

(b) No Board agent of the categories defined in § 102.128, participating in a particular proceeding as defined in that section, shall (i) request any prohibited ex parte communications; or (ii) make or knowingly cause to be made any prohibited ex parte communications about the proceeding to any interested person outside this agency relevant to the merits of the proceeding.

#### § 102.127 Definitions.

When used in this subpart:

(a) The term *person outside this agency*, to whom the prohibitions apply, shall include any individual outside this agency, partnership, corporation, association, or other entity, or an agent thereof, and the general counsel or his representative when prosecuting an unfair labor practice proceeding before the Board pursuant to section 10(b) of the Act.

(b) The term *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, subject however, to the provisions of §§ 102.129 and 102.130.

#### § 102.128 Types of on-the-record proceedings; categories of Board agents; and duration of prohibition.

Unless otherwise provided by specific order of the Board entered in the proceeding, the prohibition of § 102.126 shall be applicable in the following types of on-the-record proceedings to unauthorized ex parte communications made to the designated categories of Board agents who participate in the decision, from the stage of the proceeding specified until the issues are finally resolved by the Board for the purposes of that proceeding under prevailing rules and practices:

(a) In a preelection proceeding pursuant to section 9(c)(1) or 9(e), or in a unit clarification or certification amendment proceeding pursuant to section 9(b) of the Act, in which a formal hearing is held, communications to the regional director and members of his staff who review the record and prepare a draft of his decision, and members of the Board and their legal

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assistants, from the time the hearing is opened.

(b) In a postelection proceeding pursuant to section 9(c)(1) or 9(e) of the Act, in which a formal hearing is held, communications to the hearing officer, the regional director and members of his staff who review the record and prepare a draft of his report or decision, and members of the Board and their legal assistants, from the time the hearing is opened.

(c) In a postelection proceeding pursuant to section (c)(1) or 9(e), or in a unit clarification or certification amendment proceeding pursuant to section 9(b) of the Act, in which no formal hearing is held, communications to members of the Board and their legal assistants, from the time the regional director's report or decision is issued.

(d) In a proceeding pursuant to section 10(k) of the Act, communications to members of the Board and their legal assistants, from the time the hearing is opened.

(e) In an unfair labor practice proceeding pursuant to section 10(b) of the Act, communications to the administrative law judge assigned to hear the case or to make rulings upon any motions or issues therein and members of the Board and their legal assistants, from the time the complaint and/or notice of hearing is issued, or the time the communicator has knowledge that a complaint or notice of hearing will be issued, whichever occurs first.

(f) In any other proceeding to which the Board by specific order makes the prohibition applicable, to the categories of personnel and from the stage of the proceeding specified in the order.

### § 102.129 Communications prohibited.

Except as provided in §102.130, *ex parte* communications prohibited by §102.126 shall include:

(a) Such communications, when written, if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding in accordance with the provisions of §102.114(a).

(b) Such communications, when oral, unless advance notice thereof is given by the communicator to all parties in

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the proceeding and adequate opportunity afforded to them to be present.

[42 FR 13113, Mar. 8, 1977, as amended at 51 FR 30636, Aug. 28, 1986; 51 FR 32919, Sept. 17, 1986]

### § 102.130 Communications not prohibited.

*Ex parte* communications prohibited by §102.126 shall not include:

(a) Oral or written communications which relate solely to matters which the hearing officer, regional director, administrative law judge, or member of the Board is authorized by law or Board rules to entertain or dispose of on an *ex parte* basis.

(b) Oral or written requests for information solely with respect to the status of a proceeding.

(c) Oral or written communications which all the parties to the proceeding agree, or which the responsible official formally rules, may be made on an *ex parte* basis.

(d) Oral or written communications proposing settlement or an agreement for disposition of any or all issues in the proceeding.

(e) Oral or written communications which concern matters of general significance to the field of labor-management relations or administrative practice and which are not specifically related to pending on-the-record proceedings.

(f) Oral or written communications from the general counsel to the Board when the general counsel is acting as counsel for the Board.

### § 102.131 Solicitation of prohibited communications.

No person shall knowingly and willfully solicit the making of an unauthorized *ex parte* communication by any other person.

### § 102.132 Reporting of prohibited communications; penalties.

(a) Any Board agent of the categories defined in §102.128 to whom a prohibited oral *ex parte* communication is attempted to be made shall refuse to listen to the communication, inform the communicator of this rule, and advise him that if he has anything to say it should be said in writing with copies to all parties. Any such Board agent who