

National Labor Relations Board

§ 102.25

San Francisco, California, with the associate chief judge in New York, New York, or with the associate chief judge in Atlanta, Georgia, as the case may be. All motions made at the hearing shall be made in writing to the administrative law judge or stated orally on the record. All motions filed subsequent to the hearing, but before the transfer of the case to the Board pursuant to §102.45, shall be filed with the administrative law judge, care of the chief administrative law judge in Washington, DC, 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. Motions shall briefly state the order or relief applied for and the grounds therefor. All motions filed with a Regional Director or an administrative law judge as set forth above shall be filed therewith by transmitting three copies thereof together with an affidavit of service on the parties. All motions filed with the Board, including motions for summary judgment or dismissal, shall be filed with the Executive Secretary of the Board in Washington, DC, by transmitting eight copies thereof together with an affidavit of service on the parties. Unless otherwise provided in these rules, motions and responses thereto shall be filed promptly and within such time as not to delay the proceeding.

(b) All motions for summary judgment or dismissal shall be filed with the Board no later than 28 days prior to the scheduled hearing. Where no hearing is scheduled, or where the hearing is scheduled less than 28 days after the date for filing an answer to the complaint or compliance specification, whichever is applicable, the motion shall be filed promptly. Upon receipt of the motion, the Board may deny the motion or issue a notice to show cause why the motion should not be granted. If a notice to show cause is issued, the hearing, if scheduled, will normally be postponed indefinitely. If a party desires to file an opposition to the motion prior to issuance of the notice to show cause in order to prevent postponement of the hearing, it may do so; *Provided however*, That any such opposition shall be filed no later than 21

days prior to the hearing. If a notice to show cause is issued, an opposing party may file a response thereto notwithstanding any opposition it may have filed prior to issuance of the notice. The time for filing the response shall be fixed in the notice to show cause. It is not required that either the opposition or the response be supported by affidavits or other documentary evidence showing that there is a genuine issue for hearing. The Board in its discretion may deny the motion where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist. If the opposing party files no opposition or response, the Board may treat the motion as conceded, and summary judgment or dismissal, if appropriate, shall be entered.

[54 FR 38516, Sept. 19, 1989, as amended at 54 FR 51197, Dec. 13, 1989; 62 FR 1668, Jan. 13, 1997]

§ 102.25 Ruling on motions.

An administrative law judge designated by the chief administrative law judge, by the associate chief judge in San Francisco, California, by the associate chief judge in New York, New York, or by the associate chief judge in Atlanta, Georgia, as the case may be, shall rule on all prehearing motions (except as provided in §§102.16, 102.22, 102.29, and 102.50), and all such rulings and orders shall be issued in writing and a copy served on each of the parties. The administrative law judge designated to conduct the hearing shall rule on all motions after opening of the hearing (except as provided in §102.47), and any orders in connection therewith, if announced at the hearing, shall be stated orally on the record; in all other cases the administrative law judge shall issue such rulings and orders in writing and shall cause a copy of the same to be served on each of the parties, or shall make his ruling in his decision. Whenever the administrative law judge has reserved his ruling on any motion, and the proceeding is thereafter transferred to and continued

§ 102.26

before the Board pursuant to §102.50, the Board shall rule on such motion.

(49 Stat. 449; 29 U.S.C. 151-166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151-167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141-168), (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[45 FR 51193, Aug. 1, 1980, as amended at 62 FR 1668, Jan. 13, 1997]

§ 102.26 Motions, rulings, and orders part of the record; rulings not to be appealed directly to the Board without special permission; requests for special permission to appeal.

All motions, rulings, and orders shall become a part of the record, except that rulings on motions to revoke subpoenas shall become a part of the record only upon the request of the party aggrieved thereby as provided in §102.31. Unless expressly authorized by the Rules and Regulations, rulings by the regional director or by the administrative law judge on motions and/or by the administrative law judge on objections, and orders in connection therewith, shall not be appealed directly to the Board except by special permission of the Board, but shall be considered by the Board in reviewing the record if exception to the ruling or order is included in the statement of exceptions filed with the Board pursuant to §102.46. Requests to the Board for special permission to appeal from a ruling of the regional director or of the administrative law judge, together with the appeal from such ruling, shall be filed promptly, in writing, and shall briefly state the reasons special permission should be granted and the grounds relied on for the appeal. The moving party shall immediately serve a copy of the request for special permission and of the appeal on the other parties and, if the request involves a ruling by an administrative law judge, on the administrative law judge. Any statement in opposition or other response to the request and/or to the appeal shall be filed promptly, in writing, and shall be served immediately on the other parties and on the administrative law judge, if any. If the Board grants the request for special permission to

29 CFR Ch. I (7-1-03 Edition)

appeal, it may proceed forthwith to rule on the appeal.

[47 FR 40770, Sept. 15, 1982]

§ 102.27 Review of granting of motion to dismiss entire complaint; reopening of the record.

If any motion in the nature of a motion to dismiss the complaint in its entirety is granted by the administrative law judge before filing his decision, any party may obtain a review of such action by filing a request therefor with the Board in Washington, DC, stating the grounds for review, and immediately on such filing shall serve a copy thereof on the regional director and on the other parties. Unless such request for review is filed within 28 days from the date of the order of dismissal, the case shall be closed.

[51 FR 23746, July 1, 1986]

§ 102.28 Filing of answer or other participation in proceedings not a waiver of rights.

The right to make motions or to make objections to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the administrative law judge or the Board.

[45 FR 51192, Aug. 1, 1980]

INTERVENTION

§ 102.29 Intervention; requisites; rulings on motions to intervene.

Any person desiring to intervene in any proceeding shall file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. Prior to the hearing, such a motion shall be filed with the regional director issuing the complaint; during the hearing such motion shall be made to the administrative law judge. An original and four copies of written motions shall be filed. Immediately upon filing such motion, the moving party shall serve a copy thereof upon each of the other parties. The regional director shall rule upon all such motions filed prior to the hearing, and shall cause a copy of said rulings to be served upon each of the other parties,