

National Labor Relations Board

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(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against selfincrimination. Requests for the issuance of such an order by the Board may be made by any party. Prior to hearing, and after transfer of the proceeding to the Board, such requests shall be made to the Board in Washington, DC, and the Board shall take such action thereon as it deems appropriate. During the hearing, and thereafter while the proceeding is pending before the administrative law judge, such requests shall be made to the administrative law judge. If the administrative law judge denies the request, his ruling shall be subject to appeal to the Board in Washington, DC, in the manner and to the extent provided in §102.26 with respect to rulings and orders by an administrative law judge, except that requests for permission to appeal in this instance shall be filed within 24 hours of the administrative law judge's ruling. If no appeal is sought within such time, or the appeal is denied, the ruling of the administrative law judge shall become final and his denial shall become the ruling of the Board. If the administrative law judge deems the request appropriate, he shall recommend that the Board seek the approval of the Attorney General for the issuance of the order, and the Board shall take such action on the administrative law judge's recommendation as it deems appropriate. Until the Board has issued the requested order no individual who claims the privilege against self-incrimination shall be required, or permitted, to testify or to give other information respecting the subject matter of the claim.

(d) Upon the failure of any person to comply with a subpoena issued upon the request of a private party, the general counsel shall, in the name of the Board but on relation of such private party, institute proceedings in the appropriate district court for the enforcement thereof, unless in the judgment of the Board the enforcement of such subpoena would be inconsistent with law and with the policies of the act. Neither the general counsel nor the Board shall be deemed thereby to have assumed responsibility for the effective

prosecution of the same before the court.

(e) Persons compelled to submit data or evidence at a public proceeding are entitled to retain or, on payment of lawfully prescribed costs, to procure copies or transcripts of the data or evidence submitted by them. Persons compelled to submit data or evidence in the nonpublic investigative stages of proceedings may, for good cause, be limited by the regional director to inspection of the official transcript of their testimony, but shall be entitled to make copies of documentary evidence or exhibits which they have produced.

[24 FR 9102, Nov. 7, 1959, as amended at 35 FR 18797, Dec. 11, 1970; 62 FR 9931, Mar. 5, 1997]

§102.32 Payment of witness fees and mileage; fees of persons taking depositions.

Witnesses summoned before the trial examiner shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear and the person taking the deposition shall be paid by the party at whose instance the deposition is taken.

TRANSFER, CONSOLIDATION, AND SEVERANCE

§102.33 Transfer of charge and proceeding from region to region; consolidation of proceedings in same region; severance.

(a) Whenever the general counsel deems it necessary in order to effectuate the purposes of the Act or to avoid unnecessary costs or delay, he may permit a charge to be filed with him in Washington, DC, or may, at any time after a charge has been filed with a regional director pursuant to §102.10, order that such charge and any proceeding which may have been initiated with respect thereto:

(1) Be transferred to and continued before him for the purpose of investigation or consolidation with any other

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proceeding which may have been instituted in a regional office or with him; or

(2) Be consolidated with any other proceeding which may have been instituted in the same region; or

(3) Be transferred to and continued in any other region for the purpose of investigation or consolidation with any proceeding which may have been instituted in or transferred to such other region; or

(4) Be severed from any other proceeding with which it may have been consolidated pursuant to this section.

(b) The provisions of §§102.9 to 102.32, inclusive, shall, insofar as applicable, govern proceedings before the general counsel pursuant to this section, and the powers granted to regional directors in such provisions shall, for the purpose of this section, be reserved to and exercised by the general counsel. After the transfer of any charge and any proceeding which may have been instituted with respect thereto from one region to another pursuant to this section, the provisions of this subpart shall, insofar as applicable, govern such charge and such proceeding as if the charge had originally been filed in the region to which the transfer is made.

(c) The regional director may, prior to hearing, exercise the powers in paragraph (a)(2) and (4) of this section with respect to proceedings pending in his region.

(d) Motions to consolidate or sever proceedings after issuance of complaint shall be filed as provided in §102.24 and ruled upon as provided in §102.25, except that the regional director may consolidate or sever proceedings prior to hearing upon his own motion. Rulings by the administrative law judge upon motions to consolidate or sever may be appealed to the Board as provided in §102.26.

[32 FR 9549, July 1, 1967, as amended at 36 FR 9132, May 20, 1971]

HEARINGS

§ 102.34 Who shall conduct; to be public unless otherwise ordered.

The hearing for the purpose of taking evidence upon a complaint shall be conducted by an administrative law

judge designated by the chief administrative law judge in Washington, DC, or by the associate chief judge, 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, unless the Board or any member thereof presides. At any time an administrative law judge may be designated to take the place of the administrative law judge previously designated to conduct the hearing. Such hearing shall be public unless otherwise ordered by the Board or the administrative law judge.

(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]

§ 102.35 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) It shall be the duty of the administrative law judge to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. The administrative law judge shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the Board, subject to the Rules and Regulations of the Board and within its powers:

(1) To administer oaths and affirmations;

(2) To grant applications for subpoenas;

(3) To rule upon petitions to revoke subpoenas;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(6) To regulate the course of the hearing and, if appropriate or necessary, to exclude persons or counsel from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;