

10010–10040 INITIATION OF CASES

10010 Generally

The Agency can investigate unfair labor practice allegations only upon the filing of an appropriate charge. Sec. 101.2, Statements of Procedure and Sec. 10018.

10012 Prefiling Assistance/Information Officer

The Agency provides prefiling assistance to the public primarily through the Information Officer (I.O.) program. Under this program, Board agents are available daily in each field office to answer inquiries and, upon request, to assist members of the public who visit, telephone, or write the Regional Office in filing unfair labor practice charges and representation case petitions.

10012.1 Information

Board agents should answer public inquiries regarding the Act and the Agency accurately, completely, and as concisely as possible. Although Board agents are obligated to provide information, they may not give legal advice and should explain that advice cannot be given.

In this regard, Board agents must be cautious and consult with Regional Office management as appropriate when responding to questions, particularly during an organizational campaign or a highly publicized labor dispute. Thus, an agent should not offer an opinion as to whether any specific conduct violates the Act. Rather, the Board agent should describe the types of conduct which, depending on all of the surrounding circumstances, may constitute a violation of the Act.

Furthermore, the Board agent should inform the individual that statements of the agent cannot be considered as an official pronouncement of law binding on the Agency. In circumstances where an individual is essentially seeking legal advice, the Board agent may suggest that the individual seek private counsel. Although under no circumstances should a specific attorney be recommended, the Board agent may direct an individual to an appropriate local bar association referral service.

10012.2 Assistance in Filing a Charge

If an individual describes circumstances which may indicate a violation of the Act, the Board agent should advise such individual of the right to file a charge. The Board agent should assist in the preparation of any charge to the extent necessary. Such assistance may include identifying the sections of the Act involved and the basic theory of the allegations, furnishing the appropriate charge form and reasonable clerical assistance, and drafting the language of the charge itself.

10012.3 Situation Not Covered by the Act

If an individual presents a situation that is clearly not covered by the Act, the Board agent should so indicate and discourage the filing of a charge. If an individual asserts, however, the right to file a charge, the Board agent should take a charge. In all situations where an individual chooses not to file a charge, the Board agent should specifically describe the 6-month statute of limitations set forth in Section 10(b) of the Act. Sec. 10052.2. If, however, the individual describes a situation that appears to come within the purview of other laws, the Board agent should direct the individual to the appropriate agency.

10012.4 Website

For additional information concerning the Act and the Agency, including charge and petition forms, as well as references to Federal and State agencies dealing with employment-related matters, individuals should be referred to www.nlr.gov.

10012.5 Case Activity Tracking System (CATS) Records

Each Board agent must record in CATS all prefiling assistance and inquiries from the public and other Government agencies.

Promptly after providing assistance, whether in person, by phone, mail or electronically, the Board agent should enter all information required in the appropriate CATS window. Normally, the Board agent should include a concise description of the inquiry in the summary section.

10012.6 Obtaining an Affidavit During Visit to Information Officer

In appropriate circumstances, the Board agent serving as Information Officer or another Board agent should take an affidavit from available charging party witnesses at the time a charge is filed in order to expedite processing the case. Such circumstances include:

- The witness has traveled a substantial distance to the field office
- The witness will be otherwise unavailable for a considerable period
- The nature of the charge requires immediate investigation

10012.7 Assistance in Remediating Defects in Charge

If the Regional Office receives a charge that is facially incorrect (e.g., a charge that uses the wrong numbers of the sections alleged to have been violated or that incorporates supporting affidavits by reference), the Regional Office should assist the charging party in remediating the defect.

In such cases, docketing should be delayed pending a prompt communication with the charging party. If, however, the filing party insists that the charge be docketed as is

or delay will render the filing of the charge untimely under Section 10(b) of the Act, the Regional Office should docket and serve the charge.

10012.8 Service of Charge on Charged Party

Although the Regional Office will routinely serve a copy of a charge on the charged party following docketing of the charge, delays may occur before service is accomplished. Therefore, the Regional Office should advise the charging party that the primary responsibility in serving the charge on the charged party rests with the charging party.

10014 Case Designations

Each unfair labor practice charge is assigned a case number which includes the number of the Regional Office in which the charge is filed, followed by two letters which represent the sections of the Act alleged to have been violated, as set forth below:

- CA 8(a)(1), (2), (3), (4), and (5)
- CB 8(b)(1)(A) or (B), (2), (3), (5), and (6)
- CC 8(b)(4)(i) or (ii)(A), (B), and (C)
- CD 8(b)(4)(i) or (ii)(D)
- CP 8(b)(7)(A), (B), and (C)
- CE 8(e)
- CG 8(g)

10016 Charge Forms

The following charge forms are available in all field offices and on the Agency's website (www.nlr.gov) and are used for the purpose of filing unfair labor practice charges.

NLRB-501	Charge Against Employer	CA
NLRB-508	Charge Against Labor Organization or Agent	CB, CC, CD, CG, and CP
NLRB-509	Charge Alleging Unfair Labor Practices Under Section 8(e) of the NLRA	CE

The forms are self-explanatory and all sections of the forms should be completed before filing. As to CG charges, paragraph 1(e) of Form NLRB-508 should be modified by deleting reference to Section 8(b) and inserting reference to Section 8(g). The charging party must sign and date the charge. Sec. 102.12, Rules and Regulations.

10018 Charge Filing

A signed original charge and four copies should be filed, together with one copy for each additional charged party named, unless filed by facsimile. Sec. 102.11, Rules and Regulations.

10018.1 Facsimile Filing

A party may file a charge by facsimile pursuant to Sec. 102.114(f), Rules and Regulations. In such circumstances, the party should also file an original for the Agency's records. However, failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. Sec. 102.11, Rules and Regulations.

10018.2 Who May File

Any person or organization may file a charge. Sec. 102.9, Rules and Regulations. Care should be taken that the charge form set forth the proper identity and correct legal names of the charging party and of the charged party.

10018.3 Where to File

A charge is normally filed in person, by mail or by facsimile at a field office in the Region in which the unfair labor practices are alleged to have occurred. If the alleged unfair labor practices occurred in more than one Regional Office, the charge may be filed in any of such Regional Offices. Sec. 102.10, Rules and Regulations. For filing with the General Counsel, see Sec. 102.33, Rules and Regulations. In addition, a charge may be filed with a Board agent away from the Regional Office, in which case the Board agent should indicate the date of receipt and notify the Regional Office for assignment of a case number.

10020 Charge Allegations

In all C cases, the facts alleged in a charge to constitute the unfair labor practices should be set forth with some specificity but should not contain detailed evidentiary matter. In this connection, a charge should not normally incorporate by reference affidavits or other documents submitted in support of the charge. Suggested charge language for alleged violations of the Act is available in CATS and through Regional Office reference material.

10020.1 CA and CB Allegations

CA and CB charges should set forth the section of the Act alleged to have been violated and describe with adequate specificity the conduct alleged to be an unfair labor

practice, including allegedly violative statements. For instance, where discriminatory acts are asserted, all known alleged discriminatees should be named when practicable. Where, however, the names of all alleged discriminatees are not known, the charge should expressly state those known and add “and others whose names are presently unknown.”

10020.2 CC or CD Allegations

CC or CD charges should set forth the specific subsection(s) of 8(b)(4)(i) and/or (ii) alleged to have been violated. Even though CC allegations may involve numerous secondary employers, such allegations may be set forth in a single charge. See Secs. 10202–10204 regarding CC cases and Secs. 10206–10220 regarding CD cases.

10020.3 CE Allegations

In a CE charge, which may be filed against a labor organization, an employer or both, the allegations should include: the parties to the contract; the language of the clause at issue; and the date the clause was entered into or invoked. Secs. 10222–10224.

10020.4 CP Allegations

CP charges should set forth the specific subsection(s) of Section 8(b)(7) alleged to have been violated. Sec. 10230–10236.

10022 Assignment of Case

After a case has been docketed, it is categorized under Impact Analysis and assigned to a Board agent for investigation. Assignments should be made to provide for the most efficient and expeditious handling of cases. Among the factors that should be considered in the assignment of cases are the following:

- Impact Analysis Category. See Sec. 11740
- Complexity of the case, relative to the respective skills of Board agents
- Availability of Board agents, including scheduled appointments, travel plans and proximity to witnesses and location of dispute
- Respective workloads of Board agents
- Location of alleged unfair labor practices, relative to cases presently assigned respective Board agents
- Familiarity with background of the case
- Regional Office specialization of work
- Need to interview non-English speaking parties or witnesses

Every effort should be made to assign a case so that the investigation can be concluded within time frames consistent with Impact Analysis.

A case may be assigned by telephone or other means to a Board agent who is out of town so that an investigation may begin immediately.

10024 Notification to Board

When an R case is pending at the Board, the Regional Office should notify the Office of the Executive Secretary or the Office of Representation Appeals, as appropriate, of any significant developments that occur regarding the processing of a related C case. Examples of such developments include:

- The filing of a blocking charge when an R case with a scheduled election is pending in Representation Appeals. See Sec. 11730
- A settlement in a C case which, by its terms, would result in the withdrawal of an appeal in an R case pending before the Board
- The withdrawal of a charge which is blocking the processing of an R case pending before the Board

10025 Test of Certification Summary Judgment Cases

All Board agents, and particularly supervisory personnel assigning or otherwise processing incoming cases, must be alert to recognize test of certification cases which may lead to summary judgment proceedings and take appropriate steps from the outset to ensure that the expedited procedures described below are followed. Such cases involve an employer's general refusal to recognize and bargain with a union, which has been certified by the Regional Office or the Board after an election is conducted pursuant to Section 9 of the Act.

Once a summary judgment case is identified and the investigation establishes that respondent is refusing to recognize and bargain with the charging party union in order to test the certification, the complaint should be issued promptly. Absent extenuating circumstances, such complaints should issue within 14 days from filing of the charge. Since Motions for Summary Judgment in such cases follow the same general pattern and require similar attachments, such motions may be drafted prior to receipt of respondent's answer. Normally, a Regional Office should file its Motion for Summary Judgment within 7 days after respondent files its answer. See Sec. 10282 for procedures when filing a Motion for Summary Judgment.

10026 Interim 8(a)(5) Charges

When a new 8(a)(5) charge (herein an interim charge) is filed after the Regional Office has issued complaint seeking to compel the employer to recognize and bargain with the union, the following procedures should be followed:

(a) *Charge Seeking Only Bargaining Order*: An interim 8(a)(5) charge that simply alleges a continuation of the refusal to recognize and bargain with the union does not warrant the issuance of a new complaint. As the Board pointed out in *Canton Sign Co.*, 186 NLRB 237 (1970), no useful purpose can be served by an order based on such an interim charge where the employer is already subject to an order to bargain. Thus, enforcement of the bargaining order sought in an outstanding complaint will provide an early and effective remedy for the violations alleged in the interim charges. Accordingly, the Regional Office should dismiss such charges.

(b) *Charge Seeking Additional Remedial Action*: If, however, the interim charge is meritorious and alleges a violation that would require a remedy beyond the bargaining order sought in the first case (e.g., furnish information, rescind a unilateral change, make whole employees who suffered a loss by reason of such change), then a new complaint should issue. *Clark United Corp.*, 319 NLRB 328 (1995).

However, if respondent's sole defense is that no final bargaining order can be obtained in the first case, the Regional Office may suggest that litigation of the interim allegations can be avoided by a stipulation. Under such a stipulation, respondent would agree to remedy the interim violations if its position is ultimately rejected in the first case. Such a stipulation can be in the form of an informal or a formal settlement agreement, at the discretion of the Regional Office. In the former, respondent would agree with the Regional Director to take the remedial steps immediately after the court enforces the Board's order in the first case. In the latter, the respondent would agree that a Board order and court judgment providing such agreed upon remedial action can be entered immediately after the court enforces the Board's order in the first case. For its part, the Regional Office would agree to dismiss the charges if the Board's position in the first case is ultimately rejected.

10028 Communications with Parties

Agency policy concerning correspondence and communications with parties, including those involved in unfair labor practice proceedings, is set forth in Secs. 11842–11844. Specific directions concerning guidelines in communicating with represented parties is set forth in Sec. 10058. For guidance regarding attorney representatives, see Sec. 10058.2; for guidance regarding nonattorney representatives, see Sec. 10058.3.

10030 Public Access to Filings

All field offices will maintain and make readily available files containing copies of all charges for inspection by members of the public. However, absent unusual circumstances, charges will not be made available to the public until the day after they have been served on the charged party. Copies of charges should be maintained for the current and immediately preceding calendar years.

10040 Initial Notice to Parties Upon Filing of Charge**10040.1 Acknowledgment of Receipt**

Immediately upon docketing of a charge, a written acknowledgment of the filing, naming the Board agent assigned, is sent to the charging party. Copies of Forms NLRB-4541 and 4701 and the pamphlet concerning customer service standards should be enclosed.

10040.2 Right to Counsel and Notice of Appearance

Form NLRB-4541 advises a party of the right to be represented by counsel and summarizes the Board procedures with respect to the charge. Form NLRB-4701, Notice of Appearance, permits a party to conveniently notify the Agency of the name and address of its counsel or other representative. Sec. 10058.1(b).

10040.3 Updating Service Sheet

The service sheet maintained in the file and in CATS should be updated to reflect the current and correct representatives of the parties as well as their addresses and telephone numbers.

10040.4 Obtaining Facts from Charging Party

The Regional Office's initial letter should request that the charging party promptly submit a complete written account of all the facts and circumstances on which the charge is based, copies of all relevant contracts and/or other documents and the names and addresses of witnesses. In statutory priority and other appropriate cases, the Board agent may make such a request telephonically, electronically or by facsimile; the nature and form of the request should be tailored to fit the urgency of the situation. If the charging party is an employer, the initial letter should also request appropriate commerce information.

10040.5 Initial Letter to Charged Party and Service of Charge

Upon docketing, the Regional Office serves a copy of the charge by regular mail on the charged party, with an affidavit of service retained in the file. The Regional Director also sends to the charged party a letter giving the name of the Board agent to whom the case has been assigned, advising of the right to counsel and inviting full cooperation. If the charged party is an employer, the letter also requests appropriate commerce information. If the charged party is not an employer, a letter to the employer should request commerce information.

The letter should specifically request that the charged party submit a statement regarding the facts and circumstances that form the basis of the charge and should advise the charged party that full and complete cooperation includes, where relevant, timely providing all material witnesses under its control to a Board agent so that witnesses' statements can be reduced to affidavit form and providing all relevant documentary evidence requested by the Board agent. Copies of Forms NLRB-4541 and 4701 and the

pamphlet concerning customer service standards should be enclosed. The letter should also advise that the Regional Office will accept no limitation on the use of any statement of position submitted by the charged party in response to the charge. Sec. 10054.6. Further, the letter should assure the charged party that no organization or person seeking to represent them has any “inside knowledge” or favored relationship with the Agency and information regarding this matter is only that which must be made available to any member of the public under the Freedom of Information Act (FOIA).

Upon docketing a CD charge, the Regional Office serves a copy of the charge and the Notice of Charge Filed by regular mail on all parties, with an affidavit of service retained in the file.

10040.6 Notification to Potential Parties in Interest

In addition to the initial contacts with the charging party and the charged party described above, a copy of the charge should be served by regular mail on potential parties in interest, as soon as their identity becomes known, with an affidavit of service retained in the file. In such circumstances, the parties in interest should be advised of the right to be represented and sent copies of Forms NLRB-4541 and 4701.

Examples of such parties include:

- Any labor organization alleged to be dominated or assisted in an 8(a)(2) charge
- Any employer involved in a CC or CD case
- Any labor organization involved in a CD case
- In an 8(b)(2) case, any employer whom the charged union is allegedly causing or attempting to cause to violate Section 8(a)(3)
- Any party to a collective-bargaining agreement alleged to be invalid or unlawful, including CE situations
- Any business entity that is performing work alleged to have been subcontracted unlawfully

If appropriate, the Regional Office should also send a letter to such parties in interest requesting a written account of the pertinent facts and circumstances.

10040.7 Authorized U.S. Postal Service Representatives

The U.S. Postal Service designates authorized representatives to receive exclusive service of all charges arising in specified areas. Service of charges should be made on these agents and constitutes service within the meaning of Sec. 102.114 of the Rules and Regulations. This designation shall remain valid until a written revocation, signed by an appropriate official of the Postal Service, is filed with the General Counsel.