

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 09-59

April 23, 2009

TO: All Regional Directors, Officers-in-Charge
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Revised Pattern Dismissal Letter – Representation Cases

Memorandum OM 09-34 announced several changes to the electronic filing requirements. These changes require the revision of appeal language to be inserted in various types of letters issued in representation cases.

Attachment “A” is revised pattern dismissal language to be used when a Region is dismissing a petition (see Sec. 11102 of the Casehandling Manual for Representation Proceedings).

Attachment “B” is a revision of a portion of Sec. 11364.5 of the Manual.

Attachment “C” is a revision of Sec. 11366.2 of the Manual.

Attachment “D” is a revision of a portion of Sec. 11394.5 of the Manual.

Attachment “E” is a revision of Sec. 11396.2 of the Manual.

Any questions concerning this matter should be addressed to your Assistant General Counsel or Deputy.

/s/
R. A. S.

Attachments

cc: NLRBU
Release to the Public

Petitioner (or Designated Representative, if applicable)

Re: Case Name
Case Number

Salutation:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation, I find that further proceedings are unwarranted. The investigation disclosed that (reason for dismissal). Accordingly, I am dismissing the petition in this matter.

(Note: If a direct relationship exists between an unfair labor practice complaint and the petition, the reasons for dismissal of the petition should include a statement that the petition is subject to reinstatement after final disposition of the charge.)

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on (insert date 14 calendar days from the issuance of the letter), at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special

permission for a longer period within which to file.¹ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Very truly yours,
/s/
Regional Director

cc: Office of the Executive Secretary
Petitioner (unless addressed above because not represented by attorney)
Non-Attorney Representative of Petitioner
Other Parties and Representatives

¹ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

11364.5 Contents of Report or Supplemental Decision (portion)

Right to File Exceptions or Request for Review: A report pursuant to a consent election or full consent election agreement is final; there is no right of appeal. In these instances, the Director's Report should not include a statement of the right to request review or file exceptions. A report pursuant to a stipulated election agreement or a directed election should include a statement of the right to file exceptions. A supplemental decision should include a statement of the right to request review. The time by which such exceptions or request for review must be received by the Board in Washington, D.C. (14 days) should be stated. A statement should be included concerning the composition of the record. Accordingly, use the following patterns:

(a) Report Pursuant to Stipulated Election Agreement or Directed Election:

Right to File Exceptions: Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8 as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

Procedures for Filing Exceptions: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on (insert date 14 calendar days from the issuance of the Report), at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.² A copy of the exceptions must be served on each of

² A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of

the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(b) Supplemental Decision:

Right to File Request for Review: Pursuant to the provisions of Sections 102.69 and 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this Supplemental Decision by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Supplemental Decision, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

Procedures for Filing a Request for Review: (Insert final two paragraphs from pattern dismissal letter set forth at Sec. 11102)

time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Attachment C

11366.2 Directions to Hearing Officer

Consent Election Agreement and Full Consent Election Agreement: In the notice of hearing, the Regional Director should direct the hearing officer to prepare a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Regional Director; the hearing officer's report should provide for exceptions to be filed as follows:

Right to File Exceptions: Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may file exceptions to this Report with the Regional Director, Region (insert Region number).

Procedures for Filing Exceptions: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Regional Director, Region (insert number) by close of business on (insert date 14 calendar days from the issuance of the Report), at (insert office closing time) p.m. (insert time zone abbreviation), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 (insert full name of time zone, e.g., Eastern Time, Central Time, etc.)** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Regional Director may grant special permission for a longer period within which to file.³ A copy of the exceptions must be served on each of the other parties to the proceeding in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under Regional, Subregional & Resident Offices and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some

³ A request for extension of time, which may also be filed electronically, should be submitted to the Regional Director and a copy of such request for extension of time should be provided to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on each of the other parties in the proceeding in the same manner or a faster manner as that utilized in filing the request with the Regional Director.

other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

The Regional Director must thereafter rule in a report upon the hearing officer's report and such exceptions as may be filed. The Regional Director's report is not subject to appeal.

Stipulated Election Agreement: In the notice of hearing, the Regional Director should direct the hearing officer to prepare a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board; the hearing officer's report should provide for exceptions to be filed as follows:

Right to File Exceptions: Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

(Insert the final two paragraphs from pattern letter set forth at Sec. 11364.5(a) under the heading: **(a) Report Pursuant to Stipulated Election Agreement or Directed Election**).

Directed Election: In the notice of hearing, the Regional Director should direct the hearing officer to prepare a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to his/her attention or to the Board, whichever the Regional Director decides is appropriate.

If the Regional Director directs that the hearing officer's recommendations be made to his/her attention, then exceptions to the hearing officer's report will be filed with him/her. The hearing officer's report should provide for exceptions to be filed as follows:

Right to File Exceptions: Pursuant to the provisions of Sections 102.69 and 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may file exceptions to this Report with the Regional Director, Region (insert Region number).

(Insert final two paragraphs from pattern letter set forth at Sec. 11366.2 under the heading **Consent Election Agreement**).

The Regional Director must thereafter rule in a supplemental decision upon the hearing officer's report and such exceptions as may be filed. The Regional Director's supplemental decision is subject to a request for review to the Board.

If the Regional Director directs that the hearing officer's recommendations be made to the Board, the hearing officer's report should provide for exceptions to be filed as follows:

Right to File Exceptions: Pursuant to the provisions of Sections 102.69 and 102.67 of the National Labor Relations Board's Rules and Regulations, series 8, as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001.

(Insert final two paragraphs from pattern letter set forth at Sec. 11364.5(a) under heading **(a) Report Pursuant to Stipulated Election Agreement or Directed Election**)

Attachment D

11394.5 Contents of Report or Supplemental Proceeding (portion)

Right to File Exceptions or Request for Review: A report pursuant to a consent election agreement or a full consent election agreement is final; there is no right to appeal. In these instances, the Regional Director's Report should not include a statement of the right to request review or file exceptions. A report pursuant to a stipulated election agreement or a directed election should include a statement of the right to file exceptions. A supplemental decision should include a statement of the right to request review. The time by which such exceptions or request for review must be received by the Board in Washington, D.C. (14 days) should be stated. A statement should be included concerning the composition of the record. Accordingly, use the following patterns:

- (a) Report Pursuant to Stipulated Election Agreement or Directed Election:

(Insert pattern letter set forth at Sec. 11364.5(a).

- (b) Supplemental Decision

(Insert pattern letter set forth at Sec. 11364.5(b).

Attachment E

11396.2 Directions to Hearing Officer

Consent Election Agreement: In the notice of hearing, the Regional Director should direct the hearing officer to prepare a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Regional Director; and the hearing officer's report should provide for exceptions to be filed as follows:

(Insert pattern letter set forth at Sec. 11366.2 under the heading
Consent Election Agreement)

The Regional Director must thereafter rule in a report upon the hearing officer's report and such exceptions as may be filed. The Regional Director's report is not subject to appeal.

Stipulated Election Agreement: In the notice of hearing, the Regional Director should direct the hearing officer to prepare a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board; the hearing officer's report should provide for exceptions to be filed as follows:

(Insert pattern letter set forth at Sec. 11366.2 under the heading
Stipulated Election Agreement)

Directed Election: In the notice of hearing, the Regional Director should direct the hearing officer to prepare a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to his/her attention or to the Board, whichever the Regional Director decides is appropriate.

If the Regional Director directs that the hearing officer's recommendations be made to his/her attention, then exceptions to the hearing officer's report will be filed with him/her. The hearing officer's report should provide for exceptions to be filed as follows:

(Insert the first pattern letter set forth at Sec. 11366.2 under the heading
Directed Election)

The Regional Director must thereafter rule in a supplemental decision upon the hearing officer's report and such exceptions as may be filed. The Regional Director's supplemental decision is subject to a request for review to the Board.

If the Regional Director directs that the hearing officer's recommendations be made to the Board, the hearing officer's report should provide for exceptions to be filed as follows:

(Insert the second pattern letter set forth at Sec. 11366.2 under the heading
Directed Election)

