

PART 102—RULES AND REGULATIONS, SERIES 8

Subpart C—Procedure Under Section 9(c) of the Act for the Determination of Questions Concerning Representation of Employees ~~And for Clarification of Bargaining Units and for Amendment of Certifications Under Section 9(b) of the Act~~

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§ 102.62 ~~Election~~ agreements.

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(a) ~~Consent election agreements with final regional director determinations of post-election disputes.~~ Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of employees involved may, with the approval of the ~~regional director~~, enter into ~~an agreement providing for the waiver of a hearing and for an election and further providing that post-election disputes will be resolved by the regional director.~~ Such agreement, ~~referred to as a consent election agreement,~~ shall include a description of the appropriate unit, the time and place of holding the election, and the payroll period to be used in determining what employees within the appropriate unit shall be eligible to vote. Such ~~election~~ shall be conducted under the direction and supervision of the ~~regional director~~. The method of conducting such ~~election~~ shall be consistent with the method followed by the ~~regional director~~ in conducting elections pursuant to §§ 102.69 and 102.70 except that the rulings and determinations by the ~~regional director~~ of the results thereof shall be final, and the ~~regional director~~ shall issue to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect, in that case, as if issued by the Board, provided further that rulings or determinations by the regional director in respect to any amendment of such certification shall also be final.

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(b) ~~Stipulated election agreements with discretionary board review.~~ Where a petition has been duly filed, the employer and any individuals or labor organizations representing a substantial number of the employees involved may, with the approval of the regional director, enter into an agreement providing for ~~the waiver of hearing and for an election as described in paragraph (a) of this section and further providing that the parties may request Board review of the regional director's resolution of post-election disputes.~~ Such agreement, ~~referred to as a stipulated election agreement,~~ shall also include a description of the appropriate bargaining unit, the time and place of holding the election, and the payroll period to be used in determining which employees within the appropriate unit shall be eligible to vote. Such ~~election~~ shall be conducted under the direction and supervision of the regional director. The method of conducting such election and the post election procedure shall be consistent with that followed by the regional director in conducting elections pursuant to §§ 102.69 and 102.70.

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(c) ~~Full consent election agreements with final regional director determinations of pre- and post-election disputes.~~ Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of the employees involved may, with the approval of the ~~regional director~~, enter into an agreement, ~~referred~~

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to as a full consent election agreement, providing that pre- and post-election disputes will be resolved by the regional director. Such agreement provides for a hearing pursuant to §§ 102.63, 102.64, 102.65, 102.66 and 102.67 to determine if a question concerning representation exists. Upon the conclusion of such a hearing, the regional director shall issue a decision. The rulings and determinations by the regional director thereunder shall be final, with the same force and effect, in that case, as if issued by the Board. Any election ordered by the regional director shall be conducted under the direction and supervision of the regional director. The method of conducting such election shall be consistent with the method followed by the regional director in conducting elections pursuant to §§ 102.69 and 102.70, except that the rulings and determinations by the regional director of the results thereof shall be final, and the regional director shall issue to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect, in that case, as if issued by the Board, provided further that rulings or determinations by the regional director in respect to any amendment of such certification shall also be final.

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§ 102.63 Investigation of petition by regional director; notice of hearing; service of notice; withdrawal of notice.

(a) After a petition has been filed under §102.61 (a), (b), or (c), if no agreement such as that provided in §102.62 is entered into and if it appears to the regional director that there is reasonable cause to believe that a question of representation affecting commerce exists, that the policies of the act will be effectuated, and that an election will reflect the free choice of employees in an appropriate unit, the Regional Director shall prepare and cause to be served upon the parties and upon any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such investigation, a notice of hearing before a hearing officer at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing. Any such notice of hearing may be amended or withdrawn before the close of the hearing by the regional director on his own motion.

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(b) After a petition has been filed under §102.61(d) or (e), the regional director shall conduct an investigation and, as appropriate, he may issue a decision without a hearing; or prepare and cause to be served upon the parties and upon any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such investigation, a notice of hearing before a hearing officer at a time and place fixed therein; or take other appropriate action. If a notice of hearing is served, it shall be accompanied by a copy of the petition. Any such notice of hearing may be amended or withdrawn before the close of the hearing by the regional director on his own motion. All hearing and posthearing procedure under this paragraph (b) shall be in conformance with §§102.64 through 102.69 whenever applicable, except where the unit or certification involved arises out of an agreement as provided in §102.62(a), the regional director's action shall be final, and the provisions for review of regional director's decisions by the Board shall not apply. Dismissals of petitions without a hearing shall not be governed by §102.71. The regional director's dismissal shall be by

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decision, and a request for review therefrom may be obtained under §102.67, except where an agreement under §102.62(a) is involved.

§ 102.64 Conduct of hearing.

(a) The purpose of a hearing conducted under section 9(c) of the Act is to determine if a question of representation exists. A question of representation exists if a petition as described in section 9(c) of the Act has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a petition filed under section 9(c)(1)(A)(ii), concerning a unit in which an individual or labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted. If, upon the record of the hearing, the regional director finds that a question of representation exists and there is no bar to an election, he shall direct an election to resolve the question.

(b) Hearings shall be conducted by a hearing officer and shall be open to the public unless otherwise ordered by the hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. It shall be the duty of the hearing officer to inquire fully into all matters and issues necessary to obtain a full and complete record upon which the Board or the regional director may discharge their duties under section 9(c) of the Act.

(c) The hearing officer may, in his discretion, continue the hearing from day to day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice.

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§ 102.65 Motions; interventions.

(a) All motions, including motions for intervention pursuant to paragraphs (b) and (e) of this section, shall be in writing or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. An original and two copies of written motions shall be filed and a copy thereof immediately shall be served on the other parties to the proceeding. Motions made prior to the transfer of the case to the Board shall be filed with the regional director, except that motions made during the hearing shall be filed with the hearing officer. After the transfer of the case to the Board, all motions shall be filed with the Board. Such motions shall be printed or otherwise legibly duplicated. *Provided, however,* That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted. Eight copies of such motions shall be filed with the Board. The regional director may rule upon all motions filed with him, causing a copy of said ruling to be served on the parties, or he may refer the motion to the hearing officer: *Provided,* That if the regional director prior to the close of the hearing grants a motion to dismiss the petition, the petitioner may

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obtain a review of such ruling in the manner prescribed in § 102.71. The hearing officer shall rule, either orally on the record or in writing, upon all motions filed at the hearing or referred to him as hereinabove provided, except that all motions to dismiss petitions shall be referred for appropriate action at such time as the entire record is considered by the regional director or the Board, as the case may be.

(b) Any person desiring to intervene in any proceeding shall make a motion for intervention, stating the grounds upon which such person claims to have an interest in the proceeding. The regional director or the hearing officer, as the case may be, may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper, and such intervenor shall thereupon become a party to the proceeding.

(c) 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 § 102.66(c). Unless expressly authorized by the Rules and Regulations, rulings by the regional director or by the hearing officer shall not be appealed directly to the Board, but shall be considered by the Board on appropriate request for review pursuant to §§ 102.67 (b), (c), (d) and 102.69 or whenever the case is transferred to it for decision: *Provided, however,* That if the regional director has issued an order transferring the case to the Board for decision such rulings may be appealed directly to the Board by special permission of the Board. Nor shall rulings by the hearing officer be appealed directly to the regional director unless expressly authorized by the Rules and Regulations, except by special permission of the regional director, but shall be considered by the regional director when he reviews the entire record. Requests to the regional director, or to the Board in appropriate cases, for special permission to appeal from a ruling of the hearing officer or the regional director, 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 on the regional director. 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 regional director. The Board will not grant a request for special permission to appeal except in extraordinary circumstances where it appears that the issue will otherwise evade review. No party shall be precluded from raising an issue at a later time based on its failure to seek special permission to appeal. If the Board or the regional director, as the case may be, grants the request for special permission to appeal, the Board or the regional director may proceed forthwith to rule on the appeal. Neither the filing nor the grant of such a request shall, unless otherwise ordered by the Board, operate as a stay of an election or any action taken or directed by the regional director or require the impounding of ballots.

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(d) The right to make motions or to make objections to rulings on motions shall not be deemed waived by participation in the proceeding.

(e) (1) A party to a proceeding may, because of extraordinary circumstances, move after the close of the hearing for reopening of the record, or move after the decision or report for reconsideration, for rehearing, or to reopen the record, but no such motion shall stay the time for filing a request for review of a decision or exceptions to a report. No motion for reconsideration, for rehearing, or to reopen the record will be entertained by the Board or by any regional director or hearing officer with respect to any matter which could have been but was not raised pursuant to any other section of these rules: *Provided, however,* That the regional director may treat a request for review of a decision or exceptions to a report as a motion for reconsideration. A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on for the motion. A motion for rehearing or to reopen the record shall specify briefly the error alleged to require a rehearing or hearing *de novo*, the prejudice to the movant alleged to result from such error, the additional evidence sought to be adduced, why it was not presented previously, and what result it would require if adduced and credited. Only newly discovered evidence—evidence which has become available only since the close of the hearing—or evidence which the regional director or the Board believes should have been taken at the hearing will be taken at any further hearing.

(2) Any motion for reconsideration or for rehearing pursuant to this paragraph (e) shall be filed within 14 days, or such further period as may be allowed, after the service of the decision or report. Any request for an extension of time to file such a motion shall be served promptly on the other parties. A motion to reopen the record shall be filed promptly on discovery of the evidence sought to be adduced.

(3) The filing and pendency of a motion under this provision shall not unless so ordered operate to stay the effectiveness of any action taken or directed to be taken nor will a regional director or the Board delay any decision or action during the period specified in paragraph (e)(2) of this section, except that, if a motion for reconsideration based on changed circumstances or to reopen the record based on newly discovered evidence states with particularity that the granting thereof will affect the eligibility to vote of specific employees, the Board agent shall have discretion to allow such employees to vote subject to challenge even if they are specifically excluded in the direction of election and to permit the moving party to challenge the ballots of such employees even if they are specifically included in the direction of election in any election conducted while such motion is pending. A motion for reconsideration, for rehearing, or to reopen the record need not be filed to exhaust administrative remedies.

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§ 102.66 Introduction of evidence: rights of parties at hearing; subpoenas.

(a) Rights of parties at hearing. Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record documentary and other evidence so long as such examination, cross-examination, and other evidence supports its contentions and is relevant to the existence of a question of representation or a bar to an election. The hearing officer shall also have power to call, examine, and cross-examine witnesses and

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to introduce into the record documentary and other evidence. Witnesses shall be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Stipulations of fact may be introduced in evidence with respect to any issue.

(b) Objections. Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

(c) Subpoenas. The Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof. Any party may file applications for subpoenas in writing with the Regional Director if made prior to hearing, or with the hearing officer if made at the hearing. Applications for subpoenas may be made ex parte. The Regional Director or the hearing officer, as the case may be, shall forthwith grant the subpoenas requested. Any person served with a subpoena, whether ad testificandum or duces tecum, if he or she does not intend to comply with the subpoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received. Such petition shall be filed with the regional director who may either rule upon it or refer it for ruling to the hearing officer: *Provided, however,* That if the evidence called for is to be produced at a hearing and the hearing has opened, the petition to revoke shall be filed with the hearing officer. Notice of the filing of petitions to revoke shall be promptly given by the regional director or hearing officer, as the case may be, to the party at whose request the subpoena was issued. The regional director or the hearing officer, as the case may be, shall revoke the subpoena if, in his opinion, the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The regional director or the hearing officer, as the case may be, shall make a simple statement of procedural or other grounds for his ruling. The petition to revoke, any answer filed thereto, and any ruling thereon shall not become part of the record except upon the request of the party aggrieved by the ruling. Persons compelled to submit data or evidence are entitled to retain or, on payment of lawfully prescribed costs, to procure copies or transcripts of the data or evidence submitted by them.

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(d) Oral argument and briefs. Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Post-hearing briefs shall be filed only upon special permission of the hearing officer and within the time and addressing the subjects permitted by the hearing officer. Copies of the brief shall be served on all other parties to

the proceeding and a statement of such service shall be filed with the regional director together with the brief. No reply brief may be filed except upon special leave of the regional director.

(e) Hearing officer analysis. The hearing officer may submit an analysis of the record to the regional director or the Board but he shall make no recommendations.

(f) Witness fees. Witness fees and mileage shall be paid by the party at whose instance the witness appears.

§ 102.67 Proceedings before the regional director; further hearing; action by the regional director; review of action by the regional director; statement in opposition; transfer of case to the Board; Board action.

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(a) Proceedings before regional director. The regional director may proceed, either forthwith upon the record or after oral argument, the submission of briefs, or further hearing, as he may deem proper, to determine the unit appropriate for the purpose of collective bargaining, to determine whether a question concerning representation exists in a unit appropriate for purposes of collective bargaining, and to direct an election, dismiss the petition, or make other disposition of the matter.

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(b) Directions of elections; dismissals; requests for review. A decision by the regional director upon the record shall set forth his findings, conclusions, and order or direction. The decision of the regional director shall be final: *Provided, however,* That within 14 days after service of a decision dismissing a petition any party may file a request for review of such a dismissal with the Board in Washington, DC; Provided, further, That any party may, after the election, file a request for review of a regional director's decision, to direct an election within the time periods specified and as described in § 102.69.

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(c) Grounds for review. The Board will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:

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(1) That a substantial question of law or policy is raised because of:

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(ii) A departure from, officially reported Board precedent.

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(2) That the regional director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

(4) That there are compelling reasons for reconsideration of an important Board rule or policy.

(d) Contents of request. Any request for review must be a self-contained document enabling the Board to rule on the basis of its contents without the necessity or recourse to the record; however, the Board may, in its discretion, examine the record in evaluating the request. With respect to the ground listed in paragraph (c)(2) of this section, and other grounds where appropriate, said request must contain a summary of all evidence or rulings bearing on the issues together with page citations from the transcript and a summary of argument. But such request may not raise any issue or allege any facts not timely presented to the regional director.

(e) Opposition to request. Any party may, within 7 days after the last day on which the request for review must be filed, file with the Board a statement in opposition thereto, which shall be served in accordance with the requirements of paragraph (k) of this section. A statement of such service of opposition shall be filed simultaneously with the Board. The Board may deny the request for review without awaiting a statement in opposition thereto.

(f) Waiver; denial of request. The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmation of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

(g) Grant of review; briefs. The granting of a request for review shall not stay the regional director's decision unless otherwise ordered by the Board. Except where the Board rules upon the issues on review in the order granting review, the appellants and other parties may, within 14 days after issuance of an order granting review, file briefs with the Board. Such briefs may be reproductions of those previously filed with the regional director and/or other briefs which shall be limited to the issues raised in the request for review. Where review has been granted, the Board will consider the entire record in the light of the grounds relied on for review. Any request for review may be withdrawn with the permission of the Board at any time prior to the issuance of the decision of the Board thereon.

(h) Transfer. In any case in which it appears to the regional director that the proceeding raises questions which should be decided by the Board, he may, at any time, issue an order, to be effective after the close of the hearing and before decision, transferring the case to the Board for decision. Such an order may be served on the parties upon the record of the hearing.

(i) Briefs. If any case is transferred to the Board for decision after the parties have filed briefs with the regional director, the parties may, within such time after service of the order transferring the case as is fixed by the regional director, file with the Board the

brief previously filed with the regional director. No further briefs shall be permitted except by special permission of the Board.

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(j) **Board action.** Upon transfer of the case to the Board, the Board shall proceed, either forthwith upon the record, or after oral argument or the submission of briefs, or further hearing, as it may determine, to decide the issues referred to it or to review the decision of the regional director and shall direct a secret ballot of the employees or the appropriate action to be taken on impounded ballots of an election already conducted, dismiss the petition, affirm or reverse the regional director's order in whole or in part, or make such other disposition of the matter as it deems appropriate.

(k)(1) **Format of request.** All documents filed with the Board under the provisions of this section shall be filed in eight copies, double spaced, on 8 1/2- by 11-inch paper, and shall be printed or otherwise legibly duplicated. Carbon copies of typewritten materials will not be accepted. Requests for review, including briefs in support thereof; statements in opposition thereto; and briefs on review shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefor, filed not less than 5 days, including Saturdays, Sundays, and holidays, prior to the date the document is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page authorities cited.

(2) **Service of copies of request.** The party filing with the Board a request for review, a statement in opposition to a request for review, or a brief on review shall serve a copy thereof on the other parties and shall file a copy with the regional director. A statement of such service shall be filed with the Board together with the document.

(3) **Extensions.** Requests for extensions of time to file requests for review, statements in opposition to a request for review, or briefs, as permitted by this section, shall be filed with the Board or the regional director, as the case may be. The party filing the request for an extension of time shall serve a copy thereof on the other parties and, if filed with the Board, on the regional director. A statement of such service shall be filed with the document.

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§ 102.69 Election procedure; tally of ballots; objections; certification by the regional director; requests for review of directions of elections; hearings; hearing officer reports on objections and challenges; exceptions to hearing officer reports; requests for review of regional director decisions in stipulated or directed elections.

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(a) **Election procedure; tally; objections.** Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the regional director in whose Region the proceeding is pending. All elections shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, either participant may, upon its prompt request to and approval thereof by the regional director, whose decision shall be final, have its name removed from the ballot: *Provided, however,* That in a proceeding involving an employer-filed petition or a petition for decertification the labor

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organization certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving timely notice in writing to all parties and the regional director, disclaiming any representation interest among the employees in the unit. A pre-election conference may be held at which the parties may check the list of voters and attempt to resolve any questions of eligibility or inclusions in the unit. When the election is conducted manually, any party may be represented by observers of its own selection, subject to such limitations as the regional director may prescribe. Any party and Board agents may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election the ballots will be counted and a tally of ballots prepared and immediately made available to the parties. Within 7 days after the tally of ballots has been prepared, any party may file with the regional director an original and five copies of objections to the conduct of the election or to conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. A person filing objections by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to § 102.114(f). The Regional Director will cause a copy of the objections to be served on each of the other parties to the proceeding. Within 7 days after the filing of objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections.

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(b) Requests for review of directions of elections. If the election has been conducted pursuant to § 102.67, any party may file a request for review of the decision and direction of election with the Board in Washington, D.C. In the absence of election objections or potentially determinative challenges, the request for review of the decision and direction of election shall be filed within 14 days after the tally of ballots has been prepared. In a case involving election objections or potentially determinative challenges, the request for review shall be filed within 14 days after the regional director's decision on challenged ballots, on objections, or on both, and may be combined with a request for review of that decision as provided in paragraph (d)(3) of this section. Provided, however, That if the hearing on objections and determinative challenges has been consolidated with an unfair labor practice proceeding before an administrative law judge, the request for review of the decision and direction of election shall be filed within 14 days after issuance of the administrative law judge's decision. The procedures for such request for review shall be the same as set forth in § 102.67(c) through (g), and (k), insofar as applicable. If no request for review is filed, the decision and direction of election is final and shall have the same effect as if issued by the Board. The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmation of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

(c) Certification in the absence of objections, determinative challenges and requests for review. If no objections are filed within the time set forth in paragraph (a) of this section, if the challenged ballots are insufficient in number to affect the results of the election, if no runoff election is to be held pursuant to § 102.70, and if no request for review is filed pursuant to paragraph (b) of this section, the regional director shall forthwith issue to the parties a certification of the results of the election, including certification of representative where appropriate, with the same force and effect as if issued by the Board, and the proceeding will thereupon be closed.

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(d)(1)(i) Decisions without a hearing. If timely objections are filed to the conduct of an election or to conduct affecting the results of the election, and the regional director determines that the party's supporting evidence would not constitute grounds for overturning the election if introduced at a hearing, and the regional director determines that any determinative challenges do not raise substantial and material factual issues, the regional director shall issue a decision disposing of objections and determinative challenges, and a certification of the results of the election, including certification of representative where appropriate.

(ii) Notices of hearing. If timely objections are filed to the conduct of the election or to conduct affecting the results of the election, and the regional director determines that the party's supporting evidence could be grounds for overturning the election if introduced at a hearing, and raise substantial and material factual issues, the regional director shall prepare and caused to be served on the parties, a notice of hearing at a place and time fixed therein: Provided, however, that the regional director may consolidate the hearing concerning objections and determinative challenges with an unfair labor practice proceeding before an administrative law judge. In any proceeding wherein the election has been held pursuant to § 102.62(a) or (c) and the representation case has been consolidated with an unfair labor practice proceeding for purposes of hearing, the administrative law judge shall, after issuing his decision, sever the representation case and transfer it to the regional director for further processing.

(iii) Hearings: hearing officer reports; exceptions to regional director. Any hearing pursuant to this section shall be conducted in accordance with the provisions of §§ 102.64, 102.65, and 102.66, insofar as applicable, except that, upon the close of such hearing, the hearing officer shall prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the issues. Any party may, within 14 days from the date of issuance of such report, file with the regional director an original and one copy of exceptions to such report, with supporting brief if desired. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the regional director. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the regional director may allow, a party opposing the exceptions may file an answering brief with the regional director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the regional director. The regional director shall thereupon decide the matter upon

the record or make other disposition of the case. If no exceptions are filed to such report, the regional director, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case.

(2) Regional director decisions in consent or full consent elections. If the election has been held pursuant to § 102.62(a) or (c), the decision of the regional director shall be final and shall include a certification of the results of the election, including certification of representative where appropriate.

(3) Requests for review of regional director decisions in stipulated or directed elections. If the election has been held pursuant to §§ 102.62(b) or 102.67, the decision of the regional director shall include a certification of the results of the election, including certification of representative where appropriate. Within 14 days from the date of issuance of the regional director's decision on challenged ballots or on objections, or on both, any party may file with the Board in Washington, DC, a request for review of such decision which may be combined with a request for review of the regional director's decision to direct an election as provided in §§ 102.67(b) and 102.69(b). The procedures for post-election requests for review shall be the same as set forth in § 102.67(c) through (g), and (k), insofar as applicable. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board. The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmance of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding. Provided, however, That in any proceeding wherein a representation case has been consolidated with an unfair labor practice proceeding for purposes of hearing and the election was conducted pursuant to § 102.62(b) or § 102.67, the provisions of § 102.46 shall govern with respect to the filing of exceptions or an answering brief to the exceptions to the administrative law judge's decision.

(e)(1)(i) Record in case with hearing. In a proceeding pursuant to this section in which a hearing is held, the record in the case shall consist of the notice of hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, exhibits, together with the objections to the conduct of the election or to conduct affecting the results of the election, any briefs or other legal memoranda submitted by the parties, any report on such objections and/or on challenged ballots, exceptions, the decision of the regional director, any requests for review, and the record previously made as defined in § 102.68. Materials other than those set out above shall not be a part of the record.

(ii) Record in case with no hearing. In a proceeding pursuant to this section in which no hearing is held, the record shall consist of the objections to the conduct of the election or to conduct affecting the results of the election, any decision on objections or on challenged ballots and any request for review of such a decision, any documentary evidence, excluding statements of witnesses, relied upon by the regional director in his decision, any briefs or other legal memoranda submitted by the parties, any other

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(f) In a case involving a consent election held pursuant to § 102.62(b), if exceptions are filed, either to the report on challenged ballots or on objections, or on both if it be a consolidated report, and it appears to the Board that such exceptions do not raise substantial and material issues with respect to the conduct or results of the election, the Board may decide the matter forthwith upon the record or may make other disposition of the case. If it appears to the Board that such exceptions raise substantial and material factual issues, the Board may direct the regional director or other agent of the Board to issue and cause to be served on the parties a notice of hearing on said exceptions before a hearing officer. The hearing shall be conducted in accordance with the provisions of §§ 102.64, 102.65, and 102.66 insofar as applicable. Upon the close of the hearing the agent conducting the hearing, if directed by the Board, shall prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations to the Board as to the disposition of the challenges or objections, or both if it be a consolidated report. In any case in which the Board has directed that a report be prepared and served, any party may within 14 days from the date of issuance of the report on challenged ballots or on objections, or on both, file with the Board in Washington, DC., exceptions to such report, with supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief with the Board in Washington, DC. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. ... [5]

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motions, rulings or orders of the regional director, as well as any decision and direction of election and the record previously made as defined in §102.68. Materials other than those set out above shall not be a part of the record, except as provided in paragraph (e)(3) of this section.

(2) Immediately upon issuance of an order transferring the case to the Board, or upon issuance of an order granting a request for review by the Board, the regional director shall transmit to the Board the record of the proceeding as defined in paragraph (e)(1) of this section.

(3) In a proceeding pursuant to this section in which no hearing is held, a party filing a request for review of a regional director's decision on objections or challenges, or any opposition thereto, may support its submission to the Board by appending thereto copies of documentary evidence, including copies of any affidavits, it has timely submitted to the regional director and which were not included in the decision. Documentary evidence so appended shall thereupon become part of the record in the proceeding. Failure to append that evidence to its submission to the Board in the representation proceeding as provided above, shall preclude a party from relying on such evidence in any subsequent unfair labor proceeding.

(f) Revised tally of ballots. In any case under this section in which the regional director or the Board, upon a ruling on challenged ballots, has directed that such ballots be opened and counted and a revised tally of ballots issued, and no objection to such revised tally is filed by any party within 7 days after the revised tally of ballots has been made available, the regional director shall forthwith issue to the parties certification of the results of the election, including certifications of representative where appropriate, with the same force and effect as if issued by the Board. The proceeding shall thereupon be closed.

(g) Format of filings with regional director. All documents filed with the regional director under the provisions of this section shall be filed double spaced, on 8 1/2- by 11-inch paper, and shall be printed or otherwise legibly duplicated. Briefs in support of exceptions or answering briefs shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the regional director by motion, setting forth the reasons therefor, filed not less than 5 days, including Saturdays, Sundays, and holidays, prior to the date the brief is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

(h) Extensions of time. Requests for extensions of time to file exceptions, requests for review, supporting briefs, or answering briefs, as permitted by this section, shall be filed with the Board or the regional director, as the case may be. The party filing the request for an extension of time shall serve a copy thereof on the other parties and, if filed with the Board, on the regional director. A statement of such service shall be filed with the document.

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¶ (2) Exceptions, if any, to the hearing officer's report or to the administrative law judge's decision, and any answering brief to such exceptions, shall be filed with the Board in Washington, DC, in accordance with paragraph (f) of this section.¶

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Subpart D—Procedure for Unfair Labor Practice and Representation Cases Under Sections 8(b)(7) and 9(c) of the Act

§ 102.77 Investigation of petition by regional director; directed election.

(a) Where a petition has been filed pursuant to § 102.76 the regional director shall make an investigation of the matters and allegations set forth therein. Any party, and any individual or labor organization purporting to act as representative of the employees involved and any labor organization on whose behalf picketing has been conducted as described in section 8(b)(7)(C) of the Act may present documentary and other evidence relating to the matters and allegations set forth in the petition.

(b) If after the investigation of such petition or any petition filed under subpart C of ~~this part~~, and after the investigation of the charge filed pursuant to § 102.73, it appears to the regional director that an expedited election under section 8(b)(7)(C) ~~of the Act~~ is warranted, and that the policies of the ~~Act~~ would be effectuated thereby, he shall forthwith proceed to conduct an election by secret ballot of the employees in an appropriate unit, or make other disposition of the matter: *Provided, however*, That in any case in which it appears to the regional director that the proceeding raises questions which cannot be decided without a hearing, he may issue and cause to be served on the parties, individuals, and labor organizations involved a notice of hearing before a hearing officer at a time and place fixed therein. In this event, the method of conducting the hearing and the procedure following, including transfer of the case to the Board, shall be governed insofar as applicable by §§ 102.63 ~~through 102.69~~ inclusive.

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Subpart E—Procedure for Referendum Under Section 9(e) of the Act

§ 102.85 Investigation of petition by regional director; consent referendum; directed referendum.

Where a petition has been filed pursuant to § 102.83 and it appears to the regional director that the petitioner has made an appropriate showing, in such form as the regional director may determine, that 30 percent or more of the employees within a unit covered by an agreement between their employer and a labor organization requiring membership in such labor organization desire to rescind the authority of such labor organization to make such an agreement, he shall proceed to conduct a secret ballot of the employees involved on the question whether they desire to rescind the authority of the labor organization to make such an agreement with their employer: *Provided, however*, That in any case in which it appears to the regional director that the proceeding raises questions which cannot be decided without a hearing, he may issue and cause to be served on the parties a notice of hearing before a hearing officer at a time and place fixed therein. The regional director shall fix the time and place of the election, eligibility requirements for

voting, and other arrangements of the balloting, but the parties may enter into an agreement, subject to the approval of the regional director, fixing such arrangements. In any such consent agreements, provision may be made for final determination of all questions arising with respect to the balloting by the regional director or, upon grant of a request for review, by the Board.

§ 102.86 Hearing; posthearing procedure.

The method of conducting the hearing and the procedure following the hearing, including transfer of the case to the Board, shall be governed, insofar as applicable, by §§ 102.63 through 102.69 inclusive.

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PART 101—STATEMENTS OF PROCEDURES

Subpart C— [Removed and Reserved consisting of §§ 101.17 through 101.21]

Subpart D—Unfair Labor Practice and Representation Cases Under Sections 8(b)(7) and 9(c) of the Act

§ 101.23 Initiation and investigation of a petition in connection with a case under section 8(b)(7).

(a) A representation petition¹ involving the employees of the employer named in the charge is handled under an expedited procedure when the investigation of the charge has revealed that:

- (1) The employer's operations affect commerce within the meaning of the Act;
- (2) Picketing of the employer is being conducted for an object proscribed by section 8(b)(7) of the Act;
- (3) Subparagraph (C) of that section of the Act is applicable to the picketing; and
- (4) The petition has been filed within a reasonable period of time not to exceed 30 days from the commencement of the picketing. In these circumstances, the member of the Regional Director's staff to whom the matter has been assigned investigates the petition

¹ The manner of filing of such petition and the contents thereof are the same as described in 29 CFR 102.60 and 102.61 and the statement of the general course of proceedings under Section 9(c) of the Act published in the Federal Register, except that the petitioner is not required to allege that a claim was made on the employer for recognition or that the union represents a substantial number of employees.

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to ascertain further: the unit appropriate for collective bargaining; and whether an election in that unit would effectuate the policies of the Act.

(b) If, based on such investigation, the Regional Director determines that an election is warranted, the Director may, without a prior hearing, direct that an election be held in an appropriate unit of employees. Any party aggrieved may, after the election, file a request for review of a regional director's decision to direct the election within the time periods specified and as described in 29 CFR 102.69. If it is determined that an election is not warranted, the Director dismisses the petition or makes other disposition of the matter. Should the Regional Director conclude that an election is warranted, the Director fixes the basis of eligibility of voters and the place, date, and hours of balloting. The mechanics of arranging the balloting, the other procedures for the conduct of the election, and the postelection proceedings are the same, insofar as appropriate, as those described in 29 CFR 102.69.

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(c) If the Regional Director believes, after preliminary investigation of the petition, that there are substantial issues which require determination before an election may be held, the Director may order a hearing on the issues. This hearing is followed by Regional Director or Board decision and direction of election, or other disposition. The procedures to be used in connection with such hearing and posthearing proceedings are the same, insofar as they are applicable, as those described in 29 CFR 102.64, 102.65, 102.66, 102.67, 102.68 and 102.69, and the statement of the general course.

Deleted: §101.19, except that the Regional Director's rulings on any objections to the conduct of the election or challenged ballots are final and binding, unless the Board, on an application by one of the parties, grants such party special permission to appeal from the Regional Director's rulings. The party requesting such review by the Board must do so promptly, in writing, and state briefly the grounds relied on. Such party must also immediately serve a copy on the other parties, including the Regional Director. Neither the request for review by the Board nor the Board's grant of such review operates as a stay of any action taken by the Regional Director, unless specifically so ordered by the Board. If the Board grants permission to appeal, and it appears to the Board that substantial and material factual issues have been presented with respect to the objections to the conduct of the election or challenged ballots, it may order that a hearing be held on such issues or take other appropriate action.

(d) Should the parties so desire, they may, with the approval of the Regional Director, resolve the issues as to the unit, the conduct of the balloting, and related matters pursuant to informal consent procedures, as described in 29 CFR 102.62(a) and the statement of the general course.

(e) If a petition has been filed which does not meet the requirements for processing under the expedited procedures, the Regional Director may process it under the procedures set forth in subpart C of 29 CFR Part 102 and the statement of the general course.

Deleted: §§101.20 and 101.21, except that the parties may not file briefs with the Regional Director or the Board unless special permission therefor is granted, but may state their respective legal positions fully on the record at the hearing, and except that any request for review must be filed promptly after issuance of the Regional Director's decision

§ 101.25 Appeal from the dismissal of a petition, or from the refusal to process it under the expedited procedure.

If it is determined after investigation of the representation petition that further proceedings based thereon are not warranted, the Regional Director, absent withdrawal of the petition, dismisses it, stating the grounds therefor. If it is determined that the petition does not meet the requirements for processing under the expedited procedure, the Regional Director advises the petitioner of the determination to process the petition under the procedures described in subpart C of 29 CFR Part 102 and the statement of the general course. In either event, the Regional Director informs all the parties of such action, and such action is final, although the Board may grant an aggrieved party permission to appeal from the Regional Director's action. Such party must request such review promptly, in writing, and state briefly the grounds relied on. Such party must also immediately serve a copy on the other parties, including the Regional Director. Neither

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the request for review by the Board, nor the Board's grant of such review, operates as a stay of the action taken by the Regional Director, unless specifically so ordered by the Board.

Subpart E—Referendum Cases Under Section 9(e) (1) and (2) of the Act

§ 101.28 Consent agreements providing for election.

(a) The Board makes available to the parties three types of informal consent procedures through which authorization issues can be resolved without resort to formal procedures. These informal agreements are commonly referred to as consent-election agreement with final regional director determinations of post-election disputes, stipulated election agreement with discretionary Board review, and full consent-election agreement with final regional director determinations of pre- and post-election disputes. Forms for use in these informal procedures are available in the Regional Offices.

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(b) The procedures to be used in connection with a consent-election agreement with final regional director determinations of post-election disputes, a stipulated election agreement with discretionary Board review, and a full consent-election agreement with final regional director determinations of pre- and post-election disputes are the same as those described in subpart C of 29 CFR Part 102 and the statement of the general course in connection with similar agreements in representation cases under section 9(c) of the Act, except that no provision is made for runoff elections.

§ 101.29 Procedure respecting election conducted without hearing.

If the Regional Director determines that the case is an appropriate one for election without formal hearing, an election is conducted as quickly as possible among the employees and upon the conclusion of the election the Regional Director makes available to the parties a tally of ballots. The parties, however, have an opportunity to make appropriate challenges and objections to the conduct of the election and they have the same rights, and the same procedure is followed, with respect to objections to the conduct of the election and challenged ballots, as is described in subpart C of 29 CFR Part 102 and the statement of the general course in connection with the postelection procedures in representation cases under section 9(c) of the Act, except that no provision is made for a runoff election. If no such objections are filed within 7 days and if the challenged ballots are insufficient in number to affect the results of the election, the Regional Director issues to the parties a certification of the results of the election, with the same force and effect as if issued by the Board.

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§ 101.30 Formal hearing and procedure respecting election conducted after hearing.

(a) The procedures are the same as those described in subpart C of 29 CFR Part 102 and the statement of the general course respecting representation cases arising under section 9(c) of the Act. If the preliminary investigation indicates that there are substantial issues

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which require determination before an appropriate election may be held, the Regional Director will institute formal proceedings by issuance of a notice of hearing on the issues which, after hearing, is followed by Regional Director or Board decision and direction of election or dismissal. The notice of hearing together with a copy of the petition is served on the petitioner, the employer, and any other known persons or labor organizations claiming to have been designated by employees involved in the proceeding.

(b) The hearing, usually open to the public, is held before a hearing officer who normally is an attorney or field examiner attached to the Regional Office but may be another qualified Agency official. The hearing, which is nonadversary in character, is part of the investigation in which the primary interest of the Board's agents is to insure that the record contains as full a statement of the pertinent facts as may be necessary for determination of the case. The parties are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions that are relevant to the issue of whether the Board should conduct an election to determine whether the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8(a)(3) of the Act, desire that such authority be rescinded. In most cases a substantial number of the relevant facts are undisputed and stipulated. The parties are permitted to argue orally on the record before the hearing officer.

(c) Upon the close of the hearing, the entire record in the case is then forwarded to the Regional Director or the Board, together with an informal analysis by the hearing officer of the issues and the evidence but without recommendations. Post-hearing briefs are filed only upon special permission of the hearing officer and within the time and addressing the subjects permitted by the hearing officer. If the case is transferred to the Board after the close of the hearing, the parties may, within such time after service of the order transferring the case as is fixed by the regional director, file with the Board any post-hearing brief previously filed with the regional director. The parties may also request to be heard orally. Because of the nature of the proceeding, however, permission to argue orally is rarely granted. After review of the entire case, the Board issues a decision either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner described in 29 CFR 102.69 and the statement of the general course.

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(d) The parties have the same rights, and the same procedure is followed, with respect to objections to the conduct of the election and challenged ballots as is described in connection with the postelection procedures in representation cases under section 9(c) of the Act.

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a report on challenged ballots or on objections, or on both, including his recommendations, which report, together with the tally of ballots, he shall forward to the Board in Washington, DC. Within 14 days from the date of issuance of the report on challenged ballots or on objections, or on both, any party may file with the Board in Washington, DC, exceptions to such report, with supporting documents as permitted by § 102.69(g)(3) and/or a supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting documents and/or supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief, with supporting documents as permitted by § 102.69(g)(3) if desired, with the Board in Washington, DC. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The report on challenged ballots may be consolidated with the report on objections in appropriate cases.

(3) If the election has been conducted pursuant to a direction

election issued following any proceeding under § 102.67, the regional director may (i) issue a report on objections or on challenged ballots, or on both, as in the case of

consent election pursuant to paragraph (b) of § 102.62, or (ii) exercise his authority to decide the case and issue a decision disposing of the issues, and directing appropriate action or certifying the results of the election.

(4) If the regional director issues a report on objections and challenges, the parties shall have the rights set forth in paragraph (c)(2) of this section and in § 102.69(f); if the regional director issues a decision, the parties shall have the rights set forth in § 102.67 to the extent consistent herewith, including the right to submit documents supporting the request for review or opposition thereto as permitted by § 102.69(g)(3).

(d) In issuing a report on objections or challenged ballots, or both, following proceedings under §§ 102.62(b) or 102.67, or in issuing a decision on objections or challenged ballots, or both, following proceedings under § 102.67,

investigation or upon the record of a hearing before a hearing officer. Such hearing shall be conducted with respect to those objections or challenges which the regional director concludes raise substantial and material factual issues.

(f) In a case involving a consent election held pursuant to § 102.62(b), if exceptions are filed, either to the report on challenged ballots or on objections, or on both if it be a consolidated report, and it appears to the Board that such exceptions do not raise substantial and material issues with respect to the conduct or results of the election, the Board may decide the matter forthwith upon the record or may make other disposition of the case. If it appears to the Board that such exceptions raise substantial and material factual issues, the Board may direct the regional director or other agent of the Board to issue and cause to be served on the parties a notice of hearing on said exceptions before a hearing officer. The hearing shall be conducted in accordance with the provisions of §§ 102.64, 102.65, and 102.66 insofar as applicable. Upon the close of the hearing the agent conducting the hearing, if directed by the Board, shall prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations to the Board as to the disposition of the challenges or objections, or both if it be a consolidated report. In any case in which the Board has directed that a report be prepared and served, any party may within 14 days from the date of issuance of the report on challenged ballots or on objections, or on both, file with the Board in Washington, DC., exceptions to such report, with supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief with the Board in Washington, DC. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The Board shall thereupon proceed pursuant to § 102.67:

(2) The party filing with the Board exceptions to a report, a supporting brief, or an answering brief shall serve a copy thereof on the other parties and shall file a copy with the regional director. A statement of such service shall be filed with the Board together with the document.

(3)