

(16) Follow Brewer Road south approximately 1.8 miles to the intersection with U.S. Route 20/State Route 5;

(17) At the intersection of Brewer Road and U.S. Route 20/State Route 5, continue south approximately 0.1 miles, following an imaginary line to the south bank of the Seneca River;

(18) Follow the south bank of the Seneca River east approximately 0.1 miles to the mouth of the Kendig Creek;

(19) Continue south following the Kendig Creek approximately 3.3 miles to the Creek's intersection with Yellow Tavern Road on the Geneva South, N.Y. map;

(20) Follow Yellow Tavern Road west approximately 0.1 miles, to its intersection with Post Road;

(21) Follow Post Road south approximately 1.4 miles to its junction with State Route 96A;

(22) Then follow State Route 96A south 17.5 miles across the Dresden, N.Y., Ovid, N.Y., and Lodi, N.Y. maps to the village of Lodi;

(23) In Lodi, continue south where State Route 96A changes to S. Main Street and then changes to an unnamed medium duty road (known locally as Center Road-Country Road 137);

(24) Continue south on Center Road-Country Road 137 for approximately 4.9 miles to the Seneca/Schuyler County Line;

(25) Then proceed west 0.5 miles on the county line to Logan Road;

(26) Then proceed 8.6 miles south on Logan Road to State Route 227 (identified by the petitioner as State Route 79) on the Burdette, N.Y. map;

(27) Then proceed approximately 800 feet east on Route 227 to Skyline Drive;

(28) Then proceed south on Skyline Drive for 2.5 miles to an unnamed stream;

(29) Follow the unnamed stream west approximately 0.6 miles to its intersection with State Route 414; and

(30) Continue west on State Route 414 approximately 0.5 miles to the beginning point on the bridge over the New York State Barge Canal.

Dated: May 14, 2003.

Arthur J. Libertucci,
Administrator.

Approved: June 4, 2003.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Revisions of Regulations Concerning Procedures for Filing Appeals to Regional Directors' Refusal To Issue, or Reissue, Complaint

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The General Counsel of the National Labor Relations Board is amending regulations concerning the procedures for filing an appeal to the General Counsel from a Regional Director's dismissal of an unfair labor practice charge. The revisions, which reflect the actual practice under existing regulations, relieve persons seeking review from being required to file a complete and separate statement apart from the Appeal Form (Form 4767) to perfect an appeal before the Office of Appeals.

DATES: Effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT:

Lester A. Heltzer, Executive Secretary, 202-273-1067.

SUPPLEMENTARY INFORMATION: Section 102.19(a) of the National Labor Relations Board's rules provides that if a Regional Director declines to issue a complaint, or after withdrawing a complaint refuses to reissue it, the person making the charge may obtain review of the action by filing an appeal (or seeking an extension of time in which to file an appeal) within 14 days of being notified in writing by the Regional Director of the reasons for the decision. Significantly, Section 102.19(a) instructed that the appeal "shall" contain a complete statement setting forth the facts and reasons upon which it is based.

Despite the seemingly mandatory language of Section 102.19(a), the Office of Appeals has, for many years, accepted the "Appeal" form (Form 4767) attached to the Regional Director's dismissal letter as an appeal and sent acknowledgement to the parties based on a timely filing of such form. The policy was developed in response to the reality that many individual appellants to not have the language skills to perfect a more traditional appeal. Quite often, individuals without benefit of counsel have merely sent the form as indicative of an intent to appeal. These individuals apparently believe that they have perfected an appeal by sending in the form officially attached to the Region's dismissal letter. Since seeking review is the last recourse for a charging party

whose charge has been dismissed, the Office of Appeals has maintained a policy that reflects a liberal exercise of discretion in order to afford appeal rights to the broadest population. Although an appeal is more effective if the party seeking review explains the basis for the disagreement with the Region's disposition, failure to include such a statement has not been considered by the Office of Appeals a basis for rejecting an otherwise timely filed appeal. In *Grand Rapids Gravel Company, JD-114-02* (issued November 22, 2002),¹ an administrative law judge specifically rejected the assumption "that the filing of a notice of appeal is legally tantamount to the filing of the actual appeal." Skip op. p.20. In order to avoid future challenges concerning the viability of an appeal based only on a notice, the rules and regulations and related forms are being revised to reflect the actual practice. Because of the obvious utility of such a statement, the General Counsel believes most charging parties will continue to submit them, even if it is not mandatory. Once a case is appealed, the same level of review is afforded despite the brevity of an appeal. Because the current practice is fairer to individual, unrepresented charging parties, the language applicable to the procedures of filing an appeal has been revised to reflect that practice and to make the public aware of the actual practice.

For these reasons, the General Counsel is eliminating the requirement that a complete and separate statement must be submitted in order to constitute an appeal from the Regional Director's refusal to issue, or reissue, a complaint.

Administrative Procedure Act

Because the change involves rules of agency organization, procedure or practice, the Agency is not required to publish for comment under Section 553 of the Administrative Procedure Act (5.U.S.C. 553).

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do to apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these changes will not have a significant economic impact on small business entities since the changes

¹ Cases No. 7-CA-44094 and 7-CA-44211. The Board adopted the decision on February 27, 2003, without exceptions being filed.