

Allied Lettercraft Co., Inc., Petitioner. Case 2-CA-17724

June 4, 1982

**ORDER DENYING MOTION FOR
RULEMAKING**

Pursuant to Sections 102.124 and 102.146 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, a motion was filed on January 15, 1982, by Allied Lettercraft Co., Inc. (herein called Allied), seeking to amend Section 102.145 of the Board's rules to provide for an increase in the fees payable to "agent and attorneys" from \$75 to \$140 per hour.

Allied alleges in pertinent part that \$140 per hour is a reasonable fee for an attorney with the experience and expertise of Allied's counsel. Allied maintains that there are no qualified attorneys regularly practicing in the city of New York, the site of its operations, with sufficient expertise to defend the unfair labor practice allegations brought against it by the General Counsel of the Board, who charge fees of \$75 per hour. Allied claims that the reasonable rate for attorneys with the experience and expertise of its attorney ranges from \$100 to \$200 per hour and offers to conduct a survey to substantiate its contentions. Finally, Allied contends that the reasonable fee for its attorney has exceeded \$75 per hour since at least 1975.

The Board has considered carefully Allied's motion and has decided that it should be denied. The Equal Access to Justice Act, 5 U.S.C. § 504(b)(1)(A), provides that "attorney or agent fees shall not be awarded in excess of \$75 per hour, unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee." The Act was enacted on October 21, 1980, and became effective on October 1, 1981, the same date as the Board's rules herein. Since as evidenced by Allied's motion the reasonable attorney or agent fee in certain circumstances exceeded \$75 prior to the passage of the Act, Congress must have been aware of such circumstances when it decided to set the fee at \$75 per hour. Accordingly, and as there appears to have been no change in circumstances since the passage of the Act which warrants higher fees, the Board has decided to deny the motion for rulemaking proceeding to increase attorney and agent fees.

It is hereby ordered that Allied's motion requesting the Board to engage in rulemaking for the purpose of raising the attorney or agent fees recoverable under the Equal Access to Justice Act and Section 102.145 of the Board's rules from \$75 to \$140 per hour is denied.