

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

OM MEMORANDUM 91-59

July 22, 1991

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

FROM : Joseph E. DeSio, Associate General Counsel

SUBJECT: Processing of Appeals Cases

As you know, in order to ensure that in litigated cases the Agency is not vulnerable to applications for fees or expenses under the Equal Access to Justice Act (EAJA), it is required that Regional Offices specifically request that charged parties present evidence relative to the allegations of the charge, and that any refusal to cooperate be fully documented in the file (see OM Memoranda 81-55, 89-5 and 89-16).

As regards cases which are dismissed and appealed, it may be that the Region determined that it was not necessary or appropriate to seek evidence from the charged party. In order that EAJA concerns are appropriately addressed, Regions are to include in the Comment on Appeal a specific statement that evidence was or was not sought from the charged party, and that any refusal to cooperate is documented in the file.

Where the Region's determination is reversed on appeal, it is important to ensure, even at that stage, that requests for evidence of charged parties be made, and that any refusal to cooperate be fully documented. Upon notification that a Region's decision to dismiss has been reversed on appeal, the Region must ensure compliance with this policy.

Any questions concerning this memorandum should be directed to your Assistant General Counsel.

J. E. D.

cc: NLRBU

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