

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 88-105

November 10, 1988

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

FROM : Joseph E. DeSio, Associate General Counsel

SUBJECT: Compliance Rules Revisions

As you know, the Board recently published revisions to its Rules and Regulations which govern compliance proceedings. As noted in Memorandum OM 88-92, dated October 11, 1988, the revisions are effective November 13, 1988.

Revised Section 102.54 provides that the Regional Director may consolidate compliance proceedings with underlying unfair labor practice proceedings where it would effectuate the purposes and policies of the Act to do so. This revision resulted from the Board's decision in Earle Equipment, 270 NLRB 827 (1977) where the Board held that such consolidation was inappropriate under the current language of the rules. Accordingly, effective November 13, 1988, Regional Directors may consolidate compliance proceedings with unfair labor practice proceedings in the following situations:

1. where the backpay periods are of relatively short duration and have ended before the unfair labor practice hearing begins, e.g., where discriminatees have been reinstated or their backpay periods would have ended due to layoff or cessation of business or bankruptcy.
2. where alter ego/successor liability issues arise prior to the opening of the hearing.
3. where backpay or other compliance issues are relatively simple and their consolidation would not confuse, impede or unduly prolong the hearing.

Any situations presenting novel or complex issues should be submitted to the Division of Operations-Management for clearance.

Revised Section 102.52 provides for a formal appeal by the charging party of the Regional Director's compliance determination. The appeal procedure is only available to charging parties and begins when the charging party requests a written statement for the basis of the Regional Director's compliance determination. Any charging party who disagrees with the Regional Director's compliance determination shall be advised of the appeal

procedure, and upon request, shall be provided with a written statement. The written statement shall contain the notification of the charging party's right to appeal the Regional Director's compliance determination to the General Counsel, and a copy of Form NLRB-5434, "Notice of Compliance Appeal." It shall also contain an explanation of the basis for the Regional Director's compliance determination. However, if the charging party intends to appeal only one aspect of the compliance determination, such as the validity of a reinstatement offer, the written statement may be limited to that issue. As with dismissal letters, copies of all letters from the Regional Director containing the written statement and the appeal rights should be sent to the Office of Appeals. Any appeal filed by the charging party will be considered by the Office of Appeals. Upon request by the Office of Appeals, the Regional Office compliance file, or relevant portions thereof, should be submitted promptly to the Office of Appeals. You will receive a supply of Form NLRB-5434 under separate cover.

It should be noted that the appeal procedure in Section 102.52 does not apply to individual discriminatees who are not charging parties. However, any individual discriminatee who has intervened in the case pursuant to Section 102.29 of the Rules and Regulations may file an appeal.

In the revised rules, the Board changed the title "Backpay Proceedings" to "Compliance Proceedings" to eliminate any confusion concerning the range of issues to be considered in supplemental proceedings. Thus, any compliance issue, in addition to specific backpay issues, may be litigated or considered in compliance proceedings. Accordingly, such compliance issues as alter ego/successor liability and bad-faith bargaining are encompassed by compliance proceedings, in addition to more traditional backpay issues, such as, gross backpay, reinstatement or interim earnings.

Any questions concerning this memorandum or the revised rules concerning compliance proceedings should be addressed to your Assistant General Counsel.

J. E. D.

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**PROCEDURES FOR FILING AN APPEAL OF A
COMPLIANCE DETERMINATION**

Pursuant to the National Labor Relations Board Rules and Regulations you may obtain a review of this compliance determination by **FILING AN APPEAL WITH THE GENERAL COUNSEL** of the National Labor Relations Board, Washington, D.C. 20570, **AND A COPY WITH ME**. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C. by the close of business on _____ . Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me.

If you file an appeal, please complete the notice forms enclosed with the attached letter and send one copy of the form to each of the other parties whose names and addresses are listed. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal to me and all parties within the time stated above.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

NOTICE OF COMPLIANCE APPEAL

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

Date:

To: National Labor Relations Board
Office of the General Counsel/Office of Appeals
1717 Pennsylvania Avenue, NW
Washington, DC 20570-0001

Please be advised that an appeal is being taken to the General Counsel of the National Labor Relations Board from the compliance determination of the Regional Director in Case Name(s) _____

_____ (If more than one case number, include all case numbers in which appeal is taken.)

Case No. _____

_____ (Signature)