

§ 102.126

29 CFR Ch. I (7-1-10 Edition)

§ 102.126 Unauthorized communications.

(a) No interested person outside this agency shall, in an on-the-record proceeding of the types defined in §102.128, make or knowingly cause to be made any prohibited ex parte communication to Board agents of the categories designated in that section relevant to the merits of the proceeding.

(b) No Board agent of the categories defined in §102.128, participating in a particular proceeding as defined in that section, shall (i) request any prohibited ex parte communications; or (ii) make or knowingly cause to be made any prohibited ex parte communications about the proceeding to any interested person outside this agency relevant to the merits of the proceeding.

§ 102.127 Definitions.

When used in this subpart:

(a) The term *person outside this agency*, to whom the prohibitions apply, shall include any individual outside this agency, partnership, corporation, association, or other entity, or an agent thereof, and the general counsel or his representative when prosecuting an unfair labor practice proceeding before the Board pursuant to section 10(b) of the Act.

(b) The term *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, subject however, to the provisions of §§102.129 and 102.130.

§ 102.128 Types of on-the-record proceedings; categories of Board agents; and duration of prohibition.

Unless otherwise provided by specific order of the Board entered in the proceeding, the prohibition of §102.126 shall be applicable in the following types of on-the-record proceedings to unauthorized ex parte communications made to the designated categories of Board agents who participate in the decision, from the stage of the proceeding specified until the issues are finally resolved by the Board for the purposes of that proceeding under prevailing rules and practices:

(a) In a preelection proceeding pursuant to section 9(c)(1) or 9(e), or in a

unit clarification or certification amendment proceeding pursuant to section 9(b) of the Act, in which a formal hearing is held, communications to the regional director and members of his staff who review the record and prepare a draft of his decision, and members of the Board and their legal assistants, from the time the hearing is opened.

(b) In a postelection proceeding pursuant to section 9(c)(1) or 9(e) of the Act, in which a formal hearing is held, communications to the hearing officer, the regional director and members of his staff who review the record and prepare a draft of his report or decision, and members of the Board and their legal assistants, from the time the hearing is opened.

(c) In a postelection proceeding pursuant to section (c)(1) or 9(e), or in a unit clarification or certification amendment proceeding pursuant to section 9(b) of the Act, in which no formal hearing is held, communications to members of the Board and their legal assistants, from the time the regional director's report or decision is issued.

(d) In a proceeding pursuant to section 10(k) of the Act, communications to members of the Board and their legal assistants, from the time the hearing is opened.

(e) In an unfair labor practice proceeding pursuant to section 10(b) of the Act, communications to the administrative law judge assigned to hear the case or to make rulings upon any motions or issues therein and members of the Board and their legal assistants, from the time the complaint and/or notice of hearing is issued, or the time the communicator has knowledge that a complaint or notice of hearing will be issued, whichever occurs first.

(f) In any other proceeding to which the Board by specific order makes the prohibition applicable, to the categories of personnel and from the stage of the proceeding specified in the order.

§ 102.129 Communications prohibited.

Except as provided in §102.130, *ex parte* communications prohibited by §102.126 shall include: