(address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

## PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.105 is amended in paragraph (c)(5) by alphabetically adding the following new entry to the table to read as follows.

**§ 175.105 Adhesives.**

* * * * *

(c) * * *

(5) * * *

| Substances | Limitations |
|---|---|
| * * * * * * * | |
| 3–Iodo–2–propynyl-N-butyl carbamate (CAS Reg. No. 55406–53–6) | For use only as an antifungal preservative. |
| * * * * * * * | |

Dated: February 8, 1996.

Fred R. Shank,

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 96–4068 Filed 2–22–96; 8:45 am]

**BILLING CODE 4160–01–F**

## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Part 102

### Modifications to Role of National Labor Relations Board's Administrative Law Judges Including: Assignment of Administrative Law Judges as Settlement Judges; Discretion of Administrative Law Judges to Dispense With Briefs, to Hear Oral Argument in Lieu of Briefs, and to Issue Bench Decisions

**AGENCY:** National Labor Relations Board.

**ACTION:** Final rule.

**SUMMARY:** The National Labor Relations Board (NLRB) issues a final rule permanently implementing its recent experimental modification to its rules authorizing the use of settlement judges and providing administrative law judges (ALJs) with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions.

**EFFECTIVE DATE:** March 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, D.C. 20570. Telephone: (202) 273–1940.

**SUPPLEMENTARY INFORMATION:** On September 8, 1994, the Board issued a Notice of Proposed Rulemaking (NPR) which proposed certain modifications to the Board's rules to permit the assignment of ALJs to serve as settlement judges, and to provide ALJs with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions (59 FR 46375). The NPR provided for a comment period ending October 7, 1994.

On December 22, 1994, following consideration of the comments received to the NPR, the Board [1] issued a notice implementing, on a one-year experimental basis, the proposed modifications (59 FR 65942). The notice provided that the modifications would become effective on February 1, 1995, and would expire at the end of the one-year experimental period on January 31, 1996, absent renewal by the Board.

On December 1, 1995, following a review of the experience to date with the modifications and the views of the NLRB's Advisory Committee on Agency Procedure, the Board issued a notice proposing to make the modifications permanent upon expiration of the one-year experimental period on January 31, 1996 (60 FR 61679). The notice provided for a period of public comment on this proposal, until December 29, 1995.

Thereafter, in light of the shutdown of Agency operations due to the lack of appropriated funds, on January 19, 1996, the Board extended from December 29, 1995, until January 25, 1996, the deadline for filing comments (61 FR 1314). The same day, the Board also extended the experimental period from January 31, 1996, until March 1, 1996, to provide the Board time to consider any comments that were filed (61 FR 1281).

The Board received only one comment in response to its December 1, 1995 notice, from William K. Harvey of Jackson, Shields, Yeiser & Cantrell, Cordova, Tennessee. The comment recommended that the Board make the modification regarding settlement judges permanent and that settlement judges be used in more cases. The comment recommended, however, that the Board modify the requirement that all parties consent to the procedure by requiring any party who objects to the appointment of a settlement judge to show good cause for such objection and allowing the chief or associate chief

[1] Chairman Gould and Members Devaney and Browning; Members Stephens and Cohen dissenting in part.

judge to consider the reasons stated and grant or deny the motion notwithstanding the stated opposition. The comment also recommended that the settlement judge be given the authority and discretion to postpone the scheduled hearing where the settlement judge determines that a brief postponement would serve the purposes of settlement.

With respect to the modification permitting bench decisions, the comment urged that this modification be abolished, citing in support two ALJ bench decisions which the comment asserts were terse and confusing.[2] Alternatively, the comment recommended that the Board adopt a rule that such decisions will never be published in Board reports.

Having carefully considered the foregoing comment, we have decided, consistent with and for the reasons stated in the December 1, 1995 notice, to implement, on a permanent basis and without change, the experimental modification to the Board's rules with respect to both settlement judges and bench decisions. As indicated in the December 1, 1995 notice, many of the issues raised by the comment were considered by the NLRB Advisory Committee on Agency Procedure, and either the Management or the Union-side Panel of the Advisory Committee indicated strong opposition to the modifications to the settlement judge procedure proposed in the comment. Thus, as indicated in that notice, the Management-side Panel indicated strong opposition to modifying the current consensual aspect of the settlement judge procedure, and the Union-side Panel indicated strong opposition to providing the settlement judge with the authority to postpone the trial date. In light of the views of the Advisory Committee, we do not believe the procedure should be modified as recommended by the comment at this time.

With respect to the bench decision procedure, as indicated in the December 1, 1995 notice, in the vast majority of cases during the experimental period involving a bench decision either no exceptions were filed to the ALJ's bench decision or the Board short-form adopted the decision. In those cases where no exceptions were filed to the ALJ's bench decision, the decision was not published in Board reports consistent with the Board's historical practice where no exceptions are filed. The other decisions were published pursuant to the Board's usual procedure, and we believe that publishing such decisions, on balance, is generally beneficial to the public and should be continued where appropriate.

Accordingly, we conclude that the experimental modifications should be permanently implemented without change.

As required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the NLRB certifies that these rules will not have a significant impact on small business entities.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

29 CFR Part 102 is amended as follows:

## PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR Part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.35 is revised to read as follows:

### § 102.35 Duties and powers of administrative law judges; assignment and powers of settlement judges.

(a) It shall be the duty of the administrative law judge to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. The administrative law judge shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the Board, subject to the Rules and Regulations of the Board and within its powers:

(1) To administer oaths and affirmations;

(2) To grant applications for subpoenas;

(3) To rule upon petitions to revoke subpoenas;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(6) To regulate the course of the hearing and, if appropriate or necessary, to exclude persons or counsel from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;

(7) To hold conferences for the settlement or simplification of the issues by consent of the parties, but not to adjust cases;

(8) To dispose of procedural requests, motions, or similar matters, including motions referred to the administrative law judge by the Regional Director and motions for summary judgment or to amend pleadings; also to dismiss complaints or portions thereof; to order hearings reopened; and upon motion order proceedings consolidated or severed prior to issuance of administrative law judge decisions;

(9) To approve a stipulation voluntarily entered into by all parties to the case which will dispense with a verbatim written transcript of record of the oral testimony adduced at the hearing, and which will also provide for the waiver by the respective parties of their right to file with the Board exceptions to the findings of fact (but not to conclusions of law or recommended orders) which the administrative law judge shall make in his decisions;

(10) To make and file decisions, including bench decisions delivered within 72 hours after conclusion of oral argument, in conformity with Public Law 89–554, 5 U.S.C. 557;

(11) To call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence;

(12) To request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(13) To take any other action necessary under the foregoing and authorized by the published Rules and Regulations of the Board.

(b) Upon the request of any party or the judge assigned to hear a case, or on his or her own motion, the chief administrative law judge in Washington, D.C., the deputy chief judge in San Francisco, the associate chief judge in Atlanta, or the associate chief judge in New York may assign a judge who shall be other than the trial judge to conduct settlement negotiations. In exercising his or her discretion, the chief, deputy chief, or associate chief judge making the assignment will consider, among other factors, whether there is reason to believe that resolution of the dispute is likely, the request for assignment of a settlement judge is made in good faith, and the assignment is otherwise feasible. Provided, however, that no such assignment shall be made absent

[2] *The Riverboat Hotel*, 319 NLRB No. 30 (Sept. 29, 1995); and *Kinco, Ltd.*, 319 NLRB No. 56 (Oct. 23, 1995) (Member Cohen dissenting in relevant part).

the agreement of all parties to the use of this procedure.

(1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties, assess the practicalities of a potential settlement, and report to the chief, deputy, or associate the status of settlement negotiations, recommending continuation or termination of the settlement negotiations. Where feasible settlement conferences shall be held in person.

(2) The settlement judge may require that the attorney or other representative for each party be present at settlement conferences and that the parties or agents with full settlement authority also be present or available by telephone.

(3) Participation of the settlement judge shall terminate upon the order of the chief, deputy, or associates issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the hearing.

(4) All discussions between the parties and the settlement judge shall be confidential. The settlement judge shall not discuss any aspect of the case with the trial judge, and no evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement judge shall be admissible in any proceeding before the Board, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless voluntarily produced or obtained pursuant to subpoena.

(5) No decision of a chief, deputy, or associate concerning the assignment of a settlement judge or the termination of a settlement judge's assignment shall be appealable to the Board.

(6) Any settlement reached under the auspices of a settlement judge shall be subject to approval in accordance with the provisions of § 101.9 of the Board's Statements of Procedure.

3. Section 102.42 is revised to read as follows:

**§ 102.42 Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing.**

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which may include presentation of proposed findings and conclusions, and shall be included in the stenographic report of the hearing. In the discretion of the administrative law judge, any party may, upon request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge, who may fix a reasonable time for such filing, but not in excess of 35 days from the close of the hearing. Requests for further extensions of time shall be made to the chief administrative law judge in Washington, D.C., to the deputy chief judge in San Francisco, California, to the associate chief judge in New York, New York, or to the associate chief judge in Atlanta, Georgia, as the case may be. Notice of the request for any extension shall be immediately served on all other parties, and proof of service shall be furnished. Three copies of the brief or proposed findings and conclusions shall be filed with the administrative law judge, and copies shall be served on the other parties, and a statement of such service shall be furnished. In any case in which the administrative law judge believes that written briefs or proposed findings of fact and conclusions may not be necessary, he or she shall notify the parties at the opening of the hearing or as soon thereafter as practicable that he or she may wish to hear oral argument in lieu of briefs.

4. In § 102.45, paragraph (a) is revised to read as follows:

**§ 102.45 Administrative law judge's decision; contents; service; transfer of case to the Board; contents of record in case.**

(a) After hearing for the purpose of taking evidence upon a complaint, the administrative law judge shall prepare a decision. Such decision shall contain findings of fact, conclusions, and the reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record, and shall contain recommendations as to what disposition of the case should be made, which may include, if it be found that the respondent has engaged in or is engaging in the alleged unfair labor practices, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act. The administrative law judge shall file the original of his decision with the Board and cause a copy thereof to be served on each of the parties. If the administrative law judge delivers a bench decision, promptly upon receiving the transcript the judge shall certify the accuracy of the pages of the transcript containing the decision; file with the Board a certified copy of those pages, together with any supplementary matter the judge may deem necessary to complete the decision; and cause a copy thereof to be served on each of the parties. Upon the filing of the decision, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, on all the parties. Service of the administrative law judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

* * * * *

Dated, Washington, D.C., February 16, 1996.

By direction of the Board:[3]

John J. Toner,

*Executive Secretary.*

Dissenting Opinion of Member Cohen

I agree with the rule concerning settlement judges. However, I do not agree with the rule which gives judges the power to issue bench decisions and the related power to preclude written briefs.

In my dissent from the promulgation of the experimental rule (a dissent joined by former Member Stephens), I set forth Board law which holds that bench decisions are contrary to the provisions of Section 10(c) of the Act.[4] My colleagues, in apparent recognition of this fact, chose to summarily overrule that Board law. However, as I noted in my dissent, if Section 10(c) forbids bench decisions, the Board is without statutory power to establish a rule which permits such decisions.[5]

My colleagues have not answered this threshold problem. Further, even if they were to do so (to their satisfaction), that does not end the matter. The issue will undoubtedly be the subject of litigation in the federal courts, delaying the prompt enforcement of Board orders. Thus, the rule is at cross-purposes with its stated goal—the prompt resolution of unfair labor practice cases. Further, in my prior dissent, I set forth other concerns about the rule. At this juncture, I cannot say with certainty whether these concerns have been borne out by experience. During the experimental time frame, there have been only 10 bench decisions out of the 400 decisions issued (2.5%). However, that very paucity of decisions bespeaks an important point. Our judges, to their credit, have exercised prudent restraint in exercising the power to issue bench decisions. Accordingly, for the most part, problems have not surfaced.[6] As long as such restraint is exercised, my concerns may well be allayed. I am hopeful, and cautiously optimistic, that this will be the case.

* * * * *

[FR Doc. 96–4155 Filed 2–22–96; 8:45 am]

BILLING CODE 7545–01–P

[3] Chairman Gould and Members Browning and Fox; Member Cohen dissenting in part. Member Cohen's partial dissent is attached.

[4] *Plastic Film Products Corp.*, 232 NLRB 722 (1977); *Local Union No. 195*, 237 NLRB 931 (1978).

[5] See *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842, 843 (1984).

[6] However, there was a substantial problem, in my view, in *Kinco*, 319 NLRB No. 56.