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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2422, 2423, and 2429

Processing of Cases; Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority.

ACTION: Final rules.

SUMMARY: Sections of Parts 2422, 2423, and 2429 concerning (1) computation of time for filing papers (§ 2429.24), and (2) the place and method of filing (§ 2429.24) are amended.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, (202) 382-0715; David L. Feder, Office of the General Counsel, Federal Labor Relations Authority, (202) 382-0834.

SUPPLEMENTARY INFORMATION: On September 23, 1986, the Federal Labor Relations Authority published proposed amendments to its rules and regulations (51 FR 33838) concerning computation of time for filing papers and place and method of filing. The Authority now adopts those proposed revisions as final amendments to §§ 2429.21 and 2429.24.

Several questions were raised about the effect of these changes on the time for a party to file documents after receipt from another party. The changed provision only establishes date of mailing as a filing date with the Authority. Section 2429.27 requiring service on parties, including the General Counsel/Regional Director where appropriate, to be by certified mail or in person is unchanged, as is the § 2429.22 provision for additional time for filing after service by mail.

A request for an extension of time under § 2429.23(a) is excluded from the revised regulation on computation of

time for filing papers because it is essential that the existence of the request be known before a due date. This could not be controlled if a request were deemed filed on the date mailed.

With respect to the exclusion of filing of unfair labor practice charges under § 2423.6 and representation petitions under § 2422.21 from the revised regulation, of the nine Federal agencies and three labor organizations submitting comments on the proposed changes in the regulations, only one labor organization opposed the exclusion of the filing of unfair labor practice charges from the proposed change. The commenting labor organization did not oppose the exclusion of the filing of representation petitions from the proposed change. It was concluded that the method for determining the filing date of an unfair labor practice charge should be the same as that of a representation petition. Further, no commenting labor organization or agency has suggested that the method for determining when an unfair labor practice charge is filed for purposes of determining timeliness under 5 U.S.C. 7118(a)(4) has denied any persons of rights guaranteed under the Federal Service Labor-Management Relations Statute or has caused any hardship on parties filing unfair labor practice charges with the Regional Offices. Almost 8 years of experience of designating charges and representation petitions as having been filed when received by the Regional Offices has resulted in an established practice recognized by all participants in the Federal service labor-management relations program encompassing the sequential numbering of charges and petitions as received in the Regional Offices. No commenting labor organization or agency has provided any rationale for changing the method of determining when unfair labor practice charges and representation petitions are deemed to be filed. It was therefore concluded that changing the determination as to the filing date for unfair labor practice charges and representation petitions, and discarding the sequential numbering of charges and petitions as received in the Regional Office, would serve no purpose and possibly lead to confusion.

List of Subjects in 5 CFR Parts 2422, 2423, and 2429

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set out in the preamble, 5 CFR is amended as follows:

PART 2422—REPRESENTATION PROCEEDINGS

1. The authority citation for Part 2422 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. 5 CFR Part 2422 is amended by adding § 2422.2(e)(4) to read as follows:

§ 2422.2 Contents of petition; procedures for consolidation of existing exclusively recognized units; filing and service of petition; challenges to petition.

* * *

(e) * * *

(4) A petition will be deemed to be filed when it is received by the appropriate Regional Director in accordance with the requirements in paragraphs (e) (1), (2), and (3) of this section.

* * *

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for Part 2423 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. 5 CFR Part 2423 is amended by adding § 2423.6(c) to read as follows:

§ 2423.6 Filing and service of copies.

* * *

(c) A charge will be deemed to be filed when it is received by the appropriate Regional Director in accordance with the requirements in paragraph (a) of this section.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

1. The authority citation for Part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. 5 CFR Part 2429 is amended by revising § 2429.21 to read as follows:

§ 2429.21 Computation of time for filing papers.

(a) In computing any period of time prescribed by or allowed by this

subchapter, except in agreement bar situations described in § 2422.3 (c) and (d) of this subchapter, and except as to the filing of exceptions to an arbitrator's award under § 2425.1 of this subchapter, the day of the act, event, or default from or after which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or a Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday. *Provided, however,* in agreement bar situations described in § 2422.3 (c) and (d), if the 60th day prior to the expiration date of an agreement falls on Saturday, Sunday, or a Federal legal holiday, a petition, to be timely, must be filed by the close of business on the last official workday preceding the 60th day. When the period of time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations.

(b) Except when filing an unfair labor practice charge pursuant to § 2423.6 of this subchapter, a representation petition pursuant to § 2422.2 of this subchapter, and a request for an extension of time pursuant to § 2429.23(a) of this part, when this subchapter requires the filing of any paper with the Authority, the General Counsel, a Regional Director, or an Administrative Law Judge, the date of filing shall be determined by the date of mailing indicated by the postmark date. If no postmark date is evident on the mailing, it shall be presumed to have been mailed 5 days prior to receipt. If the filing is by personal delivery, it shall be considered filed on the date it is received by the Authority or the officer or agent designated to receive such matter.

(c) All documents filed or required to be filed with the Authority shall be filed in accordance with § 2429.24(a) of this subchapter.

3. 5 CFR Part 2429 is amended by revising § 2429.23(a) to read as follows:

§ 2429.23 Extensions; waiver.

(a) Except as provided in paragraph (d) of this section, and notwithstanding § 2429.21(b) of this subchapter, the Authority or General Counsel, or their designated representatives, as appropriate, may extend any time limit provided in this subchapter for good cause shown, and shall notify the parties of any such extension. Requests for extensions of time shall be in writing and received by the appropriate official not later than five (5) days before the established time limit for filing, shall

state the position of the other parties on the request for extension, and shall be served on the other parties.

4. 5 CFR Part 2429 is amended by revising § 2429.24 (a) and (e) to read as follows:

§ 2429.24 Place and method of filing; acknowledgment.

(a) All documents filed or required to be filed with the Authority pursuant to this subchapter shall be filed with the Director of Case Management, Federal Labor Relations Authority, Docket Room, 500 C Street SW., Washington, DC 20424 (telephone: FTS 382-0748; Commercial (202) 382-0748) between 8 a.m. and 5 p.m., Monday through Friday (except Federal holidays). Documents hand-delivered for filing must be presented in the Docket Room not later than 5 p.m. to be accepted for filing on that day.

(e) All documents filed pursuant to this section shall be filed in person or by mail.

Dated: December 17, 1986.

Jerry L. Calhoun,

Chairman.

Henry B. Frazier III,

Member.

Jean McKee,

Member.

John C. Miller,

General Counsel.

[FR Doc. 86-28606 Filed 12-19-86; 8:45 am]

BILLING CODE 6727-01-M

5 CFR Part 2423

Unfair Labor Practice Proceedings

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Authority and the General Counsel have decided not to adopt the regulation as proposed regarding the disclosure of witnesses and proposed exhibits ten (10) days prior to an unfair labor practice hearing. Rather, the Authority and General Counsel are adopting a modified version of the proposed regulation which requires that the exchange of witness lists and copies of proposed exhibits occur at a prehearing conference at the site of the unfair labor practice hearing just prior to the opening of the hearing, rather than ten (10) days prior to the opening of the hearing. Thus, § 2423.14 of the regulations is revised accordingly.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Feder, (202) 382-0834.

SUPPLEMENTARY INFORMATION: On September 23, 1986, the Federal Labor Relations Authority and the General Counsel of the Authority published a proposed amendment to its rules and regulations (51 FR 33839). The proposed change required all parties to exchange proposed witness lists and documentary evidence ten (10) days prior to the opening of an unfair labor practice hearing (§ 2423.14).

One labor organization and eight agencies submitted comments on the proposed regulation. The vast majority of comments received opposed the regulation as proposed contending in essence that the expenditure of resources required to comply with the proposed regulation would not offset any compensating benefits derived from the proposed change. The commentators further suggested that the regulation as proposed would have the opposite effect of that intended in that it would raise more questions than it answers and would result in more complex hearings and burdened records regarding whether a particular witness or exhibit was known or was available more than ten (10) days prior to the hearing. Agencies commented that it would create an unfair advantage for the General Counsel.

In view of the comments received, the Authority and General Counsel have determined not to adopt the regulation as proposed regarding the disclosure of witnesses and proposed exhibits ten (10) days prior to an unfair labor practice hearing. Rather, the Authority and General Counsel adopting a modified version of the proposed regulation which alleviates the difficulties envisioned by the commenting agencies and labor organizations. Accordingly, the final regulation would require the exchange of witness lists and copies of proposed exhibits, with index, at a prehearing conference at the site of the unfair labor practice hearing just prior to the opening of the hearing. This proposal would alleviate the concerns of the commenting parties involving additional travel to the site of the unfair labor practice, unfair advantage to the General Counsel and collateral issues which may arise regarding compliance with the regulation as originally proposed. The modified regulation would still continue to afford the parties an opportunity to review all documentations to be submitted as exhibits prior to the commencement of the hearing thus facilitating the

introduction of evidence at the hearing, the original intent of the proposed regulation. Further, any issues concerning the calling of witnesses or introduction of exhibits not exchanged prior to the hearing would be subject to the discretion of the Administrative Law Judge presiding, as is the current practice concerning the calling of witnesses and introduction of evidence.

List of Subjects in 5 CFR Part 2423

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set out in the preamble, 5 CFR Part 2423 is amended as follows:

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for Part 2423 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. 5 CFR 2423.14 is amended by revising the section heading, redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and adding a new paragraph (a) to read as follows:

§ 2423.14 Prehearing disclosure, Conduct of hearing.

(a) Parties will exchange proposed witness lists and copies of documents, with index, intended to be offered into evidence at the hearing at a prehearing conference at the site of the unfair labor practice hearing. The calling of witnesses or introduction of exhibits not exchanged prior to the hearing will be subject to the discretion of the Administrative Law Judge presiding.

Dated: December 17, 1986.

Jerry L. Calhoun,
Chairman.

Henry B. Frazier III,
Member.

Jean McKee,
Member.

John C. Miller,
General Counsel.

[FR Doc. 86-28612 Filed 12-19-86; 8:45 am]

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5 CFR Part 2424

Expedited Review of Negotiability Issues

AGENCY: Federal Labor Relations Authority.

ACTION: Final rules.

SUMMARY: The Authority amends its rules concerning (1) the content of a

petition for review of negotiability issues (§ 2424.4(a)(2)) and the filing of an incomplete petition for review (§ 2424.4(c)); and (2) the content of the agency statement of position (§ 2424.6(a)(3)).

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, (202) 382-0715.

SUPPLEMENTARY INFORMATION: On September 23, 1986, the Federal Labor Relations Authority published proposed amendments to its rules and regulations (51 FR 33845) concerning the content of a petition for review of an incomplete negotiability issue (§ 2424.4(a)(2)) and the filing of an incomplete petition for review (§ 2424.4(e)); (2) the content of the agency statement of position (§ 2424.6(a)(3)); and (3) procedures which the Authority may follow if the record created by the parties is not of sufficient quality to enable it to expeditiously reach a reasoned decision.

The comments received by the Authority with respect to the proposed regulations concerning settlement meetings and hearings to clarify deficient records generally reflected uncertainty or lack of confidence in the effectiveness of such procedures in resolving negotiability issues. In view of this widespread feeling that evidence is lacking to justify adopting the procedures at this time, the Authority has decided that the proposed regulations regarding them will not be implemented. Instead, the Authority has decided to develop an experimental project to assist parties in reaching voluntary settlements of negotiability disputes.

List of Subjects in 5 CFR Parts 2424

Administrative practice and procedures, Government employees, Labor-management relations.

PART 2424—EXPEDITED REVIEW OF NEGOTIABILITY ISSUES

1. The authority citation for 5 CFR Part 2424 continues to read:

Authority: 5 U.S.C. 7134.

2. Section 2424.4 is amended by revising paragraph (a)(2) and by adding paragraph (c) as follows:

§ 2424.4 Content of petition; service.

(a) * * *

(2) An explicit statement of the meaning attributed to the proposal by the exclusive representative including:

(i) Explanation of terms of art, acronyms, technical language, or any other aspect of the language of the proposal which is not in common usage; and

(ii) Where the proposal is concerned with a particular work situation, or other particular circumstances, a description of the situation or circumstances which will enable the Authority to understand the context in which the proposal is intended to apply;

* * * * *

(c) (1) Filing an incomplete petition for review will result in the exclusive representative being asked to provide the missing or incomplete information. Noncompliance with a request to complete the record may result in dismissal of the petition.

(2) The processing priority accorded to an incomplete petition, relative to other pending negotiability appeals, will be based upon the date when the petition is completed—not the date it was originally filed.

3. Section 2424.6 is amended by revising paragraph (a)(2) as follows:

§ 2424.6 Position of the agency; time limits for filing; service.

(a) * * *

(2) Setting forth in full its position on any matters relevant to the petition which it wishes the Authority to consider in reaching its decision, including a full and detailed statement of its reasons supporting the allegation. The statement shall cite the section of any law, rule or regulation relied upon as a basis for the allegation and shall contain a copy of any internal agency rule or regulation so relied upon. The statement shall include:

(i) Explanation of the meaning the agency attributes to the proposal as a whole, including any terms of art, acronyms, technical language or any other aspect of the language of the proposal which is not in common usage; and

(ii) Description of a particular work situation, or other particular circumstance the agency views the proposal to concern, which will enable the Authority to understand the context in which the proposal is considered to apply by the agency.

* * * * *

Dated: December 17, 1986.

Jerry L. Calhoun,
Chairman.

Henry B. Frazier III,
Member.

Jean McKee,
Member.

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