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## **Title 29 — Labor**

### **Subtitle B — Regulations Relating to Labor**

#### **Chapter IV — Office of Labor-Management Standards, Department of Labor**

##### **Subchapter A — Labor-Management Standards**

##### **Part 417 — Procedure for Removal of Local Labor Organization Officers**

**Authority:** Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary's Order No. 03-2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 01-2020.

**Source:** 29 FR 8264, July 1, 1964, unless otherwise noted.

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##### **Subpart A—Procedures To Determine Adequacy of Constitution and Bylaws for Removal of Officers of Local Labor Organizations**

##### **§ 417.3 Initiation of proceedings.**

- (a) Any member of a local labor organization who has reason to believe that:
  - (1) An elected officer(s) of such organization has been guilty of serious misconduct, and
  - (2) The constitution and bylaws of his organization do not provide an adequate procedure for the removal of such officer(s), may file with the Office of Labor-Management Standards a written application, which may be in the form of a letter, for initiation of proceedings under section 401(h) of the Act.
- (b) An application filed under paragraph (a) of this section shall set forth the facts upon which it is based including a statement of the basis for the charge that an elected officer(s) is guilty of serious misconduct; and shall contain:

- (1) Information identifying the labor organization and the officer or officers involved, and
- (2) Any data such member desires the Office of Labor-Management Standards to consider in connection with his application.

#### § 417.4 Pre-hearing conference.

- (a) Upon receipt of an application filed under § 417.3, the Chief, DOE shall cause an investigation to be conducted of the allegations contained therein, and if he finds probable cause to believe that the constitution and bylaws of the labor organization do not provide an adequate procedure for the removal of an elected officer(s) guilty of serious misconduct he shall:
  - (1) Advise the labor organization of his findings and
  - (2) Afford such labor organization the opportunity for a conference to be set not earlier than 10 days thereafter except where all interested persons elect to confer at an earlier time. Any such conference shall be conducted for the purpose of hearing the views of interested persons and attempting to achieve a settlement of the issue without formal proceedings.
- (b)
  - (1) If:
    - (i) The labor organization declines the opportunity to confer afforded under paragraph (a) of this section, and fails to undertake compliance with the provisions of section 401(h) of the Act, or if
    - (ii) After consideration of any views presented by the labor organization the Chief, DOE still finds probable cause to believe that the removal procedures are not adequate and if agreement for the adoption of adequate procedures for removal has not been achieved and the labor organization refuses to enter into a stipulation to comply with the provisions of section 401(h) of the Act, the Chief, DOE shall submit his findings and recommendations to the Director.
  - (2) Upon consideration of the Chief, DOE's recommendations, the Director may order a hearing to be conducted before an Administrative Law Judge duly assigned by him to receive evidence and arguments
    - (i) on the applicability of section 401(h) of the Act to the labor organization involved, and
    - (ii) on the question of whether its constitution and bylaws provide an adequate procedure for the removal of an elected union officer guilty of serious misconduct.

[29 FR 8264, July 1, 1964, as amended at 50 FR 31310, Aug. 1, 1985; 62 FR 6093, Feb. 10, 1997; 78 FR 8025, Feb. 5, 2013]

#### § 417.5 Notice.

Notice of hearing shall be given not less than 10 days before such hearing is held unless the parties agree to a shorter notice period. Such notice shall be transmitted to the labor organization and the officer(s) accused of misconduct and other interested persons, insofar as they are known, and shall inform them of:

- (a) The time, place, and nature of the hearings;
- (b) The legal authority and jurisdiction under which the hearing is to be held; and
- (c) The matters of fact and law asserted.

The Labor organization shall inform its members of the provisions of the notice and copies of the notice shall be made available for inspection at the offices of the labor organization.

### **§ 417.6 Powers of Administrative Law Judge.**

The designated Administrative Law Judge shall have authority:

- (a) To give notice concerning and to conduct hearings;
- (b) To administer oaths and affirmations;
- (c) To issue subpoenas;
- (d) To rule upon offers of proof and receive relevant evidence;
- (e) To take or cause depositions to be taken whenever the ends of justice would be served thereby;
- (f) To regulate the course of the hearing;
- (g) To hold conferences for the settlement or simplification of the issues by consent of the parties;
- (h) To dispose of procedural requests or other matters;
- (i) To limit the number of witnesses at hearings, or limit or exclude evidence or testimony which may be irrelevant, immaterial, or cumulative;
- (j) If appropriate or necessary to exclude persons or counsel from participation in hearings for refusing any proper request for information or documentary evidence, or for contumacious conduct;
- (k) To grant continuances or reschedule hearings for good cause shown;
- (l) To consider and decide procedural matters;
- (m) To take any other actions authorized by the regulations in this part.

The Administrative Law Judge's authority in the case shall terminate upon his filing of the record and his initial decision with the Director, or when he shall have withdrawn from the case upon considering himself disqualified, or upon termination of his authority by the Director for good cause stated. However, the Administrative Law Judge's authority may be reinstated upon referral of some or all the issues by the Director for rehearing. This authority will terminate upon certification of the rehearing record to the Director.

*[29 FR 8264, July 1, 1964, as amended at 78 FR 8025, Feb. 5, 2013]*

### **§ 417.7 Transcript.**

An official reporter shall make the only official transcript of the proceedings. Copies of the official transcript shall be made available upon request addressed to the Director in accordance with the provisions of part 70 of this title.

*[50 FR 31310, Aug. 1, 1985, as amended at 63 FR 33779, June 19, 1998; 78 FR 8025, Feb. 5, 2013]*

### **§ 417.8 Appearances.**

The Department of Labor does not maintain a register of persons or attorneys who may participate at hearings. Any interested person may appear and be heard in person or be represented by counsel.

### **§ 417.9 Evidence; contumacious or disorderly conduct.**

- (a) Formal rules of evidence or procedure in use in courts of law or equity shall not obtain. Rules of evidence are to be within the discretion of the Administrative Law Judge. However, it shall be the policy to exclude testimony or matter which is irrelevant, immaterial, or unduly repetitious.
- (b) Contumacious or disorderly conduct at a hearing may be ground for exclusion therefrom. The refusal of a witness at any hearing to answer any questions which have been ruled to be proper shall, in the discretion of the Administrative Law Judge be ground for striking all testimony previously given by such witness on related matter.
- (c) At any stage of the hearing the Administrative Law Judge may call for further evidence or testimony on any matter. After the hearing has been closed, no further information shall be received on any matter, except where provision shall have been made for it at the hearing, or except as the Administrative Law Judge or Director may direct by reopening the hearing.

*[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964; 78 FR 8025, Feb. 5, 2013]*

### **§ 417.10 Rights of participants.**

Every interested person shall have the right to present oral or documentary evidence, to submit evidence in rebuttal, and to conduct such examination or cross-examination as may be required for a full and true disclosure of the facts (subject to the rulings of the Administrative Law Judge), and to object to admissions or exclusions of evidence. The Department of Labor, through its officers and attorneys shall have all rights accorded interested persons by the provisions of this subpart A.

### **§ 417.11 Objections to evidence.**

Objections to the admission or exclusion of evidence may be made orally or in writing, but shall be in short form, stating the grounds for such objection. The transcript shall not include argument or debate thereon except as required by the Administrative Law Judge. Rulings on such objections shall be a part of the transcript. No such objections shall be deemed waived by further participation in the hearing. Formal exceptions are unnecessary and will not be taken to rulings on objections.

### **§ 417.12 Proposed findings and conclusions.**

Within 10 days following the close of hearings, interested persons may submit proposed findings and conclusions to the Administrative Law Judge, together with supporting reasons therefor, which shall become a part of the record.

### **§ 417.13 Initial decision of Administrative Law Judge.**

Within 25 days following the period for submitting proposed findings and conclusions, the Administrative Law Judge shall consider the whole record, file an initial decision as to the adequacy of the constitution and bylaws for the purpose of removing officers with the Administrative Review Board, and forward a copy to each party participating in the hearing. His decision shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all material issues.

*[29 FR 8264, July 1, 1964, as amended at 78 FR 8025, Feb. 5, 2013]*

### **§ 417.14 Form and time for filing of appeal with the Administrative Review Board.**

- (a) An interested person may appeal from the Administrative Law Judge's initial decision by filing written exceptions with the Administrative Review Board within 15 days of the issuance of the Administrative Law Judge's initial decision (or such additional time as the Administrative Review Board may allow), together with supporting reasons for such exceptions, in accordance with 29 CFR part 26. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Administrative Review Board, or an appeal containing such matter or lacking in specification of exceptions may be dismissed.
- (b) In the absence of either an appeal to the Administrative Review Board or review of the Administrative Law Judge's initial decision by the Administrative Review Board on his own motion, such initial decision shall become the decision of the Administrative Review Board.

*[29 FR 8264, July 1, 1964, as amended at 78 FR 8025, Feb. 5, 2013; 86 FR 1785, Jan. 11, 2021]*

### **§ 417.15 Decision of the Administrative Review Board.**

Upon appeal filed with the Administrative Review Board pursuant to § 417.14, or within its discretion upon its own motion, the complete record of the proceedings shall be certified to it; it shall notify all interested persons who participated in the proceedings; and it shall review the record, the exceptions filed and supporting reasons, and shall issue a decision as to the adequacy of the constitution and bylaws for the purpose of removing officers, or shall order such further proceedings as it deems appropriate. Its decision shall become a part of the record and shall include a statement of its findings and conclusions, as well as the reasons or basis therefor, upon all material issues.

*[86 FR 1785, Jan. 11, 2021]*