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 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

Authority: Secs. 401, 402, 73 Stat. 532, 534 (29 U.S.C. 481, 482); Secretary's Order No. 03-2012, 77 FR 69376, November 16, 2012.

Source: 38 FR 18324, July 9, 1973, unless otherwise noted.

Subpart A—General Considerations

§ 452.1 Introductory statement.

(a) This part discusses the meaning and scope of the provisions of title IV of the Labor-Management Reporting and Disclosure Act[1] (hereinafter referred to as the Act), which deal with the election of officers of labor organizations. These provisions require periodic election of union officers, and prescribe minimum standards to insure that such elections will be fairly conducted. Specific provisions are included to assure the right of union members to participate in selecting their officers without fear of interference or reprisal, and to protect the right to nominate candidates, run for office, and vote in officer elections. Title IV also sets forth the rights of candidates, provides for secret ballots in appropriate cases, and requires notice of nominations and elections, preservation of election records, and other safeguards to insure fair elections. However, the Act does not prescribe complete, detailed procedures for the nomination and election of union officers.

(b) Interpretations of the Director with respect to the election provisions of title IV are set forth in this part to provide those affected by these provisions of the Act with "a practical guide * * * as to how the office representing the public interest in its enforcement will seek to apply it."[2] The correctness of an interpretation can be determined finally and authoritatively only by the courts. It is necessary, however, for the Director to reach informed conclusions as to the meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Director contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide him in performing his duties unless and until he is directed otherwise by authoritative rulings of the courts or unless and until he subsequently announces that a prior interpretation is incorrect. However, the fact that a particular problem is not discussed in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Director with respect to such problem or to constitute an administrative interpretation or practice.

[1] 73 Stat. 532-535, 29 U.S.C. 481-483.

(c) To the extent that prior opinions and interpretations relating to the election of officers of labor organizations under the Act are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.

[38 FR 18324, July 9, 1973, as amended at 78 FR 8026, Feb. 5, 2013]

§ 452.2 Application of union constitution and bylaws.

Elections required to be held as provided in title IV are to be conducted in accordance with the validly adopted constitution and bylaws of the labor organizations insofar as they are not inconsistent with the provisions of the Act.

[38 FR 18324, July 9, 1973, as amended at 63 FR 33780, June 19, 1998]

§ 452.3 Interpretations of constitution and bylaws.

The interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable.[3]

§ 452.4 Investigatory provision—application.

The provisions of section 601 of the Act provide general investigatory authority to investigate alleged violations of the Act including violations of title IV. However, section 601 in and of itself provides no remedy, and the section must be read in conjunction with the remedy and statutory scheme of section 402, i.e., exhaustion of internal union remedies and a complaint to the Secretary following completion of the election before suit can be filed. In view of the remedy provided, an investigation prior to completion of an election may have the effect of publicizing the activities or unsubstantiated allegations of one faction to the prejudice of the opposition. To avoid this result, and as a matter of sound statutory construction, the Department will exercise its investigatory authority only in circumstances in which the outcome of the election could not be affected by the investigation.[4] Thus, the Department ordinarily will employ its investigatory authority only where the procedural requirements for a title IV investigation have been met; but in unusual circumstances or where necessary to collect or preserve evidence an investigation may be conducted after the conclusion of balloting.

§ 452.5 Effect of violation on outcome.

Since the remedy under section 402 is contingent upon a finding by the court, among other things, that the violation "may have affected the outcome of an election"[5] the Secretary as a matter of policy will not file suit to enforce the election provisions unless the violations found are such that the outcome may have been affected.[6]

[2] *Skidmore* v. *Swift & Co.,* 323 U.S. 134 at 138 (1944).

[3] *English* v. *Cunningham,* 282 F.2d 848 (C.A.D.C. 1960).

[4] However questions involving the use of force or violence or the threat of the use of force or violence under circumstances which may violate section 610 (29 U.S.C. 530) of the Act will be referred promptly to the Department of Justice for appropriate action.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31310, Aug. 1, 1985; 63 FR 33780, June 19, 1998]

§ 452.6 Delegation of enforcement authority.

The authority of the Secretary under the Act has been delegated in part to the Director.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31309, Aug. 1, 1985; 78 FR 8026, Feb. 5, 2013]

Subpart B—Other Provisions of the Act Affecting Title IV

§ 452.7 Bill of Rights, title I.

The provisions of title I, "Bill of Rights of Members of Labor Organizations"[7] (particularly section 101(a)(1) "Equal Rights," section 101(a)(2) "Freedom of Speech and Assembly," and section 101(a)(5) "Safeguards against Improper Disciplinary Action") are related to the rights pertaining to elections. Direct enforcement of title I rights, as such, is limited to civil suit in a district court of the United States by the person whose rights have been infringed.[8] The exercise of particular rights of members is subject to reasonable rules and regulations in the labor organization's constitution and bylaws.[9]

§ 452.8 Trusteeship provisions, title III.

Placing a labor organization under trusteeship consistent with title III, may have the effect of suspending the application of title IV to the trusteed organization (see § 452.15).

§ 452.9 Prohibition against certain persons holding office; section 504.

Among the safeguards for labor organizations provided in title V is a prohibition against the holding of office by certain classes of persons.[10] This provision makes it a crime for any person willfully to serve in certain positions, including as an elected officer of a labor organization, for a period of three to thirteen years after conviction or imprisonment for the commission of specified offenses, including violation of titles II or III of the Act, or conspiracy or attempt to commit such offenses. It is likewise a crime for any labor organization or officer knowingly to permit such a person to serve in such positions. Persons subject to the prohibition applicable to convicted criminals may serve if their citizenship rights have been fully restored after being taken away by reason of the conviction, or if, following the procedures set forth in the Act, it is determined that their service would not be contrary to the purposes of the Act.

[6] *Dunlop* v. *Bachowski,* 421 U.S. 560, 570 (1975), citing *Wirtz* v. *Glass Bottle Blowers,* 389 U.S. 463, 472 (1968) and *Schonfeld* v. *Wirtz,* 285 F. Supp. 705, 707-708 (S.D.N.Y. 1966).

[5] Act, sec. 402(b) (29 U.S.C. 482).

[9] Act, sec. 101(a)(1), 101(a)(2), and 101(b) (29 U.S.C. 411).

[8] But the Secretary may bring suit to enforce section 104 (29 U.S.C. 414).

[7] 73 Stat. 522, 29 U.S.C. 411.

[50 FR 31310, Aug. 1, 1985]

§ 452.10 Retaliation for exercising rights.

Section 609, which prohibits labor organizations or their officials from disciplining members for exercising their rights under the Act, and section 610, which makes it a crime for any person to use or threaten force or violence for the purpose of interfering with or preventing the exercise of any rights protected under the Act, apply to rights relating to the election of officers under title IV.

Subpart C—Coverage of Election Provisions

§ 452.11 Organizations to which election provisions apply.

Title IV of the Act contains election provisions applicable to national and international labor organizations, except federations of such organizations, to intermediate bodies such as general committees, conferences, system boards, joint boards, or joint councils, certain districts, district councils and similar organizations and to local labor organizations.[11] The provisions do not apply to State and local central bodies, which are explicitly excluded from the definition of "labor organization".[12] The characterization of a particular organizational unit as a "local," "intermediate," etc., is determined by its functions and purposes rather than the formal title by which it is known or how it classifies itself.

§ 452.12 Organizations comprised of government employees.

An organization composed entirely of government employees (other than employees of the United States Postal Service) is not subject to the election provisions of the Act. Section 3(e) of the Act, defining the term "employer," specifically excludes the United States Government, its wholly owned corporations, and the States and their political subdivisions from the scope of that term, and section 3(f) defines an "employee" as an individual employed by an "employer." Since a "labor organization" is defined in section 3(i) as one in which "employees" participate and which exists in whole or in part for the purpose of "dealing with employers," an organization composed entirely of government employees would not be a "labor organization"[13] as that term is defined in the Act. However, section 1209 of the Postal Reorganization Act provides that organizations of employees of the United States Postal Service shall be subject to the Labor-Management Reporting and Disclosure Act. A national, international or intermediate labor organization which has some locals of government employees not covered by the Act and other locals which are mixed or are composed entirely of employees covered by the Act would be subject to the election requirements of the Act. Its mixed locals would also be subject to the Act. The requirements would not apply to locals composed entirely of government employees not covered by the Act, except with respect to the election of officers of a parent organization which is subject to those requirements or the election of delegates to a convention of such parent organization, or to an intermediate body to which the requirements apply.

[10] Act, sec. 504(a) (29 U.S.C. 504), as amended by the Comprehensive Crime Control Act of 1984, Public Law 98-473, secs. 229, 235, 803 and 804. See text at footnote 23 for a list of the disabling crimes.

[12] See § 451.5 of this chapter for a definition of "State or local central body."

[11] For the scope of the term "labor organization," see part 451 of this chapter.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985; 63 FR 33780, June 19, 1998]

§ 452.13 Extraterritorial application.

Although the application of the Act is limited to the activities of persons and organizations within the territorial jurisdiction of the United States,[14] an international, national or intermediate body is not exempted from the requirements of the Act by virtue of the participation of its foreign locals or foreign membership in its elections. For example, votes received from Canadian members in referendum elections held by an international must have been cast under procedures meeting the minimum requirements of the Act, and Canadian delegates participating at conventions of the international at which officers are elected must have been elected by secret ballot.

§ 452.14 Newly formed or merged labor organizations.

The initial selection of officers by newly formed or merged labor organizations is not subject to the requirements of title IV.[15] Such labor organizations may have temporary or provisional officers serve until a regular election subject to the Act can be scheduled. An election under all the safeguards prescribed in these regulations must be held within a reasonable period after the organization begins to function. What would be a reasonable time for this purpose depends on the circumstances, but after the formation or consolidation of the labor organization, a regular election subject to title IV may not be deferred longer than the statutory period provided for that type of organization. However, when a pre-existing labor organization changes its affiliation without substantially altering its basic structure or identity the terms of its officers may not be extended beyond the maximum period specified by the Act for the type of labor organization involved.

§ 452.15 Effect of trusteeship.

Establishment of a valid trusteeship may have the effect of suspending the operation of the election provisions of the Act. When the autonomy otherwise available to a subordinate labor organization has been suspended consistent with the provisions of title III of the Act, officers of the organization under trusteeship may be relieved of their duties and temporary officers appointed by the trustee if necessary to assist him in carrying out the purposes for which the trusteeship was established. However, when a regular election of officers or an election for purposes of terminating the trusteeship is being held during the trusteeship, title IV would apply.

[13] Most labor organizations composed of Federal Government employees are subject to the standards of conduct provisions of the Civil Service Reform Act, 5 U.S.C. 7120, or the Foreign Service Act, 22 U.S.C. 4117. The regulations implementing those statutory provisions are contained in parts 457-459 of this chapter.

[14] See § 451.6 of this chapter.

[15] However, the other provisions of the Act are applicable immediately upon such formation or merger.

§ 452.16 Offices which must be filled by election.

Section 401 of the Act identifies the types of labor organizations whose officers must be elected and prescribes minimum standards and procedures for the conduct of such elections. Under that section officers of national or international labor organizations (except federations of such organizations), local labor organizations, and intermediate bodies such as general committees, system boards, joint boards, joint councils, conferences, certain districts, district councils and similar organizations must be elected.[16]

§ 452.17 Officer.

Section 3(n) of the Act defines the word “officer” and it is this definition which must be used as a guide in determining what particular positions in a labor organization are to be filled in the manner prescribed in the Act. For purposes of the Act, “officer” means “any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.”

§ 452.18 Constitutional officers.

A constitutional officer refers to a person holding a position identified as an officer by the constitution and bylaws of the labor organization. Thus, for example, a legislative representative of a labor organization who performs no executive functions and whose duties are confined to promoting the interests of members in legislative matters is nevertheless an officer who is required to be elected where the labor organization's constitution identifies the holder of such a position as an officer. On the other hand, legislative representatives who are required to be elected by the constitution and bylaws of a labor organization are not considered to be officers within the meaning of the Act if they are not designated as such by the constitution, are not members of any executive board or similar governing body, and do not perform executive functions. As defined in the Act, however, the term “officer” is not limited to individuals in positions identified as such or provided for in the constitution or other organic law of the labor organization.[17] The post of Honorary President, President Emeritus or Past President that is to be assumed by the retiring chief executive officer of a union would not be an officer position unless it is designated as an officer position by the union's constitution, or the holder of the position performs executive functions or serves on an executive board or similar governing body.

§ 452.19 Executive functions.

The definitional phrase “a person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization” brings within the term “officer” any person who in fact has executive or policy-making authority or responsibility, although he may not occupy a position identified as an officer under the constitution and bylaws of the organization. Authorization to perform such functions need not be contained in any provision of the constitution or bylaws or other document but may be inferred from actual practices or conduct. On the other hand, a person is not an officer merely because he performs ministerial acts for a

[16] See § 452.23 for a discussion of the frequency with which the different types of labor organizations must conduct elections of officers. See part 451 of this chapter for the scope of the term “labor organization.”

[17] Cf. *NLRB* v. *Coca-Cola Bottling Co.,* 350 U.S. 264 (1956). See also, Daily Cong. Rec. 5867, Sen., Apr. 23, 1959.

designated officer who alone has responsibility. The normal functions performed by business agents and shop stewards, such as soliciting memberships, presenting or negotiating employee grievances within the work place, and negotiating contracts are not "other executive functions" as that phrase is used in section 3(n) of the Act. However, a directing business representative or a business manager usually exercises such a degree of executive authority as to be considered an officer and, therefore, must be elected. The duties normally pertaining to membership on a bargaining committee do not come within the phrase "other executive functions." However, persons occupying such non-executive positions may be "officers" if they are ex officio members of the organization's executive board (or similar governing body) or if the constitution or bylaws of the union designate such positions as officers.

§ 452.20 Nature of executive functions.

(a) The functions that will bring a particular position with a title other than president, vice-president, secretary-treasurer, or executive board member within the definition of "officer" cannot be precisely defined. They are the functions typically performed by officers holding these titles in current labor union practice. Decisions in each case will require a practical judgment. As a general rule, a person will be regarded as being authorized to perform the functions of president if he is the chief or principal executive officer of the labor organization. Similarly, he will be regarded as being authorized to perform the functions of treasurer if he has principal responsibility for control and management of the organization's funds and fiscal operation. A member of any group, committee, or board which is vested with broad governing or policymaking authority will be regarded as a member of an "executive board or similar governing body." The name or title that the labor organization assigns to the position is not controlling.

(b) The purpose of the election requirement of the Act is to assure that persons in positions of control in labor organizations will be responsive to the desires of the members.[18] Professional and other staff members of the labor organization who do not determine the organization's policies or carry on its executive functions and who are employed merely to implement policy decisions and managerial directives established by the governing officials of the organization are not officers and are not required to be elected.

§ 452.21 Members of executive board.

The phrase "a member of its executive board or similar governing body" refers to a member of a unit identified as an executive board or a body, whatever its title, which is vested with functions normally performed by an executive board. Members of a committee which is actually the executive board or similar governing body of the union are considered officers within the meaning of section 3(n) of the Act even if they are not so designated by the union's constitution and bylaws. For example, members of an "Executive-Grievance Committee" which exercises real governing powers are officers under the Act. However, it should be noted that committee membership alone will not ordinarily be regarded as an indication of officer status, unless the committee or its members meet the requirements contained in section 3(n) of the Act.

§ 452.22 Delegates to a convention.

Under certain circumstances, delegates to a convention of a national or international labor organization, or to an intermediate body, must be elected by secret ballot among the members in good standing of the labor organization they represent even though such delegates are not "officers" of the organization. Such election is required by the

[18] See, for example, S. Rept. 187, 86th Cong., 1st sess., p. 7.

Act[19] when the delegates are to nominate or elect officers of a national or international labor organization, or of an intermediate body. There is, of course, no requirement that delegates be elected in accordance with the provisions of title IV if they do not nominate or elect officers, unless delegates are designated as “officers” in the union's constitution and bylaws or unless, by virtue of their position, they serve as members of the executive board or similar governing body of the union.

Subpart D—Frequency and Kinds of Elections

§ 452.23 Frequency of elections.

The Act requires that all national and international labor organizations (other than federations of such labor organizations) elect their officers not less often than every five years. Officers of intermediate bodies, such as general committees, system boards, joint boards, joint councils, conferences, and certain districts, district councils and similar organizations, must be elected at least every four years, and officers of local labor organizations not less often than every three years.

§ 452.24 Terms of office.

The prescribed maximum period of three, four, or five years is measured from the date of the last election.[20] It would not be consistent with these provisions of the Act for officers elected for the maximum terms allowable under the statute to remain in office after the expiration of their terms without a new election. Failure to hold an election for any office after the statutory period has expired constitutes a continuing violation of the Act, which may be brought to the attention of the Secretary in the form of a complaint filed in accordance with the appropriate procedure. Title IV establishes only maximum time intervals between elections for officers. Labor organizations covered by these provisions may hold elections of officers with greater frequency than the specified maximum period. For example, a local labor organization is required to hold an election of officers at least once every three years, but it must hold an election every year if its governing rules so provide. It should be noted, moreover, that the provisions of title IV apply to all regular elections of officers in labor organizations subject to the Act. Thus, if a labor organization chooses to hold elections of officers more frequently than the statutory maximum intervals, it must observe the minimum standards set forth in title IV for the conduct of such elections.

§ 452.25 Vacancies in office.

Title IV governs the regular periodic elections of officers in labor organizations subject to the Act. No requirements are imposed with respect to the filling by election or other method of any particular office which may become vacant between such regular elections. If, for example, a vacancy in office occurs in a local labor organization, it may be filled by appointment, by automatic succession, or by a special election which need not conform to the provisions of title IV. The provisions of section 504 of the Act, which prohibit certain persons from holding office, are applicable to such situations. While the enforcement procedures of section 402 are not available to a member in connection with the filling of an interim vacancy, remedies may be available to an aggrieved member under section 102 of the Act or under any pertinent State or local law.

[19] Act, sec. 401(a) and 401(d) (29 U.S.C. 481).

[20] See § 452.14 for a discussion of the selection of officers in a new or newly-merged labor organization.

§ 452.26 Elections in local labor organizations.

Local labor organizations must conduct their regular elections of officers by secret ballot among the members in good standing. All members in good standing of the local labor organization must be given an opportunity to vote directly for candidates to fill the offices that serve them. Indirect election of officers of a local labor organization would violate section 401(b) of the Act. For example, a procedure whereby the local's membership elects an executive board or some similar body by secret ballot which in turn selects (either from among its own membership or from the local's membership at large) the persons to fill specific offices would not comply with the Act.[21] Similarly, the election of a chief steward by the shop stewards would violate the Act if the chief steward, by virtue of that position, also serves as a member of the executive board, since members of the executive board must be elected directly by secret ballot among the members in good standing.

§ 452.27 National, international organizations, and intermediate bodies.

The officers of a national or international labor organization or of an intermediate body must be elected either directly by secret ballot among the members in good standing or indirectly by persons acting in a representative capacity who have been elected by secret ballot among all members in good standing.[22]

§ 452.28 Unopposed candidates.

An election of officers or delegates that would otherwise be required by the Act to be held by secret ballot need not be held by secret ballot when all candidates are unopposed and the following conditions are met: (a) The union provides a reasonable opportunity for nominations; (b) write-in votes are not permitted, as evidenced by provisions in the constitution and bylaws, by an official interpretation fairly placed on such documents, or by established union practice; and (c) the union complies with all other provisions of title IV.

§ 452.29 Primary elections.

Where a union holds primary elections or similar procedures for eliminating candidates prior to the final vote in connection with regular elections subject to these provisions, the primary election or other procedure must be conducted in accordance with the same standards required under the Act for the final election.

§ 452.30 Run-off elections.

A run-off election must meet the standards set forth in title IV if the original election was subject to the requirements of the Act. For example, if the run-off is to be held at the same meeting as the original election, the original notice of election must have so stated and all records pertaining to the run-off must be retained.

§ 452.31 One candidate for several offices.

Where a union constitution or other validly adopted rule provides that a single elected officer will perform the functions of more than one office, a separate election need not be held for each office.

[21] *Wirtz* v. *Independent Petroleum Workers of America,* 75 LRRM 2340, 63 L.C. ¶ 11,190 (N.D. Ind. 1970).

[22] See § 452.119 and following for discussion of indirect elections.

Subpart E—Candidacy for Office; Reasonable Qualifications

§ 452.32 Persons who may be candidates and hold office; secret ballot elections.

Section 401(e) provides that in any election of officers required by the Act which is held by secret ballot, every member in good standing with the exceptions explained in sections following shall be eligible to be a candidate and to hold office. This provision is applicable not only to the election of officers in local labor organizations, but also to elections of officers in national or international and intermediate labor organizations where those elections are held by secret ballot referendum among the members, and to the election of delegates to conventions at which officers will be elected.

§ 452.33 Persons who may be candidates and hold office; elections at conventions.

Where elections of national or international labor organizations or of intermediate bodies are held at a convention of delegates elected by secret ballot, protection of the right to be a candidate and to hold office is afforded by the requirement in section 401(f) that the convention be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of title IV. If members in good standing are denied the right to be candidates by the imposition of unreasonable qualifications on eligibility for office such qualifications would be inconsistent with the provisions of title IV.

§ 452.34 Application of section 504, LMRDA.

The eligibility of members of labor organizations to be candidates and to hold office in such organizations is subject only to the provisions of section 504(a), which bars individuals convicted of certain crimes from holding office in labor organizations[23] and to reasonable qualifications uniformly imposed. A person who is barred from serving in union office by section 504(a) is not eligible to be a candidate. However, a labor organization may permit a person who is barred from holding union office by section 504(a) to be a candidate for office if the section 504 disability will terminate by the customary date for the installation of officers. A labor organization may within reasonable limits adopt stricter standards than those contained in section 504(a) by extending the period of disability or by barring from union office persons who have been convicted of crimes other than those specified.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985]

[23] The disabling crimes set forth in the Act, sec. 504(a), as amended by sec. 803 of the Comprehensive Crime Control Act of 1984, Public Law 98-473, (29 U.S.C. 504) are robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of title II or III of this Act, any felony involving abuse or misuse of a position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element."

NOTE: The U.S. Supreme Court, on June 7, 1965, held unconstitutional as a bill of attainder the section 504 provision which imposes criminal sanctions on Communist Party members for holding union office; *U.S.* v. *Brown,* 381 U.S. 437.

§ 452.35 Qualifications for candidacy.

It is recognized that labor organizations may have a legitimate institutional interest in prescribing minimum standards for candidacy and officeholding in the organization. On the other hand, a dominant purpose of the Act is to ensure the right of members to participate fully in governing their union and to make its officers responsive to the members. A basic assumption underlying the concept of "free and democratic elections," is that voters will exercise common sense and good judgment in casting their ballots. In union elections as in political elections, the good judgment of the members in casting their votes should be the primary determinant of whether a candidate is qualified to hold office. Therefore, restrictions placed on the right of members to be candidates must be closely scrutinized to determine whether they serve union purposes of such importance, in terms of protecting the union as an institution, as to justify subordinating the right of the individual member to seek office and the interest of the membership in a free, democratic choice of leaders.

§ 452.36 Reasonableness of qualifications.

(a) The question of whether a qualification is reasonable is a matter which is not susceptible of precise definition, and will ordinarily turn on the facts in each case. However, court decisions in deciding particular cases have furnished some general guidelines. The Supreme Court in *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6,* 391 U.S. 492 at 499 (1968) held that:

> Congress plainly did not intend that the authorization in section 401(e) of 'reasonable qualifications uniformly imposed' should be given a broad reach. The contrary is implicit in the legislative history of the section and in its wording that 'every member in good standing shall be eligible to be a candidate and to hold office * * *.' This conclusion is buttressed by other provisions of the Act which stress freedom of members to nominate candidates for Office. Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents.

Union qualifications for office should not be based on assumptions that certain experience or qualifications are necessary. Rather it must be assumed that the labor organization members will exercise common sense and judgment in casting their ballots. "Congress' model of democratic elections was political elections in this country" (*Wirtz* v. *Local 6,* 391 U.S. at 502) and a qualification may not be required without a showing that citizens assumed to make discriminating judgments in public elections cannot be relied on to make such judgments when voting as union members.

(b) Some factors to be considered, therefore, in assessing the reasonableness of a qualification for union office are:

(1) The relationship of the qualification to the legitimate needs and interests of the union;

(2) The relationship of the qualification to the demands of union office;

(3) The impact of the qualification, in the light of the Congressional purpose of fostering the broadest possible participation in union affairs;

(4) A comparison of the particular qualification with the requirements for holding office generally prescribed by other labor organizations; and

(5) The degree of difficulty in meeting a qualification by union members.

§ 452.37 Types of qualifications.

Ordinarily the following types of requirements may be considered reasonable, depending on the circumstances in which they are applied and the effect of their application:

(a) ***Period of prior membership.*** It would ordinarily be reasonable for a local union to require a candidate to have been a member of the organization for a reasonable period of time, not exceeding two years, before the election. However, if a member is involuntarily compelled to transfer from one local to another, such a requirement would not be reasonable if he is not given credit for his prior period of membership.

(b) ***Continuity of good standing.*** A requirement of continuous good standing based on punctual payment of dues will be considered a reasonable qualification only if

(1) it provides a reasonable grace period during which members may make up missed payments without loss of eligibility for office,[24] and

(2) the period of time involved is reasonable. What are reasonable periods of time for these purposes will depend upon the circumstances. Section 401(e) of the Act provides that a member whose dues have been withheld by the employer for payment to the labor organization pursuant to his voluntary authorization provided for in a collective bargaining agreement may not be declared ineligible to vote or be a candidate for office by reason of alleged delay or default in the payment of dues. If during the period allowed for payment of dues in order to remain in good standing, a member on a dues checkoff system has no earnings from which dues can be withheld, section 401(e) does not relieve the member of the responsibility of paying his dues in order to remain in good standing.

§ 452.38 Meeting attendance requirements.

(a) It may be reasonable for a labor organization to establish a requirement of attendance at a specified number of its regular meetings during the period immediately preceding an election, in order to insure that candidates have a demonstrated interest in and familiarity with the affairs of the organization. In the past, it was ordinarily considered reasonable to require attendance at no more than 50 percent of the meetings over a period not exceeding two years. Experience has demonstrated that it is not feasible to establish arbitrary guidelines for judging the reasonableness of such a qualification. Its reasonableness must be gauged in the light of all the circumstances of the particular case, including not only the frequency of meetings, the number of meetings which must be attended and the period of time over which the requirement extends, but also such factors as the nature, availability and extent of excuse provisions, whether all or most members have the opportunity to attend meetings, and the impact of the rule, i.e., the number or percentage of members who would be rendered ineligible by its application.[25]

[24] In *Goldberg* v. *Amarillo General Drivers, Teamsters Local 577,* 214 F. Supp. 74 (N.D. Tex. 1963), the disqualification of five nominees for union office for failure to satisfy a constitutional provision requiring candidates for office to have maintained continuous good standing for two years by paying their dues on or before the first business day of the current month, in advance, was held to be unreasonable. See also *Wirtz* v. *Local Unions No. 9, 9-A and 9-B, International Union of Operating Engineers,* 254 F. Supp. 980 (D. Colo. 1965), aff'd. 366 F. 2d 911 (CA 10 1966), vacated as moot 387 U.S. 96 (1967).

(a—1) In *Steelworkers, Local 3489* v. *Usery,* 429 U.S. 305, 94 LRRM 2203, 79 L.C. ¶ 11,806 (1977), the Supreme Court found that this standard for determining validity of meeting attendance qualifications was the type of flexible result that Congress contemplated when it used the word "reasonable." The Court concluded that Congress, in guaranteeing every union member the opportunity to hold office, subject only to "reasonable qualifications," disabled unions from establishing eligibility qualifications as sharply restrictive of the openness of the union political process as the Steelworkers' attendance rule. The rule required attendance at fifty percent of the meetings for three years preceding the election unless prevented by union activities or working hours, with the result that 96.5 percent of the members were ineligible.

(b) Other guidance is furnished by lower court decisions which have held particular meeting attendance requirements to be unreasonable under the following circumstances: One meeting during each quarter for the three years preceding nomination, where the effect was to disqualify 99 percent of the membership (*Wirtz* v. *Independent Workers Union of Florida,* 65 LRRM 2104, 55 L.C. par. 11,857 (M.D. Fla., 1967)); 75 percent of the meetings held over a two-year period, with absence excused only for work or illness, where over 97 percent of the members were ineligible (*Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n,* 244 F. Supp. 745 (W.D. Pa., 1965), order vacating decision as moot, 372 F. 2d 86 (C.A. 3 1966), reversed 389 U.S. 463; decision on remand, 405 F.2d 176 (C.A. 3 1968)); *Wirtz* v. *Local 262, Glass bottle Blowers Ass'n.,* 290 F. Supp. 965 (N.D. Cal., 1968)); attendance at each of eight meetings in the two months between nomination and election, where the meetings were held at widely scattered locations within the State (*Hodgson* v. *Local Union No. 624 A-B, International Union of Operating Engineers,* 80 LRRM 3049, 68 L.C. par. 12,816 (S.D. Miss. Feb. 19, 1972)); attendance at not less than six regular meetings each year during the twenty-four months prior to an election which has the effect of requiring attendance for a period that must begin no later than eighteen months before a biennial election (*Usery* v. *Local Division 1205, Amalgamated Transit Union,* 545 F. 2d 1300 (C.A. 1, 1976)).

[38 FR 18324, July 3, 1973, as amended at 42 FR 39105, Aug. 2, 1977; 42 FR 41280, Aug. 16, 1977; 42 FR 45306, Sept. 9, 1977; 50 FR 31311, Aug. 1, 1985; 60 FR 57178, Nov. 14, 1995]

§ 452.39 Participation in insurance plan.

In certain circumstances, in which the duties of a particular office require supervision of an insurance plan in more than the formal sense, a union may require candidates for such office to belong to the plan.

§ 452.40 Prior office holding.

A requirement that candidates for office have some prior service in a lower office is not considered reasonable.[26]

[25] If a meeting attendance requirement disqualifies a large portion of members from candidacy, that large antidemocratic effect alone may be sufficient to render the requirement unreasonable. In *Doyle* v. *Brock,* 821 F.2d 778 (D.C. Circuit 1987), the court held that the impact of a meeting attendance requirement which disqualified 97% of the union's membership from candidacy was by itself sufficient to make the requirement unreasonable notwithstanding any of the other factors set forth in 29 CFR 452.38(a).

[26] *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6,* 391 U.S. 492 at 504. The Court stated that the union, in applying such a rule, "* * * assumes that rank and file union members are unable to distinguish qualified from unqualified candidates for particular offices without a demonstration of a candidate's

§ 452.41 Working at the trade.

(a) It would ordinarily be reasonable for a union to require candidates to be employed at the trade or even to have been so employed for a reasonable period. In applying such a rule an unemployed member is considered to be working at the trade if he is actively seeking such employment. Such a requirement should not be so inflexible as to disqualify those members who are familiar with the trade but who because of illness, economic conditions, or other good reasons are temporarily not working.

(b) It would be unreasonable for a union to prevent a person from continuing his membership rights on the basis of failure to meet a qualification which the union itself arbitrarily prevents the member from satisfying. If a member is willing and able to pay his union dues to maintain his good standing and his right to run for office, it would be unreasonable for the union to refuse to accept such dues merely because the person is temporarily unemployed. Where a union constitution requires applicants for membership to be actively employed in the industry served by the union, a person who becomes a member would not be considered to forfeit his membership in the union or any of the attendant rights of membership merely because he is discharged or laid off.

(c) Ordinarily members working part-time at the trade may not for that reason alone be denied the right to run for office.

(d) A labor organization may postpone the right to run for office of members enrolled in a bona fide apprenticeship program until such members complete their apprenticeship.

§ 452.42 Membership in particular branch or segment of the union.

A labor organization may not limit eligibility for office to particular branches or segments of the union where such restriction has the effect of depriving those members who are not in such branch or segment of the right to become officers of the union.[27]

§ 452.43 Representative categories.

In the case of a position which is representative of a unit defined on a geographic, craft, shift, or similar basis, a labor organization may by its constitution or bylaws limit eligibility for candidacy and for holding office to members of the represented unit. For example, a national or international labor organization may establish regional vice-presidencies and require that each vice-president be a member of his respective region. This kind of limitation would not be considered reasonable, however, if applied to general officers such as the president, vice-president, recording secretary, financial secretary, and treasurer. If eligibility of delegates to a convention which will elect general officers is limited to special categories of members, all such categories within the organization must be represented.

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performance in other offices. But Congress' model of democratic elections was political elections in this Country, and they are not based on any such assumption. Rather, in those elections the assumption is that voters will exercise common sense and judgment in casting their ballots. Local 6 made no showing that citizens assumed to make discriminating judgments in public elections cannot be relied on to make such judgments when, voting as union members * * *."

[27] *Hodgson* v. *Local Unions No. 18, etc., IUOE,* 440 F. 2d 485 (C.A. 6), cert. den. 404 U.S. 852 (1971); *Hodgson* v. *Local 610, Unit. Elec. Radio & Mach. Work. of Am.,* 342 F. Supp. 1344 (W.D. Pa. 1972).

§ 452.44 Dual unionism.

While the Act does not prohibit a person from maintaining membership or holding office in more than one labor organization, it would be considered reasonable for a union to bar from candidacy for office persons who hold membership in a rival labor organization.

§ 452.45 Multiple office holding.

An officer may hold more than one office in a labor organization so long as this is consistent with the constitution and bylaws of the organization.

§ 452.46 Characteristics of candidate.

A labor organization may establish certain restrictions on the right to be a candidate on the basis of personal characteristics which have a direct bearing on fitness for union office. A union may, for example, require a minimum age for candidacy. However, a union may not establish such rules if they would be inconsistent with any other Federal law. Thus, it ordinarily may not limit eligibility for office to persons of a particular race, color, religion, sex, or national origin since this would be inconsistent with the Civil Rights Act of 1964.[28] Nor may it establish a general compulsory retirement age or comparable age restriction on candidacy since this would be inconsistent with the Age Discrimination in Employment Act of 1967, as amended. A union may not require candidates for office to be registered voters and to have voted in public elections during the year preceding their nominations. Nor may it require that candidates have voted in the previous union election to be eligible. Such restrictions may not be said to be relevant to the members' fitness for office.

[53 FR 8751, Mar. 17, 1988, as amended at 53 FR 23233, June 21, 1988]

§ 452.47 Employer or supervisor members.

Inasmuch as it is an unfair labor practice under the Labor Management Relations Act (LMRA) for any employer (including persons acting in that capacity) to dominate or interfere with the administration of any labor organization, it follows that employers, while they may be members, may not be candidates for office or serve as officers. Thus, while it is recognized that in some industries, particularly construction, members who become supervisors, or contractors traditionally keep their union membership as a form of job security or as a means of retaining union benefits, such persons may not be candidates for or hold office.[29] Whether a restriction on officeholding by members who are group leaders or others performing some supervisory duties is reasonable depends on the particular circumstances. For instance, if such persons might be considered “supervisors”[30] under the LMRA, their right to be candidates under the Act may be limited. Another factor in determining the reasonableness of a ban on such persons is the position (if any) of the NLRB on the status of the particular employees involved. If, for example, the NLRB has determined that certain group leaders are part of the bargaining unit, it might be unreasonable for the union to prohibit them from running for office. An overall consideration in determining whether a member may fairly be denied the right to be a candidate for union office as an employer or supervisor is whether there is a reasonable basis for assuming that the person involved would be subject to a conflict of interest in carrying out his representative duties for employees and rank and file union members.

[28] *Shultz* v. *Local 1291, International Longshoremen's Association,* 338 F. Supp. 1204 (E.D. Pa.), aff'd, 461 F.2d 1262 (C.A. 3 1972).

[38 FR 18324, July 3, 1973, as amended at 39 FR 37360, Oct. 21, 1974]

§ 452.48 Employees of union.

A labor organization may in its constitution and bylaws prohibit members who are also its full-time non-elective employees from being candidates for union office, because of the potential conflict of interest arising from the employment relationship which could be detrimental to the union as an institution.

§ 452.49 Other union rules.

(a) Unions may establish such other reasonable rules as are necessary to protect the members against leaders who may have committed serious offenses against the union. For example, a union may, after appropriate proceedings, bar from office persons who have misappropriated union funds, even if such persons were never indicted and convicted in a court of law for their offenses. Of course, the union would have to provide reasonable precautions to insure that no member is made ineligible to hold office on the basis of unsupported allegations and that any rights guaranteed him by the constitution and bylaws are protected. Similarly, a union may require an elected officer to sign an affidavit averring that he is not barred from serving as an officer by the provisions of section 504 of the Act since the union and its officers may not permit a person to serve as an officer if he is so barred (see footnote 23).

(b) It would not violate the Act for a union to prohibit successive terms in office or to limit the number of years an officer may serve. Such rules are intended to encourage as many members as possible to seek positions of leadership in the organization.

§ 452.50 Disqualification as a result of disciplinary action.

Section 401(e) was not intended to limit the right of a labor organization to take disciplinary action against members guilty of misconduct. So long as such action is conducted in accordance with section 101(a)(5), a union may, for example, if its constitution and bylaws so provide, bar from office for a period of time any member who is guilty of specific acts, such as strikebreaking, detrimental to the union as an institution. However, if a union has improperly disciplined a member and barred him from candidacy, the Secretary may, in an appropriate case, treat him as a member in good standing entitled to all of the rights of members guaranteed by title IV.

§ 452.51 Declaration of candidacy.

A union may not adopt rules which in their effect discourage or paralyze any opposition to the incumbent officers. Therefore, it would not be a reasonable qualification to require members to file a declaration of candidacy several months in advance of the nomination meeting since such a requirement would have such effect and "serves no reasonable purpose which cannot otherwise be satisfied without resort to this procedure."[31]

[30] Under section 2(11) of the Labor Management Relations Act, supervisors include individuals "having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

[29] See Nassau and Suffolk Contractors' Association, 118 NLRB No. 19 (1957). See also *Local 636, Plumbers* v. *NLRB,* 287 F.2d 354 (C.A. D.C. 1961).

§ 452.52 Filing fee.

It would be unreasonable to require candidates for office to pay a filing fee because a fee limits the right of members to a reasonable opportunity to nominate the candidates of their choice and there is no objective relationship between the requirement and the ability to perform the duties of the office.

§ 452.53 Application of qualifications for office.

Qualifications for office which may seem reasonable on their face may not be proper if they are applied in an unreasonable manner or if they are not applied in a uniform way. An essential element of reasonableness is adequate advance notice to the membership of the precise terms of the requirement. A qualification which is not part of the constitution and bylaws or other duly enacted rules of the organization may not be the basis for denial of the right to run for office, unless required by Federal or State law.[32] Qualifications must be specific and objective. They must contain specific standards of eligibility by which any member can determine in advance whether or not he is qualified to be a candidate. For example, a constitutional provision which states that "a candidate shall not be eligible to run for office who intends to use his office as a cloak to effect purposes inimical to the scope and policies of the union" would not be a reasonable qualification within the meaning of section 401(e) because it is so general as to preclude a candidate from ascertaining whether he is eligible and would permit determinations of eligibility based on subjective judgments. Further, such a requirement is by its nature not capable of being uniformly imposed as required by section 401(e).

§ 452.54 Retroactive rules.

(a) The reasonableness of applying a newly adopted restriction on candidacy retroactively depends in part upon the nature of the requirement. It would be unreasonable for a labor organization to enforce eligibility requirements which the members had no opportunity to satisfy. For example, it would not be reasonable for a union to apply a newly adopted meeting attendance requirement retroactively since members would have no opportunity to comply with such requirement prior to its effective date.[33] When such a rule is in effect the membership is entitled to advance notice of the requirements of the rule and of the means to be used in verifying attendance. It would not be unreasonable, however, for a union to adopt and enforce a rule disqualifying persons convicted of a felony from being candidates or holding office.

(b) It would not be proper for a labor organization to amend its constitution after an election to make eligible a person who had been elected but who was not eligible at the time of the election.

[31] *Wirtz* v. *Local 30, IUOE,* 242 F. Supp. 631 (S.D. N.Y. 1965) reversed as moot 366 F.2d 438 (C.A. 2, 1966), reh. den. 366 F.2d 438.

[32] *Wirtz* v. *Local Union 559, United Brotherhood of Carpenters and Joiners of America,* 61 LRRM 2618, 53 L.C. ¶ 11.044 (W.D. Ky. 1966); *Hodgson* v. *Longshoremen's Local 1655 New Orleans Dray Clerks,* 79 LRRM 2893, 67 L.C. ¶ 12,466 (E.D. La. January 5, 1972).

[33] *Hodgson* v. *Longshoremen's Local 1655, New Orleans Dray Clerks,* 79 LRRM 2893, 67 L.C. ¶ 12,466 (E.D. La. January 5, 1972)

Subpart F—Nominations for Office

§ 452.55 Statutory provisions concerning nomination.

In elections subject to the provisions of title IV a reasonable opportunity must be afforded for the nomination of candidates. Although the Act does not prescribe particular forms of nomination procedures, it does require that the procedures employed be reasonable and that they conform to the provisions of the labor organization's constitution and bylaws insofar as they are not inconsistent with the provisions of title IV.

§ 452.56 Notice.

(a) To meet this requirement, the labor organization must give timely notice reasonably calculated to inform all members of the offices to be filled in the election as well as the time, place, and form for submitting nominations. Such notice should be distinguished from the notice of election, discussed in § 452.99. Notice of nominations need not necessarily be given at least 15 days before nominations are held, nor is it required to be given by mail. In an election which is to be held by secret ballot, accordingly, notice of nominations may be given in any manner reasonably calculated to reach all members in good standing and in sufficient time to permit such members to nominate the candidates of their choice, so long as it is in accordance with the provisions of the labor organization's constitution or bylaws. Mailing such notice to the last known address of each member within a reasonable time prior to the date for making nominations would satisfy this requirement. Likewise, timely publication in the union newspaper with sufficient prominence to be seen by all members would be adequate notice. The method of making nominations, whether by mail, petition, or at meetings, could affect the determination of the timeliness of the notice. The nomination notice may be combined with the election notice if the requirements of both are met. Posting of a nomination notice may satisfy the requirement of a reasonable opportunity for making nominations if such posting is reasonably calculated to inform all members in good standing in sufficient time to permit such members to nominate the candidates of their choice.

(b) The requirement of a reasonable opportunity for the nomination of candidates has been met only when the members of a labor organization are fully informed of the proper method of making such nominations.

§ 452.57 Procedures for nomination.

(a) Since the Act does not prescribe particular procedures for the nomination of candidates, the labor organization is free to employ any method that will provide a reasonable opportunity for making nominations. There are various methods which, if properly and fairly employed, would be considered reasonable under the Act. For example, nominations may be by petition, or from the floor at a nomination meeting.

(b) Whether a particular procedure is sufficient to satisfy the requirements of the Act is a question which will depend upon the particular facts in each case. While a particular procedure may not on its face violate the requirements of the Act, its application in a given instance may make nomination so difficult as to deny the members a reasonable opportunity to nominate.

§ 452.58 Self-nomination.

A system of self-nomination, if this is the only method for making nominations, deprives union members of a reasonable opportunity to nominate candidates and thus is inconsistent with the provisions of title IV.[34] Self-nomination is permissible only if the members are afforded additional methods whereby they may nominate the candidates of their choice.

§ 452.59 Presence of nominee.

A requirement that members must be present at the nomination meeting in order to be nominated for office might be considered unreasonable in certain circumstances; for example, in the absence of a provision for an alternative method under which a member who is unavoidably absent from the nomination meeting may be nominated, such a restriction might be regarded as inconsistent with the requirement in section 401(e) that there be a reasonable opportunity to nominate and to be a candidate.

§ 452.60 Nominations for national, international or intermediate body office.

(a) When officers of a national or international labor organization or of an intermediate body are to be elected by secret ballot among the members of the constituent local unions, it is not unreasonable for the organization to employ a nominating procedure whereby each local may nominate only one candidate for each office. When such a procedure is employed the organization may require that each candidate be nominated by a certain number of locals before his name will appear on the ballot. The reasonableness of the number of local union nominations or endorsements required depends upon the size and dispersion of the organization.

(b) Nominations for national, international or intermediate body office by locals or other subordinate organizations differ from primary elections in that they are not subject to all the technical requirements of secret ballot elections.[35] However, where nominations are made by locals or other subordinate organizations fundamental safeguards must be observed including the right of members to vote for and support the candidates of their choice without improper interference.

§ 452.61 Elimination contests—local unions.

(a) A procedure in a local under which nominees compete in an elimination process to reduce the number of candidates in the final balloting is also part of the election process and must be conducted by secret ballot.

(b) When such an elimination process is used it would be unreasonable for some nominees, such as those selected by a nominating committee, to be exempt from the process since they would thus be given an unfair advantage over other nominees.

§ 452.62 Disqualification of candidates; procedural reasons.

A candidate who is otherwise eligible for office may not be disqualified because of the failure of a union officer to perform his duties which are beyond the candidate's control. For example, the failure of a local recording secretary to perform his duty to complete and forward a candidate's nomination certificate to the district may not be used as the basis for disqualifying the candidate.

[34] See *Wirtz* v. *National Maritime Union of America,* 399 F.2d 544 (C.A. 2 1968).

[35] In *Hodgson* v. *United Mine Workers of America,* the Court directed that the nomination proceedings within the local unions be conducted by secret ballot and in accordance with the provisions of title IV. [80 LRRM 3451, 68 L.C. ¶ 12,786 (D.D.C. June 15, 1972)]. This Order indicates that the use of secret ballot nominating procedures may be an appropriate remedial measure in a supervised election.

§ 452.63 Nominations at conventions.

In elections at conventions at which nominations are also made, delegates who have been elected by secret ballot must be given ample opportunity to nominate candidates on behalf of themselves or the members they represent. A union may adopt a rule limiting access to the convention floor to delegates. However, once the candidates have been nominated, they must be accorded equal opportunity to campaign.[36] Where delegates are instructed by locals to nominate candidates, the constitution of the organization or the convention rules should provide a specific procedure for the implementation of nominating instructions issued by any local to its delegate.

§ 452.64 Write-in votes.

The Act neither requires nor prohibits write-in candidacy or write-in votes. These matters are governed by appropriate provisions of the union's constitution and bylaws, applicable resolutions, or the established practice of the union.

§ 452.65 Interval between nominations and election.

The Act specifies no time interval between nominations and election. Thus, both may be scheduled to be held at the same meeting if, during a reasonable period prior to such nomination-election meeting, every member eligible to hold office who intends to run for office is afforded the protection provided in section 401(c), including sufficient opportunity to campaign for office.

Subpart G—Campaign Safeguards

§ 452.66 Statutory provisions.

The opportunity for members to have a free, fair, and informed expression of their choices among candidates seeking union office is a prime objective of title IV of the Act. Voters can best be assured opportunity for an informed choice if certain campaign rights are guaranteed to candidates and their supporters. To this end, the statute provides that adequate safeguards to insure a fair election shall be provided, and states certain specific safeguards. These safeguards apply not only to candidates for officer positions as defined in the Act but also to candidates for delegate posts, if the delegates are to nominate or elect officers.

§ 452.67 Distribution of campaign literature.

The Act imposes the duty on the union and its officers to comply with all reasonable requests of any candidate to distribute his campaign literature to the membership at his expense. When the organization or its officers authorize distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate, if he requests it. In order to avoid charges of disparity of treatment among candidates, it is advised that a union inform all candidates in advance of the conditions under which distribution will be made and promptly advise them of any change in those conditions.

[36] See § 452.79.

§ 452.68 Distribution to less than full membership.

Although section 401(c) specifies distribution to "all members in good standing," a labor organization must also honor requests for distribution of literature to only a portion of the membership if such distribution is practicable. Each candidate may choose his own ways of campaigning for election according to his own ingenuity and resources. For example, some candidates for national or international union office may desire to limit distribution to delegates, but others may want to appeal directly to the membership or parts thereof in an effort to influence particular constituencies to choose delegates favorable to their candidacy.

§ 452.69 Expenses of campaign literature.

Each candidate must be treated equally with respect to the expense of such distribution. Thus, a union and its officers must honor a candidate's request for distribution where the candidate is willing and able to bear the expense of such distribution. However, should the candidate be unable to bear such expense, there is no requirement that the union distribute the literature of the candidate free of charge. In the event the union distributes any candidate's literature without charge, however, all other candidates are entitled to have their literature distributed on the same basis. Since labor organizations have an affirmative duty to comply with all reasonable requests of any candidate to distribute campaign literature (at the candidate's expense), a union rule refusing all such distributions would not be proper, even though applied in a nondiscriminatory fashion. In view of the fact that expenses of distribution are to be borne by the candidate a labor organization may not refuse to distribute campaign literature merely because it may have a small staff which cannot handle such distribution for all candidates. If this is the case, the organization may employ additional temporary staff or contract the job to a professional mailer and charge the expense incurred to the candidates for whom the service is being rendered. The organization may require candidates to tender in advance the estimated costs of distributing their literature, if such requirement is applied uniformly.

§ 452.70 Contents of literature.

The Act does not and unions may not regulate the contents of campaign literature which candidates may wish to have distributed by the union. This is left to the discretion of each candidate. The labor organization may not require that it be permitted to read a copy of the literature before it is sent out, nor may it censor the statements of the candidates in any way, even though the statement may include derogatory remarks about other candidates. Furthermore, a union's contention that mailing of certain campaign literature may constitute libel for which it may be sued has been held not to justify its refusal to distribute the literature, since the union is under a statutory duty to distribute the material.[37]

§ 452.71 Inspection of membership lists.

(a) Each bona fide candidate for office has a right, once within 30 days prior to any election in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment. The right of inspection does not include the right to copy the list but does include the right to compare it with a personal list of members. It is the intent of the Act that such membership lists be made available for inspection at the candidates' option any time within the 30-day

[37] See *Philo* v. *Stellato,* (E.D. Mich. Civil No. 21244, May 24, 1961); *Ansley* v. *Fulco,* (Calif. Ct. of Appeal, First App. District, Div. Three, 1 Civil No. 29483, May 31, 1972).

period. The list is not required to be maintained continuously and may be compiled immediately before each election. The form in which the list is to be maintained is not specified by the Act. Thus, a card index system may satisfy the requirements of the Act. The list may be organized alphabetically or geographically, or by local in a national or international labor organization.

(b) It is the duty of the labor organization and its officers to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Thus, if a union permits any candidate to use such lists in any way other than the right of inspection granted by the Act, it must inform all candidates of the availability of the list for that purpose and accord the same privilege to all candidates who request it. Such privileges may include permitting inspection of the list where members are not subject to a collective bargaining agreement requiring membership as a condition of employment, inspecting the list more than once, or copying the list.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985]

§ 452.72 Period of inspection.

The Act specifies the maximum period during which the right of inspection of membership lists is to be granted. The opportunity to inspect the lists must be granted once during the 30-day period prior to the casting of ballots in the election. Thus, where a mail ballot system is employed under which ballots are returnable as soon as received by members, the right to inspect must be accorded within the 30-day period prior to the mailing of the ballots to members. It would be an unreasonable restriction to permit inspection of lists only after the ballots have been mailed or the balloting has commenced.

§ 452.73 Use of union funds.

In the interest of fair union elections, section 401(g) of the Act places two limitations upon the use of labor organization funds derived from dues, assessments, or similar levy. These limitations are:

(a) No such funds may be contributed or applied to promote the candidacy of any person in an election subject to title IV, either in an election within the organization expending the funds or in any other labor organization; and

(b) No such funds may be used for issuing statements involving candidates in the election.

This section is not intended to prohibit a union from assuming the cost of distributing to the membership on an equal basis campaign literature submitted to the union by the candidates pursuant to the rights granted by section 401(c), as previously discussed, nor does it prohibit the expenditure of such funds for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of the election.

§ 452.74 Expenditures permitted.

The Act does not prohibit impartial publication of election information. Thus, it would not be improper for a union to sponsor a debate at which all candidates for a particular office are afforded equal opportunity to express their views to the membership prior to an election. Similarly, a union may issue information sheets containing biographical data on all candidates so long as all candidates are given equal opportunity to submit such data.

§ 452.75 Union newspapers.

The provisions of section 401(g) prohibit any showing of preference by a labor organization or its officers which is advanced through the use of union funds to criticize or praise any candidate. Thus, a union may neither attack a candidate in a union-financed publication nor urge the nomination or election of a candidate in a union-financed letter to the members. Any such expenditure regardless of the amount, constitutes a violation of section 401(g).[38]

§ 452.76 Campaigning by union officers.

Unless restricted by constitutional provisions to the contrary, union officers and employes retain their rights as members to participate in the affairs of the union, including campaigning activities on behalf of either faction in an election. However, such campaigning must not involve the expenditure of funds in violation of section 401(g). Accordingly, officers and employees may not campaign on time that is paid for by the union, nor use union funds, facilities, equipment, stationery, etc., to assist them in such campaigning. Campaigning incidental to regular union business would not be a violation.

§ 452.77 Permissible use of union funds.

Certain uses of union funds are considered permissible under section 401(g). For example, a court ruled that money of a subordinate union may be contributed to a committee formed to challenge the results of a national union election under title IV when such contributions are properly authorized by the members in an effort to pursue election remedies both within and outside the union. In holding such activity to be outside the prohibitions of section 401(g), although the committee was formed by defeated candidates and their supporters, the court stated that "* * * It does not promote the candidacy of any person if an election is declared invalid by a court under title IV's procedure despite the fact that in the rerun election the candidates may be identical. Neither the winner nor the loser of the disputed election gains votes by the setting aside of the election. Such action is not a vote-getting device but merely returns the parties to their pre-election status; it does not place any candidate into office."[39]

[38 FR 18324, July 9, 1973, as amended at 63 FR 33780, June 19, 1998]

§ 452.78 Expenditures by employers.

(a) As an additional safeguard, section 401(g) provides that no money of an employer is to be contributed or applied to promote the candidacy of any person in an election subject to the provisions of title IV. This includes indirect as well as direct expenditures. Thus, for example, campaigning by union stewards on company time with the approval of the employer would violate section 401(g) unless it can be shown that they are on legitimate work assignments, and that their campaign activities are only incidental to the performance of their assigned task and do not interfere with its performance. This prohibition against the use of employer money includes any costs incurred by an employer, or anything of value contributed by an

[38] *Hodgson* v. *Liquor Salesmen's Union, Local No. 2,* 334 F.Supp. 1369 (S.D. N.Y.) aff'd 444 F.2d 1344 (C.A. 2 1971); *Shultz* v. *Local Union 6799, United Steelworkers,* 426 F.2d 969 (C.A. 9 1970).

[39] *Retail Clerks Union, Local 648* v. *Retail Clerks International Association,* 299 F.Supp. 1012, 1024 (D.D.C. 1969).

employer, in order to support the candidacy of any individual in an election. It would not, however, extend to ordinary business practices which result in conferring a benefit, such as, for example, a discount on the cost of printing campaign literature which is made available on the same terms to other customers.

(b) The prohibition against the use of employer money to support the candidacy of a person in any election subject to the provisions of title IV is not restricted to employers who employ members of the labor organization in which the election is being conducted, or who have any business or contractual relationship with the labor organization.

§ 452.79 Opportunity to campaign.

There must be a reasonable period prior to the election during which office-seekers and their supporters may engage in the campaigning that the Act contemplates and guarantees. What is a reasonable period of time would depend upon the circumstances, including the method of nomination and the size of the union holding the election, both in terms of the number of members and the geographic area in which it operates. For example, a candidate for office in a local labor organization was improperly disqualified and then appealed to the international union which directed that his name be placed on the ballot. A complaint was considered properly filed alleging election violations because the candidate's name was restored to the ballot two days prior to the election so that he was denied an equal opportunity to campaign. Similarly, in a mail ballot election a union's delay in the distribution of campaign literature until after the ballots have been distributed and some have been cast would not satisfy the requirement to distribute such literature in compliance with a reasonable request.[40] Such a delay would deny the candidate a reasonable opportunity to campaign prior to the election and would thus not meet the requirement for adequate safeguards to insure a fair election. Where access to the convention floor is limited exclusively to delegates at a convention at which officers are to be elected, there must, nevertheless, be equal opportunity for all nominees to campaign. Thus, if the privilege of addressing the convention is accorded to any of the nominees, it must be accorded to all nominees who request it, whether they are delegates or not.

§ 452.80 Bona fide candidates.

A person need not be formally nominated in order to be a bona fide candidate entitled to exercise the rights mentioned in §§ 452.67 and 452.71.[41] Thus, any qualified member seeking to be nominated and elected at a convention would be able to take advantage of the distribution rights even before the convention meets and thus attempt to influence members to select delegates favorable to his candidacy or to persuade the delegates to support his candidacy. A union may reasonably require that a person be nominated in order to be elected, but may not prevent a member who actively seeks office and is otherwise qualified from taking advantage of the campaign safeguards in the Act in an effort to gain the support necessary to be nominated.

[40] *Wirtz* v. *American Guild of Variety Artists,* 267 F. Supp. 527 (S.D.N.Y. 1967).

[41] *Yablonski* v. *United Mine Workers,* 71 LRRM 2606, 60 L.C. 10,204 (D.D.C. 1969).

§ 452.81 Rights in intermediate body elections.

While the literal language in section 401(c) relating to distribution of campaign literature and to discrimination with respect to the use of membership lists would seem to apply only to national, international and local labor organizations, two United States District Courts have held that these provisions also apply to intermediate bodies.[42] The Department of Labor considers these rulings to be consistent with the intent of Congress and, therefore, has adopted this position.

§ 452.82 Reprisal for exercising rights.

A member has a right to support the candidate of his choice without being subject to penalty, discipline, or improper interference or reprisal of any kind by the labor organization conducting the election or any member thereof.

§ 452.83 Enforcement of campaign safeguards.

Certain of the safeguards of section 401(c) are enforceable at the suit of any bona fide candidate. This special statutory right to sue is limited to the distribution of campaign literature by the labor organization and the forbearance of such organization from discrimination among candidates with respect to the use of membership lists. Of course, all title IV safeguards, including those discussed in this paragraph, are subject to enforcement as provided in section 402. It should be noted that the right of a bona fide candidate to sue in the circumstances described herein is limited to the period prior to election. After the election, the only remedy would be through a suit by the Secretary under section 402.

Subpart H—Right To Vote

§ 452.84 General.

Under the provisions of section 401(e), every member in good standing is entitled to vote in elections required under title IV which are to be held by secret ballot. The phrase “member in good standing” includes any person who has fulfilled the requirements for membership and who neither has withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of the organization.[43]

§ 452.85 Reasonable qualifications on right to vote.

The basic right of members to vote in elections of the labor organization may be qualified by reasonable rules and regulations in its constitution and bylaws.[44]

[42] *Antal* v. *UMW District 5,* 64 LRRM 2222, 54 L.C. 11,621 (W.D. Pa. 1966); *Schonfeld* v. *Rarback,* 49 L.C. 19,039 (S.D.N.Y. 1964).

[43] Act, sec. 3(o).

[44] Act, sec. 101(a)(1).

§ 452.86 Vote conditioned on payment of dues.

A labor organization may condition the exercise of the right to vote upon the payment of dues, which is a basic obligation of membership. Such a rule must be applied uniformly. If a member has not paid his dues as required by the labor organization's constitution or bylaws he may not be allowed to vote. Thus, a rule which suspends a member's right to vote in an election of officers while the member is laid off and is not paying dues would not, in ordinary circumstances, be considered unreasonable, so long as it is applied in a nondiscriminatory manner. However, members must be afforded a reasonable opportunity to pay dues, including a grace period during which dues may be paid without any loss of rights. In the case where a member is laid off but desires to maintain his good standing and thus his membership rights by continuing to pay dues, it would be clearly unreasonable for the labor organization to refuse to accept his payment.

§ 452.87 Dues paid by checkoff.

A member in good standing whose dues are checked off by his employer pursuant to his voluntary authorization provided for in a collective bargaining agreement may not be disqualified from voting by reason of alleged delay or default in the payment of dues. For example, the constitution and bylaws of a labor organization call for suspension of members whose dues are three months in arrears. Dues to be paid directly by a member are two months in arrears when the union changes to a checkoff system. The member may not be denied the right to vote merely because the employer is late in submitting the checked off dues for the first month. It would not be inconsistent with the Act, however, for a union to require a new member who executes a checkoff authorization to pay one month's dues in advance on the date he becomes a member in order to be in good standing for the current month.

§ 452.88 Resumption of good standing.

While it is permissible for a labor organization to deny the right to vote to those delinquent in paying their dues (with the exceptions noted) or to those who have been suspended or disciplined in accordance with section 101(a)(5) of the Act, a provision under which such persons are disqualified from voting for an extended period of time after payment of back dues or after reinstatement would not be considered reasonable. After a member has resumed his good-standing status, it would be unreasonable to continue to deprive him of his right to vote for a period longer than that for a new member. A new member may reasonably be required to establish a relationship with the union by remaining in good standing for a continuous period of time, e.g., 6 months or a year, before being permitted to vote in an election of officers. However, while the right to vote may be deferred within reasonable limits, a union may not create special classes of nonvoting members.

§ 452.89 Apprentices.

A labor organization may condition the right to vote upon completion of a bona fide program of apprenticeship training which is designed to produce competent tradesmen in the industry the union serves.

§ 452.90 Visiting members.

A decision about the voting rights of visiting members is properly one for resolution by the union in accordance with the organization's constitution and bylaws or applicable resolutions. For purposes of the Act, a person is ordinarily considered to be a member of the local to which he pays his dues.

§ 452.91 Voting by employers, supervisors.

Voting in union elections by employers, self-employed persons, supervisors or other persons who are considered to be part of management is not precluded by title IV of the Act even if they are not required to maintain union membership as a condition of employment. However, as mentioned in the discussion of qualifications for candidacy (see § 452.47), such persons may not dominate or interfere with the administration of any labor organization.

§ 452.92 Unemployed members.

Members who are otherwise qualified to vote may not be disqualified from voting merely because they are currently unemployed or are employed on a part-time basis in the industry served by the union, provided, of course, that such members are paying dues.

§ 452.93 Retired members.

The right of retirees to vote may be restricted to the extent provided by the constitution and bylaws of the labor organization.

§ 452.94 Reasonable opportunity to vote.

The statutory protection of the right to vote implies that there must be a reasonable opportunity to vote. Thus, there is an obligation on the labor organization to conduct its periodic election of officers in such a way as to afford all its members a reasonable opportunity to cast ballots. A union may meet this obligation in a variety of ways, depending on factors such as the distance between the members' work site or homes and the polling place, the means of transportation available, the nature of the members' occupations, and their hours of work. A reasonable opportunity to vote may require establishing multiple polling places or the use of a mail ballot referendum when the members are widely dispersed. It would also be reasonable for the time period for voting to be extended to accommodate members who might otherwise be prevented from voting due to conflicting work schedules. Shortening the voting period by a late opening of the polls would not, in itself, be improper unless the intent or practical effect of such action is to deprive members of their right to vote.

§ 452.95 Absentee ballots.

Where the union knows in advance that a substantial number or a particular segment of the members will not be able to exercise their right to vote in person, as, for example, when access to a polling place is impracticable for many members because of shipping assignments, absentee ballots or other means of voting must be made available.[45] In the event absentee ballots are necessary the organization must give its members reasonable notice of the availability of such ballots.[46]

Subpart I—Election Procedures; Rights of Members

[46] *Wirtz* v. *Local Union 262, Glass Bottle Blowers Association,* 290 F. Supp. 965 (N.D. Calif. 1968).

[45] *Goldberg* v. *Marine Cooks and Stewards Union,* 204 F. Supp. 844 (N.D. Cal. 1962).

§ 452.96 General.

The Act safeguards democratic processes by prescribing, in section 401, minimum standards for the regular periodic election of officers in labor organizations subject to its provisions. It does not, however, prescribe in detail election procedures which must be followed. Labor organizations are free to establish procedures for elections as long as they are fair to all members and are consistent with lawful provisions of the organization's constitution and bylaws and with section 401. The rights granted to members in section 401(e) refer to individuals, not labor organizations. For example, while locals may be members of an intermediate body, they are not entitled to the rights granted “members” in section 401(e).

§ 452.97 Secret ballot.

(a) A prime requisite of elections regulated by title IV is that they be held by secret ballot among the members or in appropriate cases by representatives who themselves have been elected by secret ballot among the members. A secret ballot under the Act is “the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice * * * cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.”[47] Secrecy may be assured by the use of voting machines, or, if paper ballots are used, by providing voting booths, partitions, or other physical arrangements permitting privacy for the voter while he is marking his ballot. The ballot must not contain any markings which upon examination would enable one to identify it with the voter. Balloting by mail presents special problems in assuring secrecy. Although no particular method of assuring such secrecy is prescribed, secrecy may be assured by the use of a double envelope system for return of the voted ballots with the necessary voter identification appearing only on the outer envelope.

(b) Should any voters be challenged as they are casting their ballots, there should be some means of setting aside the challenged ballots until a decision regarding their validity is reached without compromising the secrecy requirement. For example, each such ballot might be placed in an envelope with the voter's name on the outside. Of course, it would be a violation of the secrecy requirement to open these envelopes and count the ballots one at a time in such a way that each vote could be identified with a voter.

(c) In a mail ballot election, a union may require members to sign the return envelope if the signatures may be used in determining eligibility. However, it would be unreasonable for a union to void an otherwise valid ballot merely because a member printed rather than signed his name if the union does not use the signatures to determine voter eligibility.

§ 452.98 Outside agencies.

There is nothing in the Act to prevent a union from employing an independent organization as its agent to handle the printing, mailing, and counting of ballots in such elections if all the standards of the Act are met.

§ 452.99 Notice of election.

Elections required by title IV to be held by secret ballot must be preceded by a notice of election mailed to each member at his last known home address not less than fifteen days prior to the election.[48] For purposes of computing the fifteen day period, the day on which the notices are mailed is not counted whereas the day of the election is counted. For example, if the election is to be held on the 20th day of the month, the notices must be

[47] Act, sec. 3(k).

mailed no later than the 5th day. The notice must include a specification of the date, time and place of the election and of the offices to be filled, and it must be in such form as to be reasonably calculated to inform the members of the impending election. Specification of the offices to be filled would not be necessary if it is a regular, periodic election of all officers and the notice so indicates. A statement in the union bylaws that an election will be held at a certain time does not constitute the notice required by the statute. Since the Act specifies that the notice must be mailed, other means of transmission such as posting on a bulletin board or hand delivery will not satisfy the requirement. A notice of election must be sent to every member as defined in section 3(o) of the Act, not only to members who are eligible to vote in the election. Where the notice, if mailed to the last known permanent or legal residence of the member, would not be likely to reach him because of a known extended absence from that place, the statutory phrase “last known home address” may reasonably be interpreted to refer to the last known temporary address of definite duration. A single notice for both nominations and election may be used if it meets the requirements of both such notices.[49]

[38 FR 18324, July 9, 1973, as amended at 63 FR 33780, June 19, 1998]

§ 452.100 Use of union newspaper as notice.

A labor organization may comply with the election notice requirement by publishing the notice in the organization's newspaper which is mailed to the last known home address of each member not less than fifteen days prior to the election. Where this procedure is used (a) the notice should be conspicuously placed on the front page of the newspaper, or the front page should have a conspicuous reference to the inside page where the notice appears, so that the inclusion of the election notice in a particular issue is readily apparent to each member; (b) the notice should clearly identify the particular labor organization holding the election; (c) the notice should specify the time and place of the election and the offices to be filled; and (d) a reasonable effort must be made to keep the mailing list of the publication current.

§ 452.101 Sample ballots as notice.

Sample ballots together with information as to the time and place of the election and the offices to be filled, if mailed fifteen days prior to the election, will fulfill the election notice requirements.

§ 452.102 Notice in mail ballot election.

If the election is conducted by mail and no separate notice is mailed to the members, the ballots must be mailed to the members no later than fifteen days prior to the date when they must be mailed back in order to be counted.

§ 452.103 Primary elections.

The fifteen-day election notice provision applies to a “primary election” at which nominees are chosen. Likewise, the fifteen-day election notice requirement applies to any runoff election which may be held after an inconclusive election. However, a separate notice would not be necessary if the election notice for the first election advises the members of the possibility of a runoff election and specifies such details as the time and place of such runoff election as may be necessary.

[49] See § 452.56 for a discussion of the requirements for notices of nomination.

[48] Act, sec. 401(e).

§ 452.104 Proximity of notice to election.

(a) The statutory requirement for giving fifteen days' notice of election is a minimum standard. There is no objection to giving more notice than is required by law. However, it was clearly the intent of Congress to have members notified at a time which reasonably precedes the date of the election. For example, notice in a union publication which is expected to cover elections to be held six months later would not be considered reasonable.

(b) Should a union change the date of an election from the date originally announced in the mail notice to the members, it must mail a second notice, containing the corrected date, at least fifteen days before the election.

§ 452.105 Interference or reprisal.

Title IV expressly provides for the right of a member to vote for and otherwise support the candidates of his choice without being subject to penalty, discipline, or improper interference or reprisal of any kind by the labor organization conducting the election or any officer or member thereof.[50]

§ 452.106 Preservation of records.

In every secret ballot election which is subject to the Act, the ballots and all other records pertaining to the election must be preserved for one year.[51] The responsibility for preserving the records is that of the election officials designated in the constitution and bylaws of the labor organization or, if none is so designated, its secretary. Since the Act specifies that ballots must be retained, all ballots, marked or unmarked, must be preserved. Independent certification as to the number and kind of ballots destroyed may not be substituted for preservation. In addition, ballots which have been voided, for example, because they were received late or because they were cast for an ineligible candidate, must also be preserved.

§ 452.107 Observers.

(a) Under the provisions of section 401(c), each candidate must be permitted to have an observer

(1) at the polls and

(2) at the counting of the ballots. This right encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of tally sheets. If there is more than one polling place, the candidate may have an observer at each location. If ballots are being counted at more than one location or at more than one table at a single location, a candidate is entitled to as many observers as necessary to observe the actual counting of ballots. The observer may note the names of those voting so that the candidates may be able to ascertain whether unauthorized persons voted in the election. The observers should be

[50] Act, section 401(e). In *Wirtz* v. *Local 1752, ILA,* 56 LRRM 2303, 49 L.C. ¶ 18,998 (S.D. Miss. 1963), the court, under its equitable jurisdiction, granted a preliminary injunction on the motion of the Secretary to enjoin a union from taking disciplinary action against a member. The member had filed a complaint with the Secretary under section 402(a) that resulted in the Secretary filing suit under 402(b).

[51] Act, section 401(e).

placed so that they do not compromise, or give the appearance of compromising, the secrecy of the ballot. The observer is not required to be a member of the labor organization unless the union's constitution and bylaws require him to be a member. There is no prohibition on the use of alternate observers, when necessary, or on a candidate serving as his own observer. Observers do not have the right to count the ballots.

(b) The right to have an observer at the polls and at the counting of the ballots extends to all candidates for office in an election subject to title IV, i.e., this includes elections in intermediate bodies as well as elections in locals and national and international labor organizations.

(c) In any secret ballot election which is conducted by mail, regardless of whether the ballots are returned by members to the labor organization office, to a mail box, or to an independent agency such as a firm of certified public accountants, candidates must be permitted to have an observer present at the preparation and mailing of the ballots, their receipt by the counting agency and at the opening and counting of the ballots.

(d) Paying election observers is the responsibility of the candidate they represent unless the union has a rule providing for the payment of observers. If the union does have such a rule, it must be uniformly applied to all candidates.

§ 452.108 Publication of results.

In any election which is required by the Act to be held by secret ballot, the votes cast by members of each local labor organization must be counted, and the results published, separately.[52] For example, where officers of an intermediate body are elected directly by members, the votes of each local must be tabulated and published separately. The publishing requirement is to assure that the results of the voting in each local are made known to all interested members. Thus, the presentation of the election report at a regular local membership meeting, and the entry of the report in the minutes, would normally accomplish this purpose in a local election. Such minutes would have to be available for inspection by members at reasonable times, unless copies of the report are made available. In an election that encompasses more than one local, publication may be accomplished by posting on appropriate bulletin boards, or in a union newspaper, or by any procedure which allows any member to obtain the information without unusual effort. Of course, the counting and reporting should account for all ballots cast in the election, although only valid votes will be counted in determining the successful candidates.

§ 452.109 Constitution of labor organization.

Elections must be conducted in accordance with the constitution and bylaws of the organization insofar as they are not inconsistent with the provisions of title IV.[53]

[52] Act, sec. 401(e). See also Senate Report 187, 86th Cong. 1st sess., p. 47; Daily Cong. Rec. p. 13682, Aug. 3, 1959, and p. A6573, July 29, 1959.

[53] Act, sec. 401(e). Under 29 CFR 402.10, a labor organization is required to make available to all members a copy of its constitution and bylaws.

§ 452.110 Adequate safeguards.

(a) In addition to the election safeguards discussed in this part, the Act contains a general mandate in section 401(c), that adequate safeguards to insure a fair election shall be provided. Such safeguards are not required to be included in the union's constitution and bylaws, but they must be observed. A labor organization's wide range of discretion regarding the conduct of elections is thus circumscribed by a general rule of fairness. For example, if one candidate is permitted to have his nickname appear on the ballot, his opponent should enjoy the same privilege.

(b) A union's failure to provide voters with adequate instructions for properly casting their ballots may violate the requirement of adequate safeguards to insure a fair election.

§ 452.111 Campaigning in polling places.

There must not be any campaigning within a polling place[54] and a union may forbid any campaigning within a specified distance of a polling place.

§ 452.112 Form of ballot; slate voting.

The form of the ballot is not prescribed by the Act. Thus, a union may, if it so desires, include a proposed bylaw change or other similar proposal on a ballot along with the candidates for office so long as this is permissible under the union's constitution and bylaws. A determination as to the position of a candidate's name on the ballot may be made by the union in any reasonable manner permitted by its constitution and bylaws, consistent with the requirement of fairness and the other provisions of the Act. For example, candidates may be listed according to their affiliation with a particular slate. However, while “slate voting” is permissible, the balloting must be consistent with the right of members to vote for the candidates of their choice. Thus, there must be provision for the voter to choose among individual candidates if he does not wish to vote for an entire slate. To avoid any misunderstanding in this regard, the voting instructions should specifically inform the voter that he need not vote for an entire slate.

§ 452.113 Sectional balloting.

The ballots may be prepared so that the names of candidates for positions representative of a particular area appear only on the ballots received by members living in that area.

§ 452.114 Write-in votes.

Where write-in votes are permitted in an election subject to title IV, details of the format of the ballot are left to the discretion of the union. Ordinarily, the Secretary would become involved in such matters only in the context of an election complaint under section 402 and then only if the arrangements for write-in votes were so unreasonable that the outcome of the election may have been affected. Of course, a union may, in accordance with its constitution and bylaws or as a matter of stated policy, refuse to permit write-in votes.

§ 452.115 Distribution of ballots.

So long as secrecy of the ballot is maintained, there is no restriction on how the ballots are distributed to the voters. Any method which actually provides each eligible voter with one blank ballot would be in conformance with the law.

[54] See *Hodgson* v. *UMW,* 344 F.Supp. 17 (D.D.C. 1972).

§ 452.116 Determining validity of ballots.

Generally, a labor organization has a right to establish reasonable rules for determining the validity of ballots cast in an election. However, where the union has no published guides for determining the validity of a voted ballot, it must count any ballot voted in such a way as to indicate fairly the intention of the voter. An entire ballot may not be voided because of a mistake made in voting for one of the offices on the ballot.

§ 452.117 Majority of votes not required for election.

A labor organization may by its constitution and bylaws provide for the election of the candidate who receives the greatest number of votes, although he does not have a majority of all the votes cast. Alternatively, it may provide that where no candidate receives a majority of all the votes cast, a run-off election be held between the two candidates having the highest vote. Similarly, a labor organization conducting an election to choose five members of an executive board may designate as elected from among all the nominees the five candidates who receive the highest vote.

§ 452.118 Local unions agents in international elections.

An international union may establish internal rules which require local or intermediate union officials to act as agents of the international in conducting designated aspects of the international referendum election of officers. The consequences of the failure to perform as directed by such officials will, of course, depend on the totality of the circumstances involved.

§ 452.119 Indirect elections.

National or international labor organizations subject to the Act have the option of electing officers either directly by secret ballot among the members in good standing or at a convention of delegates or other representatives who have been elected by secret ballot among the members. Intermediate labor organizations subject to the Act have the option of electing officers either directly by secret ballot among the members in good standing or by labor organization officers or delegates elected by secret ballot vote of the members they represent. Local unions, in contrast, do not have the option of conducting their periodic elections of officers indirectly through representatives.

§ 452.120 Officers as delegates.

Officers of labor organizations who have been elected by secret ballot vote of their respective memberships may, by virtue of their election to office, serve as delegates to conventions at which officers will be elected, if the constitution and bylaws of the labor organization so provide. In such cases it is advisable to have a statement to this effect included on the ballots. Persons who have been appointed to serve unexpired terms of officers who are ex officio delegates to a convention at which officers will be elected may not vote for officers in such election.

§ 452.121 Limitations on national or international officers serving as delegates.

While officers of national or international labor organizations or of intermediate bodies who have been elected by a vote of the delegates to a convention may serve as delegates to conventions of their respective labor organizations if the constitution and bylaws so provide, they may not vote in officer elections at such conventions unless they have also been elected as delegates by a secret ballot vote of the members they are to represent. Of course, such officers may participate in the convention, i.e., they may preside over the convention, be nominated as candidates, or act in other capacities permitted under the organization's constitution and bylaws.

§ 452.122 Delegates from intermediate bodies; method of election.

A delegate from an intermediate body who participates in the election of officers at a national or international convention must have been elected by a secret ballot vote of the individual members of the constituent units of that body. He may not participate if he was elected by the delegates who make up the intermediate body. The secret ballot election required by the Act is an election among the general membership and not an election of delegates by other delegates.

§ 452.123 Elections of intermediate body officers.

Section 401(d) states that officers of intermediate bodies shall be elected either by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot. The phrase "officers representative of such members" includes delegates who have been elected by secret ballot to represent labor organizations in intermediate bodies. Such delegates may therefore participate in the election of officers of intermediate bodies regardless of whether they are characterized as officers of the labor organization they represent.

§ 452.124 Delegates from units which are not labor organizations.

To the extent that units, such as committees, which do not meet the definition of a labor organization under the Act[55] participate in the election of officers of a national or international labor organization or an intermediate body, through delegates to the convention or otherwise, the provisions of title IV are, nevertheless, applicable to the election of such delegates. The following example is typical in organizations of railway employees. The chairman of a local grievance committee, which is not a labor organization under the Act, is not an officer within the meaning of the Act. If such a local chairman is a delegate to the general grievance committee, which is considered to be an intermediate body under the Act, however, he must be elected by secret ballot vote of the members he represents, if he votes for officers of the general grievance committee.

§ 452.125 Delegates from labor organizations under trusteeship.

It would be unlawful under section 303(a)(1) of the Act to count the votes of delegates from a labor organization under trusteeship in any convention or election of officers of the organization imposing the trusteeship unless such delegates were chosen by secret ballot vote in an election in which all the members in good standing of the subordinate organization were eligible to participate.[56]

§ 452.126 Delegates to conventions which do not elect officers.

Delegates to conventions need not be elected by secret ballot when officers of the organization are elected by a secret ballot vote of the entire membership. However, if the only method of making nominations is by delegates, then the delegates must be elected by secret ballot.

[55] Act, sec. 3 (i) and (j) and part 451 of this chapter.

[56] Section 303(b) of the LMRDA provides criminal penalties for violation of section 303(a)(1).

§ 452.127 Proportionate representation.

When officers of a national, international or intermediate labor organization are elected at a convention of delegates who have been chosen by secret ballot, the structure of representation of the membership is a matter for the union to determine in accordance with its constitution and bylaws. There is no indication that Congress intended, in enacting title IV of the Act, to require representation in delegate bodies of labor organizations to reflect the proportionate number of members in each subordinate labor organization represented in such bodies. Questions of such proportionate representation are determined in accordance with the labor organization's constitution and bylaws insofar as they are not inconsistent with the election provisions of the Act. Congress did not attempt to specify the organizational structure or the system of representation which unions must adopt. However, all members must be represented; the union may not deny representation to locals below a certain size.

§ 452.128 Under-strength representation.

A local union may elect fewer delegates than it is permitted under the union constitution as long as the local is allowed to determine for itself whether or not it will send its full quota of delegates to the union convention. The delegates present from a local may cast the entire vote allotted to that local if this is permitted by the constitution and bylaws.

§ 452.129 Non-discrimination.

Further, distinctions in representational strength among or within locals may not be based on arbitrary and unreasonable factors such as race, sex, or class of membership based on type of employment.

§ 452.130 Expenses of delegates.

A local may elect two groups—one which would receive expenses while the other would be required to pay its own way, provided each member has an equal opportunity to run for the expense-paid as well as the non-expense-paid positions.

§ 452.131 Casting of ballots; delegate elections.

The manner in which the votes of the representatives are cast in the convention is not subject to special limitations. For example, the voting may be by secret ballot, by show of hands, by oral roll call vote, or if only one candidate is nominated for an office, by acclamation or by a motion authorizing the convention chairman to cast a unanimous vote of the delegates present.

§ 452.132 Proxy voting.

There is no prohibition on delegates in a convention voting by proxy, if the constitution and bylaws permit.

§ 452.133 Election of delegates not members of the labor organization.

A labor organization's constitution and bylaws may authorize the election of delegates who are not members of the subordinate labor organization they represent, provided the members of the subordinate organization are also eligible to be candidates.

§ 452.134 Preservation of records.

The credentials of delegates, and all minutes and other records pertaining to the election of officers at conventions, must be preserved for one year by the officials designated in the constitution and bylaws or by the secretary if no other officer is designated. This requirement applies not only to conventions of national or international labor organizations, but also to representative bodies of intermediate labor organizations.

Subpart J—Special Enforcement Provisions

§ 452.135 Complaints of members.

(a) Any member of a labor organization may file a complaint with the Office of Labor-Management Standards alleging that there have been violations of requirements of the Act concerning the election of officers, delegates, and representatives (including violations of election provisions of the organization's constitution and bylaws that are not inconsistent with the Act.).[57] The complaint may not be filed until one of the two following conditions has been met:

(1) The member must have exhausted the remedies available to him under the constitution and bylaws of the organization and its parent body, or

(2) he must have invoked such remedies without obtaining a final decision within three calendar months after invoking them.

(b) If the member obtains an unfavorable final decision within three calendar months after invoking his available remedies, he must file his complaint within one calendar month after obtaining the decision. If he has not obtained a final decision within three calendar months, he has the option of filing his complaint or of waiting until he has exhausted the available remedies within the organization. In the latter case, if the final decision is ultimately unfavorable, he will have one month in which to file his complaint.

§ 452.136 Investigation of complaint by Office of Labor-Management Standards, court action by the Secretary.

(a) The Office of Labor-Management Standards is required to investigate each complaint of a violation filed in accordance with the requirements of the Act and, if the Secretary finds probable cause to believe that a violation has occurred and has not been remedied, he is directed to bring within 60 days after the complaint has been filed a civil action against the labor organization in a Federal district court. In any such action brought by the Secretary the statute provides that if, upon a preponderance of the evidence after a trial upon the merits, the court finds

(1) that an election has not been held within the time prescribed by the election provisions of the Act or

(2) that a violation of these provisions “may have affected the outcome of an election”, the court shall declare the election, if any, to be void and direct the conduct of an election under the supervision of the Secretary, and, so far as is lawful and practicable, in conformity with the constitution and bylaws of the labor organization.

[57] Act, sec. 402(a).

(b) Violations of the election provisions of the Act which occurred in the conduct of elections held within the prescribed time are not grounds for setting aside an election unless they "may have affected the outcome." The Secretary, therefore, will not institute court proceedings upon the basis of a complaint alleging such violations unless he finds probable cause to believe that they "may have affected the outcome of an election."

(b-1) The Supreme Court, in *Hodgson* v. *Local Union 6799, Steelworkers Union of America,* 403 U.S. 333, 91 S.Ct. 1841 (1971), ruled that the Secretary of Labor may not include in his complaint a violation which was known to the protesting member but was not raised in the member's protest to the union.

Complaints filed by the Department of Labor will accordingly be limited by that decision to the matters which may fairly be deemed to be within the scope of the member's internal protest and those which investigation discloses he could not have been aware of.

(c) Elections challenged by a member are presumed valid pending a final decision. The statute provides that until such time, the affairs of the labor organization shall be conducted by the elected officers or in such other manner as the union constitution and bylaws provide. However, after suit is filed by the Secretary the court has power to take appropriate action to preserve the labor organization's assets.

[38 FR 18324, July 3, 1973, as amended at 39 FR 37360, Oct. 21, 1974]

Subpart K—Dates and Scope of Application

§ 452.137 Effective dates.

(a) Section 404 states when the election provisions of the Act become applicable.[58] In the case of labor organizations whose constitution and bylaws can be lawfully modified or amended by action of the organization's "constitutional officers or governing body," the election provisions become applicable 90 days after the enactment of the statute (December 14, 1959). Where the modification of the constitution and bylaws of a local labor organization requires action by the membership at a general meeting or by referendum, the general membership would be a "governing body" within the meaning of this provision. In the cases where any necessary modification of the constitution and bylaws can be made only by a constitutional convention of the labor organization, the election provisions become applicable not later than the next constitutional convention after the enactment of the statute, or one year after the enactment of the statute, whichever is sooner.

(b) The statute does not require the calling of a special constitutional convention to make such modifications. However, if no convention is held within the one-year period, the executive board or similar governing body that has the power to act for the labor organization between conventions is empowered by the statute to make such interim constitutional changes as are necessary to carry out the provisions of title IV of the Act. Any election held thereafter would have to comply with the requirements of the Act.

§ 452.138 Application of other laws.

(a) Section 403[59] provides that no labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by the election provisions of the Act.

[58] Act, sec. 404.

(b) The remedy[60] provided in the Act for challenging an election already conducted is exclusive.[61] However, existing rights and remedies to enforce the constitutions and bylaws of such organizations before an election has been held are unaffected by the election provisions. Section 603[62] which applies to the entire Act, states that except where explicitly provided to the contrary, nothing in the Act shall take away any right or bar any remedy of any union member under other Federal law or law of any State.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985]

[59] Act, sec. 403.

[62] Act, sec. 603.

[61] Act, sec. 403. See Daily Cong. Rec. 86th Cong., 1st sess., p. 9115, June 8, 1959, pp. 13017 and 13090, July 27, 1959. H. Rept. No. 741, p. 17; S. Rept. No. 187, pp. 21-22, 101, 104. Hearings, House Comm. on Education and Labor, 86th Cong., 1st sess., pt. 1, p. 1611. See also *Furniture Store Drivers Local 82* v. *Crowley,* 104 S.Ct. 2557 (1984).

[60] Act, sec. 402.