AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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]

(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,

[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).

[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).

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]

§ 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

[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 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 * * *.''