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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.

[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.

[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).

[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.''

§ 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]

§ 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.

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.

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[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)