

PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS

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AUTHORITY: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

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

GENERAL

§417.1 Purpose and scope.

Section 401(h) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 481) provides that if, upon application of any member of a local labor organization, the Secretary of Labor finds, after hearing in accord-

ance with the Administrative Procedure Act, that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot. Section 401(i) (29 U.S.C. 481) requires the Secretary to promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures referred to in section 401(h). Section 402(a) (29 U.S.C. 482) provides that a member of a labor organization who has exhausted the available internal remedies of such organization and of any parent body, or who has invoked such remedies without obtaining a final decision within three months, may file a complaint with the Secretary within one month thereafter alleging violation of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the removal of officers). Section 402(b) (29 U.S.C. 482) provides that upon suit initiated by the Secretary, a Federal court may direct the conduct of a hearing and vote upon the removal of officers under the supervision of the Secretary, and in accordance with such rules and regulations as the Secretary may prescribe. It is the purpose of this part to implement those sections by prescribing regulations relating to the procedures and standards for determining the adequacy of removal procedures and the procedures for holding elections for the removal of officers.

§417.2 Definitions.

(a) *Chief, DOE* means the Chief of the Division of Enforcement within the Office of Labor-Management Standards, Employment Standards Administration.

(b) *Adequate procedure* shall mean any procedure which affords reasonable and equitable opportunity for (1) trial of an officer(s) charged with serious misconduct, and (2) removal of such an officer(s) if found guilty, and which contains the elements set forth in each of the subparagraphs of this paragraph:

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Provided, however, That any other procedure which provides otherwise reasonable and equitable measures for removal from office may also be considered adequate:

(1) A reasonable opportunity is afforded for filing charges of serious misconduct against any elected officer(s) without being subject to retaliatory threats, coercion, or acts of intimidation.

(2) The charges of serious misconduct are communicated to the accused officer(s), and reasonable notice is given the members of the organization, reasonably in advance of the time for hearing thereon.

(3) Subject to reasonable restrictions, a fair and open hearing upon such charges is held after adequate notice and adequate opportunity is afforded for testimony or the submission of evidence in support of or in opposition to such charges. Within a reasonable time following such hearing, a decision is reached as to the guilt or innocence of the accused.

(4) If the hearing upon such charges is held before a trial committee or other duly authorized body, reasonable notice of such body's findings is given to the membership of the organization promptly.

(5) If such accused officer(s) is found guilty, he may be removed by a procedure which includes:

(i) A secret ballot vote of the members at an appropriately called meeting, or

(ii) A vote of a trial committee or other duly authorized body, subject to appeal and review by the members voting by a secret ballot at an appropriately called meeting.

(6) Within a reasonable time after the charges of serious misconduct are filed with the labor organization final disposition (including appellate procedures) is made of the charges.

(c) *Elected 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.

(d) *Cause shown* means substantial evidence of serious misconduct.

(e) *Interested person* means any person or organization whose interests are or may be affected by a proceeding.

(f) *Court* means the district court of the United States in the district in which the labor organization in question maintains its principal office.

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964; 29 FR 9537, July 14, 1964; 50 FR 31310, Aug. 1, 1985; 62 FR 6093, Feb. 10, 1997; 63 FR 33779, June 19, 1998]

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

§ 417.3 Initiation of proceedings.

(a) Any member of a local labor organization who has reason to believe that:

(1) An elected officer(s) of such organization has been guilty of serious misconduct, and

(2) The constitution and bylaws of his organization do not provide an adequate procedure for the removal of such officer(s), may file with the Office of Labor-Management Standards a written application, which may be in the form of a letter, for initiation of proceedings under section 401(h) of the Act.

(b) An application filed under paragraph (a) of this section shall set forth the facts upon which it is based including a statement of the basis for the charge that an elected officer(s) is guilty of serious misconduct; and shall contain:

(1) Information identifying the labor organization and the officer or officers involved, and

(2) Any data such member desires the Office of Labor-Management Standards to consider in connection with his application.

§ 417.4 Pre-hearing conference.

(a) Upon receipt of an application filed under § 417.3, the Chief, DOE shall cause an investigation to be conducted of the allegations contained therein, and if he finds probable cause to believe that the constitution and bylaws

of the labor organization do not provide an adequate procedure for the removal of an elected officer(s) guilty of serious misconduct he shall:

(1) Advise the labor organization of his findings and

(2) Afford such labor organization the opportunity for a conference to be set not earlier than 10 days thereafter except where all interested persons elect to confer at an earlier time. Any such conference shall be conducted for the purpose of hearing the views of interested persons and attempting to achieve a settlement of the issue without formal proceedings.

(b)(1) If:

(i) The labor organization declines the opportunity to confer afforded under paragraph (a) of this section, and fails to undertake compliance with the provisions of section 401(h) of the Act, or if

(ii) After consideration of any views presented by the labor organization the Chief, DOE still finds probable cause to believe that the removal procedures are not adequate and if agreement for the adoption of adequate procedures for removal has not been achieved and the labor organization refuses to enter into a stipulation to comply with the provisions of section 401(h) of the Act, the Chief, DOE shall submit his findings and recommendations to the Assistant Secretary.

(2) Upon consideration of the Chief, DOE's recommendations, the Assistant Secretary may order a hearing to be conducted before an Administrative Law Judge duly assigned by him to receive evidence and arguments (i) on the applicability of section 401(h) of the Act to the labor organization involved, and (ii) on the question of whether its constitution and bylaws provide an adequate procedure for the removal of an elected union officer guilty of serious misconduct.

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

§417.5 Notice.

Notice of hearing shall be given not less than 10 days before such hearing is held unless the parties agree to a shorter notice period. Such notice shall be transmitted to the labor organization and the officer(s) accused of mis-

conduct and other interested persons, insofar as they are known, and shall inform them of:

(a) The time, place, and nature of the hearings;

(b) The legal authority and jurisdiction under which the hearing is to be held; and

(c) The matters of fact and law asserted.

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

§417.6 Powers of Administrative Law Judge.

The designated Administrative Law Judge shall have authority:

(a) To give notice concerning and to conduct hearings;

(b) To administer oaths and affirmations;

(c) To issue subpoenas;

(d) To rule upon offers of proof and receive relevant evidence;

(e) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(f) To regulate the course of the hearing;

(g) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(h) To dispose of procedural requests or other matters;

(i) To limit the number of witnesses at hearings, or limit or exclude evidence or testimony which may be irrelevant, immaterial, or cumulative;

(j) If appropriate or necessary to exclude persons or counsel from participation in hearings for refusing any proper request for information or documentary evidence, or for contumacious conduct;

(k) To grant continuances or reschedule hearings for good cause shown;

(l) To consider and decide procedural matters;

(m) To take any other actions authorized by the regulations in this part.

The Administrative Law Judge's authority in the case shall terminate upon his filing of the record and his

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

§ 417.7 Transcript.

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

[50 FR 31310, Aug. 1, 1985, as amended at 63 FR 33779, June 19, 1998]

§ 417.8 Appearances.

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

§ 417.9 Evidence; contumacious or disorderly conduct.

(a) Formal rules of evidence or procedure in use in courts of law or equity shall not obtain. Rules of evidence are to be within the discretion of the Administrative Law Judge. However, it shall be the policy to exclude testimony or matter which is irrelevant, immaterial, or unduly repetitious.

(b) Contumacious or disorderly conduct at a hearing may be ground for exclusion therefrom. The refusal of a witness at any hearing to answer any questions which have been ruled to be proper shall, in the discretion of the Administrative Law Judge be ground for striking all testimony previously given by such witness on related matter.

(c) At any stage of the hearing the Administrative Law Judge may call for further evidence or testimony on any matter. After the hearing has been closed, no further information shall be received on any matter, except where

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provision shall have been made for it at the hearing, or except as the Administrative Law Judge or Assistant Secretary may direct by reopening the hearing.

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964]

§ 417.10 Rights of participants.

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

§ 417.11 Objections to evidence.

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

§ 417.12 Proposed findings and conclusions.

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

§ 417.13 Initial decision of Administrative Law Judge.

Within 25 days following the period for submitting proposed findings and conclusions, the Administrative Law Judge shall consider the whole record, file an initial decision as to the adequacy of the constitution and bylaws for the purpose of removing officers

with the Assistant Secretary, and forward a copy to each party participating in the hearing. His decision shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all material issues.

§ 417.14 Form and time for filing of appeal with the Assistant Secretary.

(a) An interested person may appeal from the Administrative Law Judge's initial decision by filing written exceptions with the Assistant Secretary within 15 days of the issuance of the Administrative Law Judge's initial decision (or such additional time as the Assistant Secretary may allow), together with supporting reasons for such exceptions. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Assistant Secretary, or an appeal containing such matter or lacking in specification of exceptions may be dismissed.

(b) In the absence of either an appeal to the Assistant Secretary or review of the Administrative Law Judge's initial decision by the Assistant Secretary on his own motion, such initial decision shall become the decision of the Assistant Secretary.

§ 417.15 Decision of the Assistant Secretary.

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

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964]

Subpart B—Procedures Upon Failure of Union To Take Appropriate Remedial Action Following Subpart A Procedures

§ 417.16 Initiation of proceedings.

(a) Any member of a local labor organization may file a complaint with the Office of Labor-Management Standards alleging that following a finding by the Assistant Secretary pursuant to subpart A that the constitution and bylaws of the labor organization pertaining to the removal of officers are inadequate, or a stipulation of compliance with the provisions of section 401(h) of the Act reached with the Chief, DOE in connection with a prior charge of the inadequacy of a union's constitution and bylaws to remove officers, as provided in subpart A of this part, the labor organization (1) has failed to act within a reasonable time, or (2) has violated the procedures agreed to with the Chief, DOE, or (3) has violated the principles governing adequate removal procedures under § 417.2(b).

(b) The complaint must be filed pursuant to section 402(a) of the Act within one calendar month after one of the two following conditions has been met:

(1) The member has exhausted the remedies available to him under the constitution and bylaws of the organization, or

(2) The member has invoked such remedies without obtaining a final decision within three calendar months after invoking them.

[59 FR 65716, Dec. 21, 1994, as amended at 62 FR 6093, Feb. 10, 1997]

§ 417.17 Investigation of complaint and court action.

The Office of Labor-Management Standards shall investigate such complaint, and if upon such investigation the Secretary finds probable cause to believe that a violation of section 401(h) of the Act has occurred and has not been remedied, the Secretary shall within 60 days after the filing of such complaint, bring a civil action against the labor organization in the district court of the United States for the district in which such labor organization maintains its principal office, to direct

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the conduct of a hearing and vote upon the removal of officer(s) under the supervision of the Assistant Secretary as provided in section 402(b) of the Act.

[59 FR 65717, Dec. 21, 1994]

§ 417.18 Hearings—removal of officers of local labor organizations.

Hearings pursuant to order of the court and concerning the removal of officers under section 402(b) of the Act shall be for the purpose of introducing testimony and evidence showing why an officer or officers accused of serious misconduct should or should not be removed. Hearings shall be conducted by the officers of the labor organization (subject to § 417.19) in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with title IV of the Act, or with the provisions of this part 417: *Provided, however,* That no officer(s) accused of serious misconduct shall participate in such hearings in any capacity except as witness or counsel.

§ 417.19 Assistant Secretary's representative.

The Assistant Secretary shall appoint a representative or representatives whose functions shall be to supervise the hearing and vote. Such representative(s) shall have final authority to issue such rulings as shall be appropriate or necessary to insure a full and fair hearing and vote. Upon his own motion or upon consideration of the petition of any interested person the Assistant Secretary's Representative may disqualify any officer(s) or member(s) of the union from participation in the conduct of the hearing (except in the capacity of witness or counsel).

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964]

§ 417.20 Notice of hearing.

Notice of hearing, not less than 10 days in advance of the date set for such hearing, shall be transmitted to the officer or officers accused of serious misconduct and other interested persons, insofar as they are known, and shall inform them of (a) the time, place, and nature of the hearing; (b) the legal au-

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thority and jurisdiction under which the hearing is to be held; (c) the matters of fact and law asserted; and (d) their rights to challenge the appointment of certain of, or all of, the officers of the union to conduct the hearing in accordance with this subpart. The labor organization shall promptly inform its members of the provisions of the notice. Copies of the notice shall be made available for inspection at the office of the labor organization.

§ 417.21 Transcript.

It shall be within the discretion of the Assistant Secretary to require an official reporter to make an official transcript of the hearings. In the event he does so require, copies of the official transcript shall be made available upon request addressed to the Assistant Secretary in accordance with the provisions of part 70 of this title.

[50 FR 31310, Aug. 1, 1985, as amended at 63 FR 33779, June 19, 1998]

§ 417.22 Vote among members of the labor organization.

Within a reasonable time after completion of the hearing, and after proper notice thereof, a secret ballot vote shall be conducted among the members of the labor organization in good standing on the issue of whether the accused officer or officers shall be removed from office. The vote shall be in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of the Act or this part 417. The presiding officer or officers at the taking of such vote shall entertain objections or suggestions as to the rules for conducting the vote, eligibility of voters, and such other matters as may be pertinent; and shall rule on such questions, shall establish procedures for the conduct of the vote, and for tabulation of the ballots; and shall appoint observers and compile a list of eligible voters. All rulings of the presiding officer or officers shall be subject to the provisions of § 417.19.

§ 417.23 Report to the Assistant Secretary.

Following completion of the hearing and vote, the Assistant Secretary's Representative shall file a report with

the Assistant Secretary setting out the results of the balloting; and pertinent details of the hearing and vote. Notice thereof shall be given to the membership of such labor organization promptly and copies shall be furnished to all interested parties.

§ 417.24 Appeal to the Assistant Secretary.

(a) Within 15 days after mailing of the report of the Assistant Secretary's Representative, any interested party may appeal the conduct of the hearing or vote or both by filing written exceptions with the Assistant Secretary. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Assistant Secretary, or an appeal containing such matter or lacking in specifications may be dismissed.

(b) Upon review of the whole record, the Assistant Secretary shall issue a decision or may order further hearing, a new vote, or such further proceedings as he deems appropriate.

[29 FR 8264, July 1, 1964, as amended at 50 FR 31310, Aug. 1, 1985]

§ 417.25 Certification of results of vote.

Upon receipt of the report of the Assistant Secretary's Representative on the hearing and vote on removal, the Assistant Secretary shall certify the results of the vote to the court as required by section 402(c) of the Act.

PART 451—LABOR ORGANIZATIONS AS DEFINED IN THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

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AUTHORITY: Secs. 3, 208, 401, 73 Stat. 520, 529, 532 (29 U.S.C. 402, 438, 481); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 28 FR 14388, Dec. 27, 1963, unless otherwise noted.

§ 451.1 Introductory statement.

(a) This part discusses the meaning and scope of sections 3(i) and 3(j) of the Labor-Management Reporting and Disclosure Act of 1959¹ (hereinafter referred to as the Act). These provisions define the terms "labor organization" and "labor organization * * * in an industry affecting commerce" for purposes of the Act.²

(b) The Act imposes on labor organizations various obligations and prohibitions relating generally, among other things, to the reporting of information and election and removal of officers. Requirements are also imposed on the officers, representatives, and employees of labor organizations. In addition, certain rights are guaranteed the members thereof. It thus becomes a matter of importance to determine what organizations are included within the applicability of the Act.

(c) The provisions of the Act, other than title I and amendments to other statutes contained in section 505 and title VII, are subject to the general investigatory authority of the Secretary of Labor embodied in section 601³ (and delegated by him to the Assistant Secretary), which empowers him to investigate whenever he believes it necessary in order to determine whether any person has violated or is about to violate such provisions. The correctness of an interpretation of these provisions can be determined finally and authoritatively only by the courts. It is necessary, however, for the Assistant Secretary to reach informed conclusions as to the meaning of the law to enable him to carry out his statutory

¹73 Stat. 520, 521, 29 U.S.C. 402.

²It should be noted that the definition of the term "labor organization," as well as other terms, in section 3 are for purposes of those portions of the Act included in titles I, II, III, IV, V (except section 505) and VI. They do not apply to title VII, which contains amendments of the National Labor Relations Act, as amended, nor to section 505 of title V, which amends section 302 (a), (b), and (c) of the Labor Management Relations Act, 1947, as amended. The terms used in title VII and section 505 of title V have the same meaning as they have under the National Labor Relations Act, as amended, and the Labor Management Relations Act, 1947, as amended.

³Sec. 601, 73 Stat. 539, 29 U.S.C. 521.