

## § 452.1

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AUTHORITY: Secs. 401, 402, 73 Stat. 532, 534 (29 U.S.C. 481, 482); Secretary's Order No. 5–96, 62 FR 107, January 2, 1997.

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<sup>1</sup> (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 Assistant Secretary with respect to the election provisions of title IV are set forth in

<sup>1</sup>73 Stat. 532–535, 29 U.S.C. 481–483.

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.”<sup>2</sup> The correctness of an interpretation 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 duties of administration and enforcement. The interpretations of the Assistant Secretary 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 Assistant Secretary with respect to such problem or to constitute an administrative interpretation or practice.

(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.

#### § 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

<sup>2</sup>*Skidmore v. Swift & Co.*, 323 U.S. 134 at 138 (1944).

body will be accepted unless the interpretation is clearly unreasonable.<sup>3</sup>

#### § 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.<sup>4</sup> 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”<sup>5</sup> the Secretary as a matter of policy will not file suit to enforce the

<sup>3</sup>*English v. Cunningham*, 282 F.2d 848 (C.A.D.C. 1960).

<sup>4</sup>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.

<sup>5</sup>Act, sec. 402(b) (29 U.S.C. 482).