

§ 452.126

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.

§ 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

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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

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

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 viola-

tion 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.

(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

⁵⁷ Act, sec. 402(a).