§ 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"5 the Secretary as a matter of policy will not file suit to enforce the body will be accepted unless the interpretation is clearly unreasonable.3

§ 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.4 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"5 the Secretary as a matter of policy will not file suit to enforce the

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4 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.
5 Act, sec. 402(b) (29 U.S.C. 532).