

§ 452.81

mentioned in §§ 452.67 and 452.71.⁴¹ Thus, any qualified member seeking to be nominated and elected at a convention would be able to take advantage of the distribution rights even before the convention meets and thus attempt to influence members to select delegates favorable to his candidacy or to persuade the delegates to support his candidacy. A union may reasonably require that a person be nominated in order to be elected, but may not prevent a member who actively seeks office and is otherwise qualified from taking advantage of the campaign safeguards in the Act in an effort to gain the support necessary to be nominated.

§ 452.81 Rights in intermediate body elections.

While the literal language in section 401(c) relating to distribution of campaign literature and to discrimination with respect to the use of membership lists would seem to apply only to national, international and local labor organizations, two United States District Courts have held that these provisions also apply to intermediate bodies.⁴² The Department of Labor considers these rulings to be consistent with the intent of Congress and, therefore, has adopted this position.

§ 452.82 Reprisal for exercising rights.

A member has a right to support the candidate of his choice without being subject to penalty, discipline, or improper interference or reprisal of any kind by the labor organization conducting the election or any member thereof.

§ 452.83 Enforcement of campaign safeguards.

Certain of the safeguards of section 401(c) are enforceable at the suit of any bona fide candidate. This special statutory right to sue is limited to the distribution of campaign literature by the labor organization and the forbearance of such organization from discrimination among candidates with respect to

29 CFR Ch. IV (7–1–10 Edition)

the use of membership lists. Of course, all title IV safeguards, including those discussed in this paragraph, are subject to enforcement as provided in section 402. It should be noted that the right of a bona fide candidate to sue in the circumstances described herein is limited to the period prior to election. After the election, the only remedy would be through a suit by the Secretary under section 402.

Subpart H—Right To Vote

§ 452.84 General.

Under the provisions of section 401(e), every member in good standing is entitled to vote in elections required under title IV which are to be held by secret ballot. The phrase “member in good standing” includes any person who has fulfilled the requirements for membership and who neither has withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of the organization.⁴³

§ 452.85 Reasonable qualifications on right to vote.

The basic right of members to vote in elections of the labor organization may be qualified by reasonable rules and regulations in its constitution and bylaws.⁴⁴

§ 452.86 Vote conditioned on payment of dues.

A labor organization may condition the exercise of the right to vote upon the payment of dues, which is a basic obligation of membership. Such a rule must be applied uniformly. If a member has not paid his dues as required by the labor organization's constitution or bylaws he may not be allowed to vote. Thus, a rule which suspends a member's right to vote in an election of officers while the member is laid off and is not paying dues would not, in ordinary circumstances, be considered unreasonable, so long as it is applied in a nondiscriminatory manner. However, members must be afforded a reasonable opportunity to pay dues, including a

⁴¹ *Yablonski v. United Mine Workers*, 71 LRRM 2606, 60 L.C. 10,204 (D.D.C. 1969).

⁴² *Antal v. UMW District 5*, 64 LRRM 2222, 54 L.C. 11,621 (W.D. Pa. 1966); *Schonfeld v. Rarback*, 49 L.C. 19,039 (S.D.N.Y. 1964).

⁴³ Act, sec. 3(o).

⁴⁴ Act, sec. 101(a)(1).

grace period during which dues may be paid without any loss of rights. In the case where a member is laid off but desires to maintain his good standing and thus his membership rights by continuing to pay dues, it would be clearly unreasonable for the labor organization to refuse to accept his payment.

§ 452.87 Dues paid by checkoff.

A member in good standing whose dues are checked off by his employer pursuant to his voluntary authorization provided for in a collective bargaining agreement may not be disqualified from voting by reason of alleged delay or default in the payment of dues. For example, the constitution and bylaws of a labor organization call for suspension of members whose dues are three months in arrears. Dues to be paid directly by a member are two months in arrears when the union changes to a checkoff system. The member may not be denied the right to vote merely because the employer is late in submitting the checked off dues for the first month. It would not be inconsistent with the Act, however, for a union to require a new member who executes a checkoff authorization to pay one month's dues in advance on the date he becomes a member in order to be in good standing for the current month.

§ 452.88 Resumption of good standing.

While it is permissible for a labor organization to deny the right to vote to those delinquent in paying their dues (with the exceptions noted) or to those who have been suspended or disciplined in accordance with section 101(a)(5) of the Act, a provision under which such persons are disqualified from voting for an extended period of time after payment of back dues or after reinstatement would not be considered reasonable. After a member has resumed his good-standing status, it would be unreasonable to continue to deprive him of his right to vote for a period longer than that for a new member. A new member may reasonably be required to establish a relationship with the union by remaining in good standing for a continuous period of time, e.g., 6 months or a year, before being permitted to vote in an election of offi-

cers. However, while the right to vote may be deferred within reasonable limits, a union may not create special classes of nonvoting members.

§ 452.89 Apprentices.

A labor organization may condition the right to vote upon completion of a bona fide program of apprenticeship training which is designed to produce competent tradesmen in the industry the union serves.

§ 452.90 Visiting members.

A decision about the voting rights of visiting members is properly one for resolution by the union in accordance with the organization's constitution and bylaws or applicable resolutions. For purposes of the Act, a person is ordinarily considered to be a member of the local to which he pays his dues.

§ 452.91 Voting by employers, supervisors.

Voting in union elections by employers, self-employed persons, supervisors or other persons who are considered to be part of management is not precluded by title IV of the Act even if they are not required to maintain union membership as a condition of employment. However, as mentioned in the discussion of qualifications for candidacy (see § 452.47), such persons may not dominate or interfere with the administration of any labor organization.

§ 452.92 Unemployed members.

Members who are otherwise qualified to vote may not be disqualified from voting merely because they are currently unemployed or are employed on a part-time basis in the industry served by the union, provided, of course, that such members are paying dues.

§ 452.93 Retired members.

The right of retirees to vote may be restricted to the extent provided by the constitution and bylaws of the labor organization.

§ 452.94 Reasonable opportunity to vote.

The statutory protection of the right to vote implies that there must be a reasonable opportunity to vote. Thus,