

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organizations under the Act are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.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).

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election provisions unless the violations found are such that the outcome may have been affected.<sup>6</sup>

[38 FR 18324, July 9, 1973, as amended at 50 FR 31310, Aug. 1, 1985; 63 FR 33780, June 19, 1998]

### § 452.6 Delegation of enforcement authority.

The authority of the Secretary under the Act has been delegated in part to the Assistant Secretary.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31309, Aug. 1, 1985]

## Subpart B—Other Provisions of the Act Affecting Title IV

### § 452.7 Bill of Rights, title I.

The provisions of title I, “Bill of Rights of Members of Labor Organizations”<sup>7</sup> (particularly section 101(a)(1) “Equal Rights,” section 101(a)(2) “Freedom of Speech and Assembly,” and section 101(a)(5) “Safeguards against Improper Disciplinary Action”) are related to the rights pertaining to elections. Direct enforcement of title I rights, as such, is limited to civil suit in a district court of the United States by the person whose rights have been infringed.<sup>8</sup> The exercise of particular rights of members is subject to reasonable rules and regulations in the labor organization’s constitution and by-laws.<sup>9</sup>

### § 452.8 Trusteeship provisions, title III.

Placing a labor organization under trusteeship consistent with title III, may have the effect of suspending the application of title IV to the trustee organization (see § 452.15).

### § 452.9 Prohibition against certain persons holding office; section 504.

Among the safeguards for labor organizations provided in title V is a prohibition against the holding of office by

<sup>6</sup>*Dunlop v. Bachowski*, 421 U.S. 560, 570 (1975), citing *Wirtz v. Glass Bottle Blowers*, 389 U.S. 463, 472 (1968) and *Schonfeld v. Wirtz*, 285 F. Supp. 705, 707–708 (S.D.N.Y. 1966).

<sup>7</sup>73 Stat. 522, 29 U.S.C. 411.

<sup>8</sup>But the Secretary may bring suit to enforce section 104 (29 U.S.C. 414).

<sup>9</sup>Act, sec. 101(a)(1), 101(a)(2), and 101(b) (29 U.S.C. 411).

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certain classes of persons.<sup>10</sup> This provision makes it a crime for any person willfully to serve in certain positions, including as an elected officer of a labor organization, for a period of three to thirteen years after conviction or imprisonment for the commission of specified offenses, including violation of titles II or III of the Act, or conspiracy or attempt to commit such offenses. It is likewise a crime for any labor organization or officer knowingly to permit such a person to serve in such positions. Persons subject to the prohibition applicable to convicted criminals may serve if their citizenship rights have been fully restored after being taken away by reason of the conviction, or if, following the procedures set forth in the Act, it is determined that their service would not be contrary to the purposes of the Act.

[50 FR 31310, Aug. 1, 1985]

### § 452.10 Retaliation for exercising rights.

Section 609, which prohibits labor organizations or their officials from disciplining members for exercising their rights under the Act, and section 610, which makes it a crime for any person to use or threaten force or violence for the purpose of interfering with or preventing the exercise of any rights protected under the Act, apply to rights relating to the election of officers under title IV.

## Subpart C—Coverage of Election Provisions

### § 452.11 Organizations to which election provisions apply.

Title IV of the Act contains election provisions applicable to national and international labor organizations, except federations of such organizations, to intermediate bodies such as general committees, conferences, system boards, joint boards, or joint councils, certain districts, district councils and similar organizations and to local labor

<sup>10</sup>Act, sec. 504(a) (29 U.S.C. 504), as amended by the Comprehensive Crime Control Act of 1984, Public Law 98–473, secs. 229, 235, 803 and 804. See text at footnote 23 for a list of the disabling crimes.