

§ 452.95

there is an obligation on the labor organization to conduct its periodic election of officers in such a way as to afford all its members a reasonable opportunity to cast ballots. A union may meet this obligation in a variety of ways, depending on factors such as the distance between the members' work site or homes and the polling place, the means of transportation available, the nature of the members' occupations, and their hours of work. A reasonable opportunity to vote may require establishing multiple polling places or the use of a mail ballot referendum when the members are widely dispersed. It would also be reasonable for the time period for voting to be extended to accommodate members who might otherwise be prevented from voting due to conflicting work schedules. Shortening the voting period by a late opening of the polls would not, in itself, be improper unless the intent or practical effect of such action is to deprive members of their right to vote.

§ 452.95 Absentee ballots.

Where the union knows in advance that a substantial number or a particular segment of the members will not be able to exercise their right to vote in person, as, for example, when access to a polling place is impracticable for many members because of shipping assignments, absentee ballots or other means of voting must be made available.⁴⁵ In the event absentee ballots are necessary the organization must give its members reasonable notice of the availability of such ballots.⁴⁶

Subpart I—Election Procedures; Rights of Members

§ 452.96 General.

The Act safeguards democratic processes by prescribing, in section 401, minimum standards for the regular periodic election of officers in labor organizations subject to its provisions. It does not, however, prescribe in detail

⁴⁵ *Goldberg v. Marine Cooks and Stewards Union*, 204 F. Supp. 844 (N.D. Cal. 1962).

⁴⁶ *Wirtz v. Local Union 262, Glass Bottle Blowers Association*, 290 F. Supp. 965 (N.D. Calif. 1968).

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election procedures which must be followed. Labor organizations are free to establish procedures for elections as long as they are fair to all members and are consistent with lawful provisions of the organization's constitution and bylaws and with section 401. The rights granted to members in section 401(e) refer to individuals, not labor organizations. For example, while locals may be members of an intermediate body, they are not entitled to the rights granted "members" in section 401(e).

§ 452.97 Secret ballot.

(a) A prime requisite of elections regulated by title IV is that they be held by secret ballot among the members or in appropriate cases by representatives who themselves have been elected by secret ballot among the members. A secret ballot under the Act is "the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice * * * cast in such a manner that the person expressing such choice cannot be identified with the choice expressed."⁴⁷ Secrecy may be assured by the use of voting machines, or, if paper ballots are used, by providing voting booths, partitions, or other physical arrangements permitting privacy for the voter while he is marking his ballot. The ballot must not contain any markings which upon examination would enable one to identify it with the voter. Balloting by mail presents special problems in assuring secrecy. Although no particular method of assuring such secrecy is prescribed, secrecy may be assured by the use of a double envelope system for return of the voted ballots with the necessary voter identification appearing only on the outer envelope.

(b) Should any voters be challenged as they are casting their ballots, there should be some means of setting aside the challenged ballots until a decision regarding their validity is reached without compromising the secrecy requirement. For example, each such ballot might be placed in an envelope with the voter's name on the outside. Of course, it would be a violation of the

⁴⁷ Act, sec. 3(k).

secrecy requirement to open these envelopes and count the ballots one at a time in such a way that each vote could be identified with a voter.

(c) In a mail ballot election, a union may require members to sign the return envelope if the signatures may be used in determining eligibility. However, it would be unreasonable for a union to void an otherwise valid ballot merely because a member printed rather than signed his name if the union does not use the signatures to determine voter eligibility.

§ 452.98 Outside agencies.

There is nothing in the Act to prevent a union from employing an independent organization as its agent to handle the printing, mailing, and counting of ballots in such elections if all the standards of the Act are met.

§ 452.99 Notice of election.

Elections required by title IV to be held by secret ballot must be preceded by a notice of election mailed to each member at his last known home address not less than fifteen days prior to the election.⁴⁸ For purposes of computing the fifteen day period, the day on which the notices are mailed is not counted whereas the day of the election is counted. For example, if the election is to be held on the 20th day of the month, the notices must be mailed no later than the 5th day. The notice must include a specification of the date, time and place of the election and of the offices to be filled, and it must be in such form as to be reasonably calculated to inform the members of the impending election. Specification of the offices to be filled would not be necessary if it is a regular, periodic election of all officers and the notice so indicates. A statement in the union by-laws that an election will be held at a certain time does not constitute the notice required by the statute. Since the Act specifies that the notice must be mailed, other means of transmission such as posting on a bulletin board or hand delivery will not satisfy the requirement. A notice of election must be sent to every member as defined in section 3(o) of the Act, not only to

members who are eligible to vote in the election. Where the notice, if mailed to the last known permanent or legal residence of the member, would not be likely to reach him because of a known extended absence from that place, the statutory phrase "last known home address" may reasonably be interpreted to refer to the last known temporary address of definite duration. A single notice for both nominations and election may be used if it meets the requirements of both such notices.⁴⁹

[38 FR 18324, July 9, 1973, as amended at 63 FR 33780, June 19, 1998]

§ 452.100 Use of union newspaper as notice.

A labor organization may comply with the election notice requirement by publishing the notice in the organization's newspaper which is mailed to the last known home address of each member not less than fifteen days prior to the election. Where this procedure is used (a) the notice should be conspicuously placed on the front page of the newspaper, or the front page should have a conspicuous reference to the inside page where the notice appears, so that the inclusion of the election notice in a particular issue is readily apparent to each member; (b) the notice should clearly identify the particular labor organization holding the election; (c) the notice should specify the time and place of the election and the offices to be filled; and (d) a reasonable effort must be made to keep the mailing list of the publication current.

§ 452.101 Sample ballots as notice.

Sample ballots together with information as to the time and place of the election and the offices to be filled, if mailed fifteen days prior to the election, will fulfill the election notice requirements.

§ 452.102 Notice in mail ballot election.

If the election is conducted by mail and no separate notice is mailed to the members, the ballots must be mailed to the members no later than fifteen days

⁴⁸ Act, sec. 401(e).

⁴⁹ See § 452.56 for a discussion of the requirements for notices of nomination.