

of Labor finds, after hearing in accordance with the Administrative Procedure Act, that the constitution and by-laws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot. Section 401(i) (29 U.S.C. 481) requires the Secretary to promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures referred to in section 401(h). Section 402(a) (29 U.S.C. 482) provides that a member of a labor organization who has exhausted the available internal remedies of such organization and of any parent body, or who has invoked such remedies without obtaining a final decision within three months, may file a complaint with the Secretary within one month thereafter alleging violation of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the removal of officers). Section 402(b) (29 U.S.C. 482) provides that upon suit initiated by the Secretary, a Federal court may direct the conduct of a hearing and vote upon the removal of officers under the supervision of the Secretary, and in accordance with such rules and regulations as the Secretary may prescribe. It is the purpose of this part to implement those sections by prescribing regulations relating to the procedures and standards for determining the adequacy of removal procedures and the procedures for holding elections for the removal of officers.

#### §417.2 Definitions.

(a) *Chief, DOE* means the Chief of the Division of Enforcement within the Office of Labor-Management Standards, Employment Standards Administration.

(b) *Adequate procedure* shall mean any procedure which affords reasonable and equitable opportunity for (1) trial of an officer(s) charged with serious misconduct, and (2) removal of such an officer(s) if found guilty, and which contains the elements set forth in each of the subparagraphs of this paragraph: *Provided, however,* That any other pro-

cedure which provides otherwise reasonable and equitable measures for removal from office may also be considered adequate:

(1) A reasonable opportunity is afforded for filing charges of serious misconduct against any elected officer(s) without being subject to retaliatory threats, coercion, or acts of intimidation.

(2) The charges of serious misconduct are communicated to the accused officer(s), and reasonable notice is given the members of the organization, reasonably in advance of the time for hearing thereon.

(3) Subject to reasonable restrictions, a fair and open hearing upon such charges is held after adequate notice and adequate opportunity is afforded for testimony or the submission of evidence in support of or in opposition to such charges. Within a reasonable time following such hearing, a decision is reached as to the guilt or innocence of the accused.

(4) If the hearing upon such charges is held before a trial committee or other duly authorized body, reasonable notice of such body's findings is given to the membership of the organization promptly.

(5) If such accused officer(s) is found guilty, he may be removed by a procedure which includes:

(i) A secret ballot vote of the members at an appropriately called meeting, or

(ii) A vote of a trial committee or other duly authorized body, subject to appeal and review by the members voting by a secret ballot at an appropriately called meeting.

(6) Within a reasonable time after the charges of serious misconduct are filed with the labor organization final disposition (including appellate procedures) is made of the charges.

(c) *Elected officer* means any constitutional officer, any person authorized to perform the functions of president, vice-president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(d) *Cause shown* means substantial evidence of serious misconduct.

### § 417.3

(e) *Interested person* means any person or organization whose interests are or may be affected by a proceeding.

(f) *Court* means the district court of the United States in the district in which the labor organization in question maintains its principal office.

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964; 29 FR 9537, July 14, 1964; 50 FR 31310, Aug. 1, 1985; 62 FR 6093, Feb. 10, 1997; 63 FR 33779, June 19, 1998]

### Subpart A—Procedures To Determine Adequacy of Constitution and Bylaws for Removal of Officers of Local Labor Organizations

#### § 417.3 Initiation of proceedings.

(a) Any member of a local labor organization who has reason to believe that:

(1) An elected officer(s) of such organization has been guilty of serious misconduct, and

(2) The constitution and bylaws of his organization do not provide an adequate procedure for the removal of such officer(s), may file with the Office of Labor-Management Standards a written application, which may be in the form of a letter, for initiation of proceedings under section 401(h) of the Act.

(b) An application filed under paragraph (a) of this section shall set forth the facts upon which it is based including a statement of the basis for the charge that an elected officer(s) is guilty of serious misconduct; and shall contain:

(1) Information identifying the labor organization and the officer or officers involved, and

(2) Any data such member desires the Office of Labor-Management Standards to consider in connection with his application.

#### § 417.4 Pre-hearing conference.

(a) Upon receipt of an application filed under § 417.3, the Chief, DOE shall cause an investigation to be conducted of the allegations contained therein, and if he finds probable cause to believe that the constitution and bylaws of the labor organization do not provide an adequate procedure for the re-

### 29 CFR Ch. IV (7–1–05 Edition)

moval of an elected officer(s) guilty of serious misconduct he shall:

(1) Advise the labor organization of his findings and

(2) Afford such labor organization the opportunity for a conference to be set not earlier than 10 days thereafter except where all interested persons elect to confer at an earlier time. Any such conference shall be conducted for the purpose of hearing the views of interested persons and attempting to achieve a settlement of the issue without formal proceedings.

(b)(1) If:

(i) The labor organization declines the opportunity to confer afforded under paragraph (a) of this section, and fails to undertake compliance with the provisions of section 401(h) of the Act, or if

(ii) After consideration of any views presented by the labor organization the Chief, DOE still finds probable cause to believe that the removal procedures are not adequate and if agreement for the adoption of adequate procedures for removal has not been achieved and the labor organization refuses to enter into a stipulation to comply with the provisions of section 401(h) of the Act, the Chief, DOE shall submit his findings and recommendations to the Assistant Secretary.

(2) Upon consideration of the Chief, DOE's recommendations, the Assistant Secretary may order a hearing to be conducted before an Administrative Law Judge duly assigned by him to receive evidence and arguments (i) on the applicability of section 401(h) of the Act to the labor organization involved, and (ii) on the question of whether its constitution and bylaws provide an adequate procedure for the removal of an elected union officer guilty of serious misconduct.

[29 FR 8264, July 1, 1964, as amended at 50 FR 31310, Aug. 1, 1985; 62 FR 6093, Feb. 10, 1997]

#### § 417.5 Notice.

Notice of hearing shall be given not less than 10 days before such hearing is held unless the parties agree to a shorter notice period. Such notice shall be transmitted to the labor organization and the officer(s) accused of misconduct and other interested persons,