

§ 452.13

would also be subject to the Act. The requirements would not apply to locals composed entirely of government employees not covered by the Act, except with respect to the election of officers of a parent organization which is subject to those requirements or the election of delegates to a convention of such parent organization, or to an intermediate body to which the requirements apply.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985; 63 FR 33780, June 19, 1998]

§ 452.13 Extraterritorial application.

Although the application of the Act is limited to the activities of persons and organizations within the territorial jurisdiction of the United States,¹⁴ an international, national or intermediate body is not exempted from the requirements of the Act by virtue of the participation of its foreign locals or foreign membership in its elections. For example, votes received from Canadian members in referendum elections held by an international must have been cast under procedures meeting the minimum requirements of the Act, and Canadian delegates participating at conventions of the international at which officers are elected must have been elected by secret ballot.

§ 452.14 Newly formed or merged labor organizations.

The initial selection of officers by newly formed or merged labor organizations is not subject to the requirements of title IV.¹⁵ Such labor organizations may have temporary or provisional officers serve until a regular election subject to the Act can be scheduled. An election under all the safeguards prescribed in these regulations must be held within a reasonable period after the organization begins to function. What would be a reasonable time for this purpose depends on the circumstances, but after the formation or consolidation of the labor organization, a regular election subject to title

¹⁴ See § 451.6 of this chapter.

¹⁵ However, the other provisions of the Act are applicable immediately upon such formation or merger.

29 CFR Ch. IV (7-1-05 Edition)

IV may not be deferred longer than the statutory period provided for that type of organization. However, when a pre-existing labor organization changes its affiliation without substantially altering its basic structure or identity the terms of its officers may not be extended beyond the maximum period specified by the Act for the type of labor organization involved.

§ 452.15 Effect of trusteeship.

Establishment of a valid trusteeship may have the effect of suspending the operation of the election provisions of the Act. When the autonomy otherwise available to a subordinate labor organization has been suspended consistent with the provisions of title III of the Act, officers of the organization under trusteeship may be relieved of their duties and temporary officers appointed by the trustee if necessary to assist him in carrying out the purposes for which the trusteeship was established. However, when a regular election of officers or an election for purposes of terminating the trusteeship is being held during the trusteeship, title IV would apply.

§ 452.16 Offices which must be filled by election.

Section 401 of the Act identifies the types of labor organizations whose officers must be elected and prescribes minimum standards and procedures for the conduct of such elections. Under that section officers of national or international labor organizations (except federations of such organizations), local labor organizations, and intermediate bodies such as general committees, system boards, joint boards, joint councils, conferences, certain districts, district councils and similar organizations must be elected.¹⁶

§ 452.17 Officer.

Section 3(n) of the Act defines the word "officer" and it is this definition which must be used as a guide in determining what particular positions in a

¹⁶ See § 452.23 for a discussion of the frequency with which the different types of labor organizations must conduct elections of officers. See part 451 of this chapter for the scope of the term "labor organization."

labor organization are to be filled in the manner prescribed in the Act. For purposes of the Act, "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."

§ 452.18 Constitutional officers.

A constitutional officer refers to a person holding a position identified as an officer by the constitution and bylaws of the labor organization. Thus, for example, a legislative representative of a labor organization who performs no executive functions and whose duties are confined to promoting the interests of members in legislative matters is nevertheless an officer who is required to be elected where the labor organization's constitution identifies the holder of such a position as an officer. On the other hand, legislative representatives who are required to be elected by the constitution and bylaws of a labor organization are not considered to be officers within the meaning of the Act if they are not designated as such by the constitution, are not members of any executive board or similar governing body, and do not perform executive functions. As defined in the Act, however, the term "officer" is not limited to individuals in positions identified as such or provided for in the constitution or other organic law of the labor organization.¹⁷ The post of Honorary President, President Emeritus or Past President that is to be assumed by the retiring chief executive officer of a union would not be an officer position unless it is designated as an officer position by the union's constitution, or the holder of the position performs executive functions or serves on an executive board or similar governing body.

§ 452.19 Executive functions.

The definitional phrase "a person authorized to perform the functions of president, vice president, secretary,

treasurer, or other executive functions of a labor organization" brings within the term "officer" any person who in fact has executive or policy-making authority or responsibility, although he may not occupy a position identified as an officer under the constitution and bylaws of the organization. Authorization to perform such functions need not be contained in any provision of the constitution or bylaws or other document but may be inferred from actual practices or conduct. On the other hand, a person is not an officer merely because he performs ministerial acts for a designated officer who alone has responsibility. The normal functions performed by business agents and shop stewards, such as soliciting memberships, presenting or negotiating employee grievances within the work place, and negotiating contracts are not "other executive functions" as that phrase is used in section 3(n) of the Act. However, a directing business representative or a business manager usually exercises such a degree of executive authority as to be considered an officer and, therefore, must be elected. The duties normally pertaining to membership on a bargaining committee do not come within the phrase "other executive functions." However, persons occupying such non-executive positions may be "officers" if they are ex officio members of the organization's executive board (or similar governing body) or if the constitution or bylaws of the union designate such positions as officers.

§ 452.20 Nature of executive functions.

(a) The functions that will bring a particular position with a title other than president, vice-president, secretary-treasurer, or executive board member within the definition of "officer" cannot be precisely defined. They are the functions typically performed by officers holding these titles in current labor union practice. Decisions in each case will require a practical judgment. As a general rule, a person will be regarded as being authorized to perform the functions of president if he is the chief or principal executive officer of the labor organization. Similarly, he will be regarded as being authorized to perform the functions of treasurer if he

¹⁷Cf. *NLRB v. Coca-Cola Bottling Co.*, 350 U.S. 264 (1956). See also, Daily Cong. Rec. 5867, Sen., Apr. 23, 1959.