

§ 452.42

(d) A labor organization may postpone the right to run for office of members enrolled in a bona fide apprenticeship program until such members complete their apprenticeship.

§ 452.42 Membership in particular branch or segment of the union.

A labor organization may not limit eligibility for office to particular branches or segments of the union where such restriction has the effect of depriving those members who are not in such branch or segment of the right to become officers of the union.²⁷

§ 452.43 Representative categories.

In the case of a position which is representative of a unit defined on a geographic, craft, shift, or similar basis, a labor organization may by its constitution or bylaws limit eligibility for candidacy and for holding office to members of the represented unit. For example, a national or international labor organization may establish regional vice-presidencies and require that each vice-president be a member of his respective region. This kind of limitation would not be considered reasonable, however, if applied to general officers such as the president, vice-president, recording secretary, financial secretary, and treasurer. If eligibility of delegates to a convention which will elect general officers is limited to special categories of members, all such categories within the organization must be represented.

§ 452.44 Dual unionism.

While the Act does not prohibit a person from maintaining membership or holding office in more than one labor organization, it would be considered reasonable for a union to bar from candidacy for office persons who hold membership in a rival labor organization.

§ 452.45 Multiple office holding.

An officer may hold more than one office in a labor organization so long as

²⁷ *Hodgson v. Local Unions No. 18, etc., IUOE*, 440 F. 2d 485 (C.A. 6), cert. den. 404 U.S. 852 (1971); *Hodgson v. Local 610, Unit. Elec. Radio & Mach. Work. of Am.*, 342 F. Supp. 1344 (W.D. Pa. 1972).

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this is consistent with the constitution and bylaws of the organization.

§ 452.46 Characteristics of candidate.

A labor organization may establish certain restrictions on the right to be a candidate on the basis of personal characteristics which have a direct bearing on fitness for union office. A union may, for example, require a minimum age for candidacy. However, a union may not establish such rules if they would be inconsistent with any other Federal law. Thus, it ordinarily may not limit eligibility for office to persons of a particular race, color, religion, sex, or national origin since this would be inconsistent with the Civil Rights Act of 1964.²⁸ Nor may it establish a general compulsory retirement age or comparable age restriction on candidacy since this would be inconsistent with the Age Discrimination in Employment Act of 1967, as amended. A union may not require candidates for office to be registered voters and to have voted in public elections during the year preceding their nominations. Nor may it require that candidates have voted in the previous union election to be eligible. Such restrictions may not be said to be relevant to the members' fitness for office.

[53 FR 8751, Mar. 17, 1988, as amended at 53 FR 23233, June 21, 1988]

§ 452.47 Employer or supervisor members.

Inasmuch as it is an unfair labor practice under the Labor Management Relations Act (LMRA) for any employer (including persons acting in that capacity) to dominate or interfere with the administration of any labor organization, it follows that employers, while they may be members, may not be candidates for office or serve as officers. Thus, while it is recognized that in some industries, particularly construction, members who become supervisors, or contractors traditionally keep their union membership as a form of job security or as a means of retaining union benefits, such persons may

²⁸ *Shultz v. Local 1291, International Longshoremen's Association*, 338 F. Supp. 1204 (E.D. Pa.), aff'd, 461 F.2d 1262 (C.A. 3 1972).

not be candidates for or hold office.²⁹ Whether a restriction on officeholding by members who are group leaders or others performing some supervisory duties is reasonable depends on the particular circumstances. For instance, if such persons might be considered “supervisors”³⁰ under the LMRA, their right to be candidates under the Act may be limited. Another factor in determining the reasonableness of a ban on such persons is the position (if any) of the NLRB on the status of the particular employees involved. If, for example, the NLRB has determined that certain group leaders are part of the bargaining unit, it might be unreasonable for the union to prohibit them from running for office. An overall consideration in determining whether a member may fairly be denied the right to be a candidate for union office as an employer or supervisor is whether there is a reasonable basis for assuming that the person involved would be subject to a conflict of interest in carrying out his representative duties for employees and rank and file union members.

[38 FR 18324, July 3, 1973, as amended at 39 FR 37360, Oct. 21, 1974]

§ 452.48 Employees of union.

A labor organization may in its constitution and bylaws prohibit members who are also its full-time non-elective employees from being candidates for union office, because of the potential conflict of interest arising from the employment relationship which could be detrimental to the union as an institution.

²⁹See *Nassau and Suffolk Contractors' Association*, 118 NLRB No. 19 (1957). See also *Local 636, Plumbers v. NLRB*, 287 F.2d 354 (C.A. D.C. 1961).

³⁰Under section 2(11) of the Labor Management Relations Act, supervisors include individuals “having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

§ 452.49 Other union rules.

(a) Unions may establish such other reasonable rules as are necessary to protect the members against leaders who may have committed serious offenses against the union. For example, a union may, after appropriate proceedings, bar from office persons who have misappropriated union funds, even if such persons were never indicted and convicted in a court of law for their offenses. Of course, the union would have to provide reasonable precautions to insure that no member is made ineligible to hold office on the basis of unsupported allegations and that any rights guaranteed him by the constitution and bylaws are protected. Similarly, a union may require an elected officer to sign an affidavit averring that he is not barred from serving as an officer by the provisions of section 504 of the Act since the union and its officers may not permit a person to serve as an officer if he is so barred (see footnote 23).

(b) It would not violate the Act for a union to prohibit successive terms in office or to limit the number of years an officer may serve. Such rules are intended to encourage as many members as possible to seek positions of leadership in the organization.

§ 452.50 Disqualification as a result of disciplinary action.

Section 401(e) was not intended to limit the right of a labor organization to take disciplinary action against members guilty of misconduct. So long as such action is conducted in accordance with section 101(a)(5), a union may, for example, if its constitution and bylaws so provide, bar from office for a period of time any member who is guilty of specific acts, such as strike-breaking, detrimental to the union as an institution. However, if a union has improperly disciplined a member and barred him from candidacy, the Secretary may, in an appropriate case, treat him as a member in good standing entitled to all of the rights of members guaranteed by title IV.

§ 452.51 Declaration of candidacy.

A union may not adopt rules which in their effect discourage or paralyze any opposition to the incumbent officers.