

§ 453.21

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

the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-13), as an acceptable surety on Federal bonds. That Act provides, among other things, that in order for a surety company to be eligible for such grant of authority, it must be incorporated under the laws of the United States or of any State and the Secretary of the Treasury shall be satisfied of certain facts relating to its authority and capitalization. Such grants of authority are evidenced by Certificates of Authority which are issued by the Secretary of the Treasury and which expire on the June 30 following the date of their issuance. A list of the companies holding such Certificates of Authority is published annually in the FEDERAL REGISTER, usually in July. Changes in the list, occurring between July 1 and June 30, either by addition to or removal from the list of companies, are also published in the FEDERAL REGISTER following each such change.

[28 FR 14394, Dec. 27, 1963, as amended at 50 FR 31311, Aug. 1, 1985]

§ 453.21 Interests held in agents, brokers, and surety companies.

(a) Section 502(a) of the Act prohibits the placing of bonds required therein through any agent or broker or with any surety company in which any labor organization or any officer, agent, shop steward, or other representative of a labor organization has any direct or indirect interest. The purpose of this provision, as shown by its legislative history, is to insure against the existence of any "financial or other influential" interests which would affect the objectivity of the action of agents, brokers, or surety companies in bonding the personnel specified in the section.¹¹ It appears, therefore, that it was the intent of Congress to prevent the placing of bonds through agents or brokers, and with surety companies, in which any labor organization or any officer, agent, shop steward, or other rep-

¹¹Daily Cong. Rec. 9114, Senate, June 8, 1959; Record of Hearings before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Congress, 1st Session, on H.R. 3540, H.R. 3302, H.R. 4473 and H.R. 4474, p. 1607.

resentative of a labor organization holds more than a nominal interest.

(b) Since the statute provides that either a direct or indirect interest by a labor organization or by the specified persons may disqualify an agent, broker, or surety company from having a bond placed through or with it, the disqualification would be effective if a labor organization or any of the specified persons are in a position to influence or control the activities or operations of such brokers, agents, or surety companies, by virtue of interests held either directly by them or by relatives or third parties which they own or control. The question of whether the relationship between the labor organization or the specified persons on the one hand, and another party or parties holding an interest in a broker, agent, or surety company on the other hand, is so close as to put the former in a position to influence or control the activities or operations of such broker, agent, or surety company through the latter, presents a question of fact which must necessarily be determined in each case in the light of all the pertinent circumstances.

(c) It is also to be noted that the statute does not appear to restrict the disqualification to cases in which a direct or indirect interest is held by a labor organization as a whole, or by a substantial number of officers, agents, shop stewards, or other representatives of a labor organization, but provides for the disqualification also in cases where any one officer, agent, shop steward, or other representative of a labor organization holds such an interest.

[28 FR 14394, Dec. 27, 1963, as amended at 63 FR 33780, June 19, 1998]

MISCELLANEOUS PROVISIONS

§ 453.22 Prohibition of certain activities by unbonded persons.

(a) Section 502(a) provides that persons who are not covered by bonds as required by that section shall not be permitted to receive, handle, disburse, or otherwise exercise custody or control of the funds or other property of a labor organization or of a trust in which a labor organization is interested. This prohibits personnel who are

required to be bonded, as explained in § 453.8 from performing any of these acts without being covered by the required bonds. In addition, this provision makes it unlawful for any person with power to do so to delegate or assign the duties of receiving, handling, disbursing, or otherwise exercising custody or control of such funds or property to any person who is not bonded in accordance with the provisions of section 502(a).

(b) The legislative history of the Act indicates, however, that it was not the intent of Congress to make compliance with the bonding requirements of section 502(a) a condition on the right of banks or other financial institutions to serve as the depository of the funds of labor organizations or trusts. Similarly, it appears that the provisions of that section do not require the bonding of brokers or other independent contractors who have contracted with labor organizations or trusts for the performance of functions which are normally not carried out by such labor organizations' or trusts' own officials or employees, such as the buying of securities, the performance of other investment functions, or the transportation of funds by armored truck.¹²

§ 453.23 Persons becoming subject to bonding requirements during fiscal year.

Considering the purpose of section 502, the language of the prohibition should be considered to apply to persons who because of election, employment or change in duties begin to handle funds or other property during the course of a particular fiscal year. Bonds should be secured for such persons, in an amount based on the funds handled by their predecessors during the preceding fiscal year, before they are permitted to engage in any of the fund-handling activities referred to in the prohibition, unless coverage with respect to such persons is already pro-

vided by bonds in force meeting the requirements of section 502(a).

§ 453.24 Payment of bonding costs.

The Act does not prohibit payment of the cost of the bonds, required by section 502(a), by labor organizations or by trusts in which a labor organization is interested. The decision whether such costs are to be borne by the labor organization or trust or by the bonded person is left to the duly authorized discretion and agreement of the parties concerned in each case.

§ 453.25 Effective date of the bonding requirement.

While the bonding provision in section 502(a) became effective on September 14, 1959, its requirement for obtaining bonds does not become applicable to a labor organization or a trust in which a labor organization is interested, or to the personnel of any such organization, until the subsequent date when such organization's next fiscal year begins. This is so because the Act requires each such bond to be fixed at the beginning of the organization's fiscal year in an amount based on funds handled in the preceding fiscal year, and it could not well have been intended that the obtaining of a bond would be necessary in advance of the time when it would be possible to meet this requirement.

§ 453.26 Powers of the Secretary of Labor to exempt.

Section 502(a) of the Act provides that when in the opinion of the Secretary of Labor a labor organization has made other bonding arrangements which would provide the protection required at comparable cost or less, he may exempt such labor organization from placing a bond through a surety company holding a grant of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-13), as acceptable surety on Federal bonds.

[30 FR 14926, Dec. 2, 1965]

¹² See § 453.6(b).