

funds or other property of the trust within the meaning of section 502(a).

(b) *Independent institutions not included.* The analogy to the definition of the term “officer, agent, shop steward, or other representative,” when used with respect to a labor organization, shows that banks and other qualified financial institutions in which trust funds are deposited are not to be considered as “agents” or “representatives” of trusts within the meaning of section 502 and thus are not subject to the bonding requirement, even though they may also have administrative or management responsibilities with respect to such trusts. Similarly, the bonding requirement does not apply to brokers or other independent contractors who have contracted with trusts for the performance of functions which are normally not carried out by officials or employees of such trusts such as the buying of securities, the performance of other investment functions, or the transportation of funds by armored truck.

(c) *Employees of a trust in which a labor organization is interested.* As in the case of labor organizations, all individuals employed by a trust in which a labor organization is interested are “employees,” regardless of whether, technically, they are employed by the trust, by the trustees, by the trust administrator, or by trust officials in similar positions.

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

§ 453.7 “Funds or other property” of a labor organization or of a trust in which a labor organization is interested.

The affirmative requirement for bonding the specified personnel is applicable only if they handle “funds or other property” of the labor organization or trust concerned. A consideration of the purpose of section 502 and a reading of the section as a whole, including provisions for fixing the amount of bonds, suffice to show that the term “funds or other property”, as used in this section of the Act, encom-

and Labor, House of Representatives, 86th Congress, 1st Session, on H.R. 3540, H.R. 3302, H.R. 4473 and H.R. 4474, pp. 1493-94, 1979.

passes more than cash alone but that it does not embrace all of the property of a labor organization or of a trust in which a labor organization is interested. The term does not include property of a relatively permanent nature, such as land, buildings, furniture, fixtures and office and delivery equipment used in the operations of a labor organization or trust. It does, however, include items in the nature of quick assets, such as checks and other negotiable instruments, government obligations and marketable securities, as well as cash, and other property held, not for use, but for conversion into cash or for similar purposes making it substantially equivalent to funds.

§ 453.8 Personnel who “handle” funds or other property.

(a) *General considerations.* Section 502(a) requires “every” person specified in its bonding requirement “who handles” funds or other property of the labor organization or trust to be bonded. It does not contain any exemption based on the amount of the funds or other property handled by particular personnel. Therefore, if the bonding requirement is otherwise applicable to such persons, the amount of the funds or the value of the property handled by them does not affect such applicability. In determining whether a person “handles” funds or other property within the meaning of section 502(a), however, it is important to consider the term “handles” in the light of the basic purpose which Congress sought to achieve by the bonding requirement and the language chosen to make that purpose effective. Thus, while it is clear that section 502(a) should be considered as representing the minimum requirements which Congress deemed necessary in order to insure the reasonable protection of the funds and other property of labor organizations and trusts within the coverage of the section, it is equally clear from the legislative history⁷ and the language used

⁷House Report No. 1147, 86th Congress, 1st Session, p. 35; Daily Cong. Record 16419, Senate, Sept. 3, 1959; Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare on S. 505, S. 748, S. 76, S. 1002, S. 1137, and S. 1311, 86th Congress, 1st Session, p. 709.

that Congress was aware of cost considerations and did not intend to require unreasonable, unnecessary or duplicative bonding. In terms of these general considerations, more specific content may be assigned to the term "handles" by reference to the prohibition in section 502(a) against permitting any person not covered by an appropriate bond "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. The phrase "receive, handle, disburse, or otherwise exercise custody or control" is not to be considered as expanding the scope of the term "handles" but rather as indicating facets of "handles" which in a specific prohibition, Congress believed should be clearly set forth.

(b) *Persons included generally.* The basic objective of section 502(a) is to provide reasonable protection of funds or other property rather than to insure against every conceivable possibility of loss. Accordingly, a person shall be deemed to be "handling" funds or other property, so as to require bonding under that section, whenever his duties or activities with respect to given funds or other property are such that there is a significant risk of loss by reason of fraud or dishonesty on the part of such person, acting either alone or in collusion with others.

(c) *Physical contact as criterion of "handling."* Physical dealing with funds or other property is, under the principles above stated, not necessarily a controlling criterion in every case for determining the persons who "handle" within the meaning of section 502(a). Physical contact with cash, checks or similar property generally constitutes "handling." On the other hand, bonding may not be required for office personnel who from time to time perform counting, packaging, tabulating or similar duties which involve physical contact with checks, securities, or other funds or property but which are performed under conditions that cannot reasonably be said to give rise to significant risks with respect to the receipt, safekeeping or disbursement of funds or property. This may be the case where significant risks of fraud or dis-

honesty in the performance of duties of an essentially clerical character are precluded by the closeness of the supervision provided or by the nature of the funds or other property handled.

(d) *"Handling" funds or other property without physical contact.* Personnel who do not physically handle funds or property may nevertheless "handle" within the meaning of section 502(a) where they have or perform significant duties with respect to the receipt, safekeeping or disbursement of funds or other property. For example, persons who have access to a safe deposit box or similar depository for the purpose of adding to, withdrawing, checking or otherwise dealing with its contents may be said to "handle" these contents within the meaning of section 502(a) even though they do not at any time during the year actually secure such access for such purposes. Similarly, those charged with general responsibility for the safekeeping of funds or other property such as the treasurer of a labor organization, should be considered as handling funds or other property. It should also be noted that the extent of actual authority to deal with funds or property may be immaterial where custody or other functions have been granted which create a substantial risk of fraud or dishonesty. Thus, if a bank account were maintained in the name of a particular officer or employee whose signature the bank were authorized to honor, it could not be contended that he did not "handle" funds merely because he had been forbidden by the organization or by his superiors to make deposits or withdrawals.

(e) *Disbursement of funds or other property.* It is clear from both the purpose and language of section 502(a) that personnel described in the section who actually disburse funds or other property, such as officers or trustees authorized to sign checks or persons who make cash disbursements, must be considered as handling such funds and property. Whether others who may influence, authorize or direct disbursements must also be considered to handle funds or other property can be determined only by reference to the specific

§ 453.9

duties or responsibilities of these persons in a particular labor organization or trust.

[28 FR 14394, Dec. 27, 1963, as amended at 30 FR 14925, Dec. 2, 1965]

§ 453.9 “Handling” of funds or other property by personnel functioning as a governing body.

(a)(1) *General considerations.* For many labor organizations and trusts special problems involving disbursements will be presented by those who, as trustees or members of an executive board or similar governing body, are, as a group, charged with general responsibility for the conduct of the business and affairs of the organization or trust. Often such bodies may approve contracts, authorize disbursements, audit accounts and exercise similar responsibilities.

(2) It is difficult to formulate any general rule for such cases. The mere fact that a board of trustees, executive board or similar governing body has general supervision of the affairs of a trust or labor organization, including investment policy and the establishment of fiscal controls, would not necessarily mean that the members of this body “handle” the funds or other property of the organization. On the other hand, the facts may indicate that the board or other body exercises such close, day-to-day supervision of those directly charged with the handling of funds or other property that it might be unreasonable to conclude that the members of such board were not, as a group, also participating in the handling of such funds and property.⁸ Also, whether or not the members of a particular board of trustees or executive board handle funds or other property in their capacity as such, certain of these members may hold other offices or have other functions involving duties directly related to the receipt, safe-keeping or disbursement of the funds or other property of the organization so that it would be necessary that they be bonded irrespective of their board membership.

(b) *Nature of responsibilities as affecting “handling.”* With respect to particular responsibilities of boards of

⁸As to group coverage, see § 453.16.

29 CFR Ch. IV (7–1–05 Edition)

trustees, executive boards and similar bodies in disbursing funds or other property, much would depend upon the system of fiscal controls provided in a particular trust or labor organization. The allocation of funds or authorization of disbursements for a particular purpose is not necessarily handling of funds within the meaning of the section. If the allocation or authorization merely permits expenditures by a disbursing officer who has responsibility for determining the validity or propriety of particular expenditures, then the action of the disbursing officer and not that of the board would constitute handling. But if pursuant to a direction of the board, the disbursing officer performed only ministerial acts without responsibility to determine whether the expenditures were valid or appropriate, then the board’s action would constitute handling. In such a case, the absence of fraud or dishonesty in the acts of the disbursing officer alone would not necessarily prevent fraudulent or dishonest disbursements. The person or persons who are charged with or exercise responsibility for determining whether specific disbursements are bona fide, regular, and in accordance with the applicable constitution, trust instrument, resolution or other laws or documents governing the disbursement of funds or other property should be considered to handle such funds and property and be bonded accordingly.

[28 FR 14394, Dec. 27, 1963, as amended at 30 FR 14926, Dec. 2, 1965]

SCOPE OF THE BOND

§ 453.10 The statutory provision.

The statute requires that every covered person “shall be bonded to provide protection against loss by reason of acts of fraud or dishonesty on his part directly or through connivance with others.”

[30 FR 14926, Dec. 2, 1965]

§ 453.11 The nature of the “duties” to which the bonding requirement relates.

The bonding requirement in section 502(a) relates only to duties of the specified personnel in connection with their handling of funds or other property to