

Subpart B—Procedures Upon Failure of Union To Take Appropriate Remedial Action Following Subpart A Procedures

§ 417.16 Initiation of proceedings.

(a) Any member of a local labor organization may file a complaint with the Office of Labor-Management Standards alleging that following a finding by the Assistant Secretary pursuant to subpart A that the constitution and bylaws of the labor organization pertaining to the removal of officers are inadequate, or a stipulation of compliance with the provisions of section 401(h) of the Act reached with the Chief, DOE in connection with a prior charge of the inadequacy of a union's constitution and bylaws to remove officers, as provided in subpart A of this part, the labor organization (1) has failed to act within a reasonable time, or (2) has violated the procedures agreed to with the Chief, DOE, or (3) has violated the principles governing adequate removal procedures under § 417.2(b).

(b) The complaint must be filed pursuant to section 402(a) of the Act within one calendar month after one of the two following conditions has been met:

(1) The member has exhausted the remedies available to him under the constitution and bylaws of the organization, or

(2) The member has invoked such remedies without obtaining a final decision within three calendar months after invoking them.

[59 FR 65716, Dec. 21, 1994, as amended at 62 FR 6093, Feb. 10, 1997]

§ 417.17 Investigation of complaint and court action.

The Office of Labor-Management Standards shall investigate such complaint, and if upon such investigation the Secretary finds probable cause to believe that a violation of section 401(h) of the Act has occurred and has not been remedied, the Secretary shall within 60 days after the filing of such complaint, bring a civil action against the labor organization in the district court of the United States for the district in which such labor organization maintains its principal office, to direct

the conduct of a hearing and vote upon the removal of officer(s) under the supervision of the Assistant Secretary as provided in section 402(b) of the Act.

[59 FR 65717, Dec. 21, 1994]

§ 417.18 Hearings—removal of officers of local labor organizations.

Hearings pursuant to order of the court and concerning the removal of officers under section 402(b) of the Act shall be for the purpose of introducing testimony and evidence showing why an officer or officers accused of serious misconduct should or should not be removed. Hearings shall be conducted by the officers of the labor organization (subject to § 417.19) in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with title IV of the Act, or with the provisions of this part 417: *Provided, however,* That no officer(s) accused of serious misconduct shall participate in such hearings in any capacity except as witness or counsel.

§ 417.19 Assistant Secretary's representative.

The Assistant Secretary shall appoint a representative or representatives whose functions shall be to supervise the hearing and vote. Such representative(s) shall have final authority to issue such rulings as shall be appropriate or necessary to insure a full and fair hearing and vote. Upon his own motion or upon consideration of the petition of any interested person the Assistant Secretary's Representative may disqualify any officer(s) or member(s) of the union from participation in the conduct of the hearing (except in the capacity of witness or counsel).

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964]

§ 417.20 Notice of hearing.

Notice of hearing, not less than 10 days in advance of the date set for such hearing, shall be transmitted to the officer or officers accused of serious misconduct and other interested persons, insofar as they are known, and shall inform them of (a) the time, place, and

§ 417.21

nature of the hearing; (b) the legal authority and jurisdiction under which the hearing is to be held; (c) the matters of fact and law asserted; and (d) their rights to challenge the appointment of certain of, or all of, the officers of the union to conduct the hearing in accordance with this subpart. The labor organization shall promptly inform its members of the provisions of the notice. Copies of the notice shall be made available for inspection at the office of the labor organization.

§ 417.21 Transcript.

It shall be within the discretion of the Assistant Secretary to require an official reporter to make an official transcript of the hearings. In the event he does so require, copies of the official transcript shall be made available upon request addressed to the Assistant Secretary in accordance with the provisions of part 70 of this title.

[50 FR 31310, Aug. 1, 1985, as amended at 63 FR 33779, June 19, 1998]

§ 417.22 Vote among members of the labor organization.

Within a reasonable time after completion of the hearing, and after proper notice thereof, a secret ballot vote shall be conducted among the members of the labor organization in good standing on the issue of whether the accused officer or officers shall be removed from office. The vote shall be in accordance with the constitution and by-laws of the labor organization insofar as they are not inconsistent with the provisions of the Act or this part 417. The presiding officer or officers at the taking of such vote shall entertain objections or suggestions as to the rules for conducting the vote, eligibility of voters, and such other matters as may be pertinent; and shall rule on such questions, shall establish procedures for the conduct of the vote, and for tabulation of the ballots; and shall appoint observers and compile a list of eligible voters. All rulings of the presiding officer or officers shall be subject to the provisions of § 417.19.

§ 417.23 Report to the Assistant Secretary.

Following completion of the hearing and vote, the Assistant Secretary's

29 CFR Ch. IV (7-1-06 Edition)

Representative shall file a report with the Assistant Secretary setting out the results of the balloting; and pertinent details of the hearing and vote. Notice thereof shall be given to the membership of such labor organization promptly and copies shall be furnished to all interested parties.

§ 417.24 Appeal to the Assistant Secretary.

(a) Within 15 days after mailing of the report of the Assistant Secretary's Representative, any interested party may appeal the conduct of the hearing or vote or both by filing written exceptions with the Assistant Secretary. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Assistant Secretary, or an appeal containing such matter or lacking in specifications may be dismissed.

(b) Upon review of the whole record, the Assistant Secretary shall issue a decision or may order further hearing, a new vote, or such further proceedings as he deems appropriate.

[29 FR 8264, July 1, 1964, as amended at 50 FR 31310, Aug. 1, 1985]

§ 417.25 Certification of results of vote.

Upon receipt of the report of the Assistant Secretary's Representative on the hearing and vote on removal, the Assistant Secretary shall certify the results of the vote to the court as required by section 402(c) of the Act.

PART 451—LABOR ORGANIZATIONS AS DEFINED IN THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

Sec.

- 451.1 Introductory statement.
- 451.2 General.
- 451.3 Requirements of section 3(i).
- 451.4 Labor organizations under section 3(j).
- 451.5 "State or local central body."
- 451.6 Extraterritorial application.

AUTHORITY: Secs. 3, 208, 401, 73 Stat. 520, 529, 532 (29 U.S.C. 402, 438, 481); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 28 FR 14388, Dec. 27, 1963, unless otherwise noted.