

§ 452.79

or who have any business or contractual relationship with the labor organization.

§ 452.79 Opportunity to campaign.

There must be a reasonable period prior to the election during which office-seekers and their supporters may engage in the campaigning that the Act contemplates and guarantees. What is a reasonable period of time would depend upon the circumstances, including the method of nomination and the size of the union holding the election, both in terms of the number of members and the geographic area in which it operates. For example, a candidate for office in a local labor organization was improperly disqualified and then appealed to the international union which directed that his name be placed on the ballot. A complaint was considered properly filed alleging election violations because the candidate's name was restored to the ballot two days prior to the election so that he was denied an equal opportunity to campaign. Similarly, in a mail ballot election a union's delay in the distribution of campaign literature until after the ballots have been distributed and some have been cast would not satisfy the requirement to distribute such literature in compliance with a reasonable request.⁴⁰ Such a delay would deny the candidate a reasonable opportunity to campaign prior to the election and would thus not meet the requirement for adequate safeguards to insure a fair election. Where access to the convention floor is limited exclusively to delegates at a convention at which officers are to be elected, there must, nevertheless, be equal opportunity for all nominees to campaign. Thus, if the privilege of addressing the convention is accorded to any of the nominees, it must be accorded to all nominees who request it, whether they are delegates or not.

§ 452.80 Bona fide candidates.

A person need not be formally nominated in order to be a bona fide candidate entitled to exercise the rights

⁴⁰ *Wirtz v. American Guild of Variety Artists*, 267 F. Supp. 527 (S.D.N.Y. 1967).

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mentioned in §§ 452.67 and 452.71.⁴¹ Thus, any qualified member seeking to be nominated and elected at a convention would be able to take advantage of the distribution rights even before the convention meets and thus attempt to influence members to select delegates favorable to his candidacy or to persuade the delegates to support his candidacy. A union may reasonably require that a person be nominated in order to be elected, but may not prevent a member who actively seeks office and is otherwise qualified from taking advantage of the campaign safeguards in the Act in an effort to gain the support necessary to be nominated.

§ 452.81 Rights in intermediate body elections.

While the literal language in section 401(c) relating to distribution of campaign literature and to discrimination with respect to the use of membership lists would seem to apply only to national, international and local labor organizations, two United States District Courts have held that these provisions also apply to intermediate bodies.⁴² The Department of Labor considers these rulings to be consistent with the intent of Congress and, therefore, has adopted this position.

§ 452.82 Reprisal for exercising rights.

A member has a right to support the candidate of his choice without being subject to penalty, discipline, or improper interference or reprisal of any kind by the labor organization conducting the election or any member thereof.

§ 452.83 Enforcement of campaign safeguards.

Certain of the safeguards of section 401(c) are enforceable at the suit of any bona fide candidate. This special statutory right to sue is limited to the distribution of campaign literature by the labor organization and the forbearance of such organization from discrimination among candidates with respect to

⁴¹ *Yablonski v. United Mine Workers*, 71 LRRM 2606, 60 L.C. 10,204 (D.D.C. 1969).

⁴² *Antal v. UMW District 5*, 64 LRRM 2222, 54 L.C. 11,621 (W.D. Pa. 1966); *Schonfeld v. Rarback*, 49 L.C. 19,039 (S.D.N.Y. 1964).

the use of membership lists. Of course, all title IV safeguards, including those discussed in this paragraph, are subject to enforcement as provided in section 402. It should be noted that the right of a bona fide candidate to sue in the circumstances described herein is limited to the period prior to election. After the election, the only remedy would be through a suit by the Secretary under section 402.

Subpart H—Right To Vote

§ 452.84 General.

Under the provisions of section 401(e), every member in good standing is entitled to vote in elections required under title IV which are to be held by secret ballot. The phrase “member in good standing” includes any person who has fulfilled the requirements for membership and who neither has withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of the organization.⁴³

§ 452.85 Reasonable qualifications on right to vote.

The basic right of members to vote in elections of the labor organization may be qualified by reasonable rules and regulations in its constitution and bylaws.⁴⁴

§ 452.86 Vote conditioned on payment of dues.

A labor organization may condition the exercise of the right to vote upon the payment of dues, which is a basic obligation of membership. Such a rule must be applied uniformly. If a member has not paid his dues as required by the labor organization’s constitution or bylaws he may not be allowed to vote. Thus, a rule which suspends a member’s right to vote in an election of officers while the member is laid off and is not paying dues would not, in ordinary circumstances, be considered unreasonable, so long as it is applied in a nondiscriminatory manner. However, members must be afforded a reasonable opportunity to pay dues, including a

grace period during which dues may be paid without any loss of rights. In the case where a member is laid off but desires to maintain his good standing and thus his membership rights by continuing to pay dues, it would be clearly unreasonable for the labor organization to refuse to accept his payment.

§ 452.87 Dues paid by checkoff.

A member in good standing whose dues are checked off by his employer pursuant to his voluntary authorization provided for in a collective bargaining agreement may not be disqualified from voting by reason of alleged delay or default in the payment of dues. For example, the constitution and bylaws of a labor organization call for suspension of members whose dues are three months in arrears. Dues to be paid directly by a member are two months in arrears when the union changes to a checkoff system. The member may not be denied the right to vote merely because the employer is late in submitting the checked off dues for the first month. It would not be inconsistent with the Act, however, for a union to require a new member who executes a checkoff authorization to pay one month’s dues in advance on the date he becomes a member in order to be in good standing for the current month.

§ 452.88 Resumption of good standing.

While it is permissible for a labor organization to deny the right to vote to those delinquent in paying their dues (with the exceptions noted) or to those who have been suspended or disciplined in accordance with section 101(a)(5) of the Act, a provision under which such persons are disqualified from voting for an extended period of time after payment of back dues or after reinstatement would not be considered reasonable. After a member has resumed his good-standing status, it would be unreasonable to continue to deprive him of his right to vote for a period longer than that for a new member. A new member may reasonably be required to establish a relationship with the union by remaining in good standing for a continuous period of time, e.g., 6

⁴³ Act, sec. 3(o).

⁴⁴ Act, sec. 101(a)(1).