



NEW LEADERS TRAINING

Participant Workbook

FSED
APRIL 2023

NEW LEADERS TRAINING

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WELCOME TO NEW LEADERS TRAINING AND CONGRATULATIONS!

WELCOME MESSAGE

Becoming a leader at AFGE is a huge decision that should be both celebrated and supported. The work that you do in your leadership position will help drive the mission and goals of the entire union. This course will provide a foundation of knowledge and skills for your incredible leadership journey at AFGE!

This Participant Workbook is designed for you to use during AFGE's New Leaders Course. Besides taking notes, use this workbook and its activities to help you remember important information that will be discussed in the course. A lot of supplemental materials for this course can also be found on AFGE's Training webpage. Please be sure to visit the AFGE website and navigate the Education tab for access to all the available resources.

USEFUL WEBSITE LINKS

Department of Labor, LMRDA:

<https://www.dol.gov/olms/regs/statutes/lmrda-act.htm>

Federal Labor Relations Authority, The Statute:

<https://www.flra.gov/OGC>

<https://www.flra.gov/resources-training/resources/statute-and-regulations/statute>

Office of Personnel Management, Civil Service Reform Act:

https://archive.opm.gov/biographyofanideal/PU_CSreform.htm

AFGE

www.afge.org

AFL-CIO

www.aflcio.org

DC Code

<http://dcode.org/simple/sections/1-617.03.html>

AFGE LEARN

AFGE Learn is a great resource to use as a growing leader within this union. There are materials on AFGE Learn that you can print and download to use. There are also interactive courses you can utilize on your own time. To access AFGE Learn, go to www.afgelearn.org and log in using the same log in information that you use for www.afge.org.

REFLECTION POINT #1

What does leadership mean to me?

I became a leader in AFGE because:

As a leader in AFGE, I believe I can:

A leader that I admire and why:

Qualities and skills of a good leader include:



A genuine leader is
not a searcher for
consensus but a
molder of
consensus.”

Dr. Martin Luther King Jr





He who has never
learned to obey
cannot be a good
commander.

Aristotle





The challenge of leadership is to be strong, but not rude; be kind, but not weak; be bold, but not bully; be thoughtful, but not lazy; be humble, but not timid; be proud, but not arrogant; have humor, but without folly.

Jim Rohn





Do what you feel in
your heart to be
right—for you'll be
criticized anyway.

Eleanor Roosevelt





Effective leadership
is putting first things
first. Effective
management is
discipline, carrying it
out.

Stephen Covey





It is absurd that a man should rule others, who cannot rule himself.

Latin Proverb





Leadership and
learning are
indispensable to
each other.

John F. Kennedy





Leadership cannot
just go along to get
along. Leadership
must meet the
moral challenge of
the day.

Jesse Jackson





Not the cry, but the
flight of a wild duck,
leads the flock to fly
and follow.

Chinese Proverb





Reacting in anger or
annoyance will not
advance one's
ability to persuade.

Ruth Bader Ginsburg





Without unions, workers will lose many of the protections against abusive employers.

Wages for all will be depressed, even as corporate profits soar. The American dream will be destroyed for millions. And we will have a government of the corporations, by the already powerful, for the wealthy.

Too a few Americans, no labor history, and how they have benefited from the efforts of unions.

Kenneth Bernstein, Teacher, and blogger in a 2011 CNN.com opinion piece on the Wisconsin measure to strip public employees of collective-bargaining rights





GROUP ACTIVITY: IN THE CONSTITUTION: SCAVENGER HUNT!

AFGE Constitution sets forth the rules by which the union conducts its business. It is the framework for how AFGE operates. Knowing the contents of AFGE's Constitution is very important!

To help you navigate through this booklet, use your copy of the Constitution to answer the questions below.

1. How many Articles are there in the Constitution?

2. What year was this last version of the Constitution adopted?

3. Where can you find information about Rules of Conduct for an Election?

4. Who can be an AFGE member? *(Hint: See Article III)*



GROUP ACTIVITY: IN THE CONSTITUTION: SCAVENGER HUNT!

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To help you navigate through this booklet, use your copy of the Constitution to answer the questions below.

5. Who is protected from discrimination, as it relates to membership, under the AFGE National Constitution? (*Hint: See Article III*)

6. Read Article III, Section 2. Describe what it says:

7. What is AFGE's "true and legitimate source of all authority and the final court of appeal"? (*Hint: See Article V, Section 2*)

8. AFGE Locals in Europe are part of what District?



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9. How many years must a member be employed in the Federal Government to run for National Office with AFGE? *(Hint: See Article VII, Section 1a)*

10. Who has the authority to impose trusteeship on a Local? *(Hint: See Article IX, Section 5a)*

11. Who assumes the Office of National President in the event of a vacancy in that office between National Conventions? *(Hint: See Article IX, Section 11)*

12. What is the date past which all newly chartered locals automatically fall under the standard local constitution? *(Hint: Article XIX, Section III)*



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13. How much can a local executive board spend without prior approval of the membership of their local? *(Hint: Article XIX, Section III)*

14. What is the per capita tax as of January 1, 2016? *(Hint: See Article XIX)*

15. Describe 3 things the Constitution says about Councils: *(Hint: Article XXI)*

16. Read Article XIX, Section 3b and 3c. Describe what it says:



GROUP ACTIVITY: IN THE CONSTITUTION: SCAVENGER HUNT!

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To help you navigate through this booklet, use your copy of the Constitution to answer the questions below.

17. How must amendments to the AFGE National Constitution be submitted to be considered by a National Convention? (*Hint: See Article XXVIII*).

18. Find and read Article VI, Section I. What does it say?

19. What is considered an "offense against the Federation"? (*Hint: See XXIII*)

20. Read Page 131 to yourselves.

APPENDIX A: RULES OF CONDUCT FOR AN ELECTION

In the Constitution!

1. What are the requirements for the nomination notice?

2. What are the eligibility requirements for holding an Office?

APPENDIX A: RULES OF CONDUCT FOR AN ELECTION

In the Constitution!

ELECTIONS

All elections must be conducted by secret ballot

Local must mail notice at least 15 days before the election

BALLOTS

Should be counted when polls close or the deadline is reached

Write in votes are prohibited

RESULTS

By majority

Results should be sealed



AFGE NATIONAL OFFICE

AFGE's National Office has several resources for you to utilize as a leader within this organization. AFGE's website (www.afge.org) is a great place to start looking for what the National has to offer!

Let's review some things that National has to offer below:

_____ has the mission to enhance the effectiveness of the entire AFGE in pursuit of its objectives. The basic functions of this Office include: National Executive Council (NEC) Chair, Chief Executive Officer, Chief Lobbyist, and Chief Spokesperson, Union organizer, Mediator/Decision-maker, AFL-CIO Representative, and Chair of the National Convention. The following departments report directly to the National President:

- _____ This department ensures that AFGE's message is dispersed as widely as possible and designs communication products, print, video, and social media that also serve as effective organizing tools.
- _____ This department provides staff expertise in collective bargaining, partnership, personnel system changes, contracting issues, health and safety, and other areas of direct relationship between AFGE affiliates and agency management. The Education section coordinates AFGE's national leadership development training program, and also develops standardized curriculum for use in AFGE districts, councils, and Locals.
- _____ This department is responsible for providing legal counsel, analysis and assistance to the National President and other general officers, the NEC, Council Presidents, Local Presidents, National Representatives, and national Office departments. Duties also include litigating before federal, state, and local courts and administrative agencies.
- _____ This department provides professional and administrative support for the personnel needs of AFGE employees.

AFGE NATIONAL OFFICE

Legislative and Political Action

- o _____: Lobbies Congress and the Administration, educates grassroots activist to lobby Congress, and makes recommendations to the NP and NVPs on campaign contributions that will enhance our legislative program.

- o Public Policy: Advocates for AFGE members on federal employee issues including pay, health insurance, retirement, and job security to name a few. Researches and promotes AFGE’s views on national policy issues such as Social Security, Medicare, the federal budget, and tax policy.

- o _____ Primary job is to give AFGE members the tools and resources they need to be effective, grassroots political activists, and works to elect pro-work candidates to office and involve AFGE members in the political process.

- _____ This department prepares mass mailings, designs and prints AFGE publications and training materials, receives and distributes mail, and processes requests from Locals for AFGE materials.

- _____ This department’s objective is to help AFGE Districts, Councils, and Locals in their efforts to increase membership, as well as educate and mobilize those members into a strong national union.

_____ This office oversees the financial responsibilities of AFGE, management information systems, and building operations.

- Building Operations: Performs routine preventive maintenance and repair of the national headquarters building including mechanical engineering, electrical, and heating and cooling.

- _____: Performs all the financial reporting of the organization which includes the preparation and interpretation of the financial statements, budgeting, auditing, and financial technical assistance is performed. The Data Processing Section for the FIS Department enters all membership changes received from add forms, drop forms, membership update forms, status change forms, and roster corrections. AFGE’s management Information System (MIS) section manages AFGE’s network.

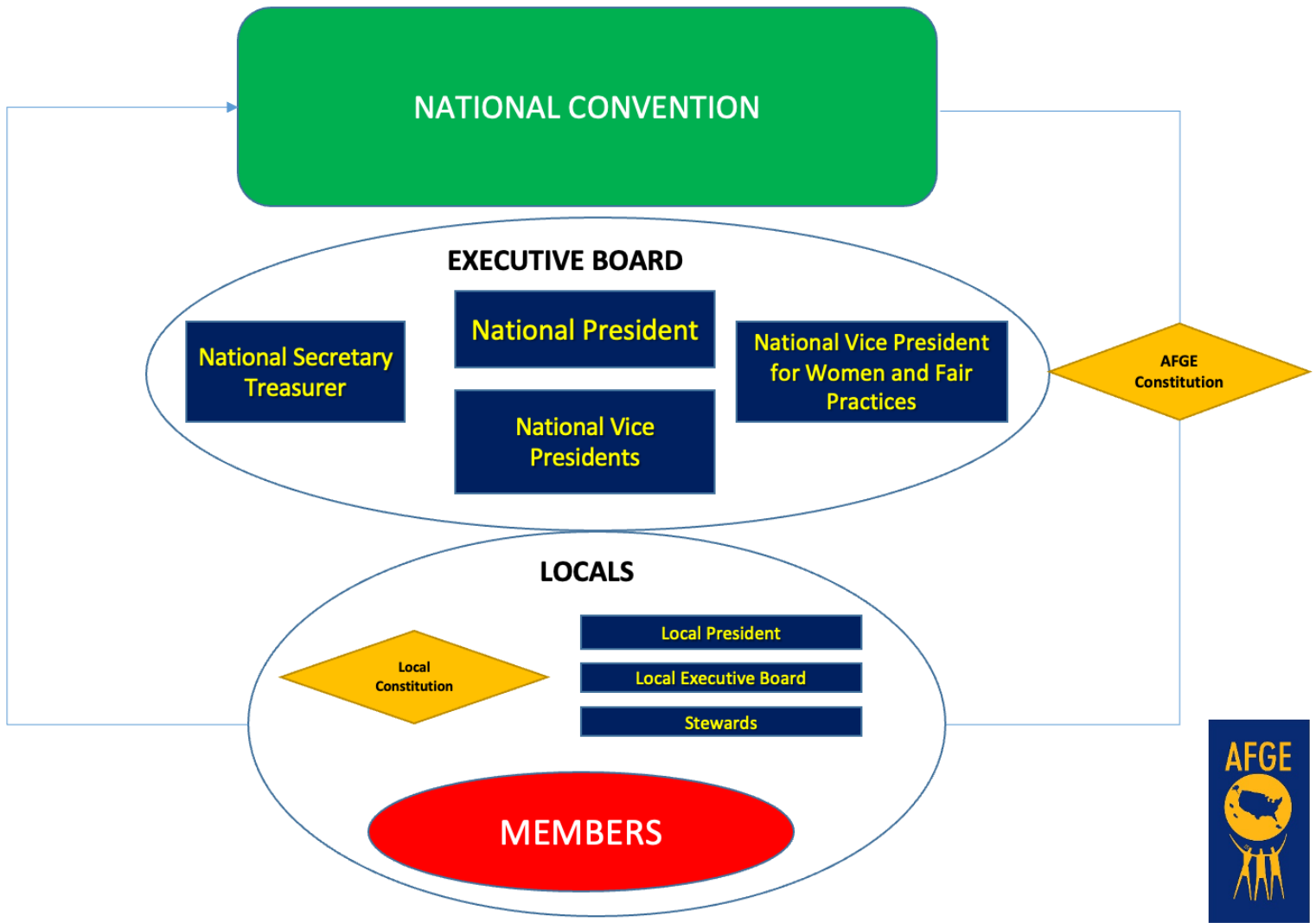
AFGE NATIONAL OFFICE

_____ duties are to promote and protect federal employee rights on the job. This NVP supervises the AFGE’s Women’s Department and the Fair Practices Department, an arrangement formalized into Article XI of the Constitution by the 1997 Convention.

- Women ‘s Department: Supports a wide spectrum of issues of priority to today’s working families including family and medical leave, childcare, sexual harassment, and domestic violence. The department is also responsible for the enforcement of AFGE’s internal sexual harassment policy approved by the NEC.
- _____: Provides civil rights expertise to the Federation, and concentrates on significant EEO representational matters of our locals and members. The department is responsible for briefing the National President on all Equal Employment Opportunity (EEO) matters

AFGE GOVERNING STRUCTURE

AFGE GOVERNING STRUCTURE



AFGE GOVERNING STRUCTURE

LEADERSHIP ROLE	DESCRIPTION OF DUTIES
Executive Board	<ul style="list-style-type: none"> • Provide leadership and consensus on goals • Provide annual budget (reviewed and approved by membership), act for the membership on urgent matters
President	<ul style="list-style-type: none"> • Conducting all Local business, exercise general supervision over the affairs of their Locals • Set specific short term and long term goals (Strategic Planning), Approve budget, communicating with fellow officers and members, make worksite visits, supervise all grievances, arbitrations, ULPs
Vice President	<ul style="list-style-type: none"> • Assume all responsibilities of Local in President's absence (ex: presiding over meetings) • Chairman of budget committee & assist sec-treasurer in preparing budget
Secretary	<ul style="list-style-type: none"> • Formal communication link btwn members and President • Take minutes at meetings, transcribe notes, assist in setting agenda
Treasurer	<ul style="list-style-type: none"> • Protect Local's assets, prepare budget, maintain financial records • Report finances, handle bonding coverage, arrange audits
Sergeant of Arms	<ul style="list-style-type: none"> • Meet and greet members at Local meetings, welcome and introduce new guest • Assist presiding officer in maintaining order
Stewards	<ul style="list-style-type: none"> • Informing workers of rights under the collective bargaining agreement (CBA); monitoring and enforcing the provisions of the CBA; and ensuring employer compliance with federal, state and local laws. • Represent and defend in investigatory interviews (Weingarten Rights), that are reasonably expected to result in disciplinary action, and through the grievance procedure.
Committees	<ul style="list-style-type: none"> • Key to an activist Local, getting the programmatic work done(Ex: election, audit, organizing, legislative, health and safety, etc.)

AFGE GOVERNING STRUCTURE

AFL CIO
AMERICAN FEDERATION OF LABOR
CONGRESS OF INDUSTRIAL ORGANIZATIONS
WWW.AFLCIO.ORG

Allied Groups

**State
Federations**

**Constituency
Groups**

**Area Labor
Federations**

**Central Labor
Councils**

THE STATUTE. 5 USC CHAPTER 71

Legal Framework

7102 EMPLOYEES RIGHTS

7114 REPRESENTATION RIGHTS AND DUTIES

7120 STANDARD OF CONDUCT FOR LABOR ORGANIZATIONS



STANDARD OF CONDUCT REGULATIONS. 29 CFR IV, SUBCHAPTER B, PARTS 457-459

Legal Framework

458.2 BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

(a) (1)

(a) (2)

(a) (3)

(a) (4)

(a) (5)



PUT YOUR FIDUCIARY IQ TO THE TEST!

Fiduciary Responsibilities

Answer the following multiple choice questions to test your current knowledge regarding fiduciary responsibilities and procedures.

Based on your experience and current knowledge, choose your best answer.

1. Who are considered Financial Officers?

- a.The Local President
- b.The Treasurer
- c.The Vice President
- d.All the above

2. The money that is handled by Financial Officers belong to:

- a.AFGE's National President
- b.The local
- c.The Members
- d.Uncle Sam

3. In terms of finances, what is a bond?

- a.The time spent with the E-board discussing money
- b.Extra money in the bank for the Locals
- c.A type of insurance policy that protects the Local against financial losses
- d.None of the above

4. How often should your Local conduct an audit?

- a.At least once every year
- b.Never, National is responsible for this
- c.What is an audit?
- d.When the time permits

PUT YOUR FIDUCIARY IQ TO THE TEST!

Fiduciary Responsibilities

5. Duties of a Financial Officer include:

- a.Safeguarding the property of the Local and its Members
- b.Collecting and dispersing Local funds
- c.Accurately reporting all financial transactions to Government Agencies
- d.All the above

6. In reviewing the Local’s finances (often as an audit), which of the following can be considered a “Red Flag”?

- a.Two signature checks
- b.Checks written out of sequence
- c.Checks with receipts attached
- d.Checks written to individuals

7. One group that Financial Officers must report to is:

- a.The Membership
- b.IRS
- c.AFGE National Headquarters
- d.Department of Labor

8. In what circumstances does AFGE National suggest your Local should lend out money to members?

- a.To pay their mortgage
- b.To pay their child’s tuition
- c.Car issues, can’t get to meetings
- d.None of the above

9. Every Local should have a credit card

- a.True
- b.False

AFGE CONSTITUTION AND FIDUCIARY RESPONSIBILITIES

Fiduciary Responsibilities

ARTICLE II, SECTION 2:

ARTICLE IV, SECTION 1:

ARTICLE V:



AFGE CONSTITUTION AND FIDUCIARY RESPONSIBILITIES

Fiduciary Responsibilities

ARTICLE VI, SECTIONS 5:

ARTICLE VIII, SECTIONS 3, AND 4:



FIDUCIARY RESPONSIBILITIES FILL IN THE BLANKS!

Directions: Fill in the blanks below with the correct information as your Instructor reviews this information in class.

CREDIT CARD USAGE

How to avoid problems when using Credit Cards:

1. Credit Cards should be in the name of _____
2. _____ should be placed on Credit Cards
3. _____ capability should be allowed
4. Credit Cards are to be used for _____
5. A Credit Card Statement should not be considered authorization for payment—You must provide _____
6. Use of a Credit Card should be defined in _____

LOANS

1. AFGE's position _____
2. If you choose to make loans:
 - They must be approved by _____
 - _____ cannot approve loans!
 - It cannot exceed more than _____ per individual.
 - There should be a _____
3. All outstanding advances in excess of \$2,000 are considered a loan by the _____

FIDUCIARY RESPONSIBILITIES FILL IN THE BLANKS!

Directions: Fill in the blanks below with the correct information as your Instructor reviews this information in class.

LOCAL AUDITS

1. An Audit should be held: _____ (Mandatory)
2. Other suggested times an audit should be conducted:
 - _____
 - _____
 - _____
3. Once audit is completed:
 - _____ to the National Secretary-Treasurer showing that an audit has been completed.
4. Committee Members:
 - _____
President should appoint an odd number of members (3 or 5) that do not have signature authority on any accounts.
 - _____
May hire outside Accountants or Bookkeepers
 - _____
- Savings, Checking, Investment, and Credit Card Account statements to insure all items have been reconciled.
- Also review checkbook and dues deduction listings

LOCAL BONDS

1. Bonding is required to _____
2. In order for your bond to be in effect you must
 - a. _____
 - b. submit to AFGE these documents:
 - i. _____
 - ii. a copy of your _____
 - iii. and the approved _____
3. Required coverage:

CA + TR x 10% = amount of coverage required
 CA is current assets (cash, investments)
 TR is total receipts
 _____ is the amount of coverage required

FIDUCIARY RESPONSIBILITIES FILL IN THE BLANKS!

Directions: Fill in the blanks below with the correct information as your Instructor reviews this information in class.

FIDUCIARY REPORTING AND RECORD KEEPING

1. Who do you report to?:

- a. _____
- b. _____
- c. _____

2. Penalties for not filing on time include:

3. Keep the Membership informed of:

- a. _____
- b. _____
- c. _____
- d. _____

Record Keeping

General Local Files:

- By-laws and Amendment----- Permanent
- Correspondence ----- 5 Years
- Election Records----- 2 Years past the term of office
- Local MOUs-----Permanent
- Minutes of Meetings----- Permanent
- (Membership & E-Board)
- Items that Document the Local's History ----- Permanent

Local Membership Records:

- Dues Deduction Forms (1187, 1188, etc.)-----3 years
- EEO Case Files-----5 years
- Grievance Case Files-----5 years
- MSPB Case Files----- 5 years
- Workers' Compensation Case Files-----5 years

Financial Records:

- Correspondences----- 5 years
- IRS Forms----- 5 years
- LM Forms----- 5 years
- Financial Statements and Reports----- Permanent
- Officer Bonds----- Permanent



FIDUCIARY RESPONSIBILITIES. TRUE OR FALSE?

A member of the NEC or any duly authorized representative must give you a 72-hour notice if they desire to look at your records.

It is mandatory for the Local to conduct an audit when there is a change in Financial Officers

There are criminal penalties for embezzling or stealing Local property that can include fines up to \$10,000, imprisonment for up to five years, or both.

For your bond to be in effect, you must conduct an annual audit and submit two documents to AFGE; a Form 41 and a copy of LM report

Pre-signed checks by one officer is a red flag item during an audit.

HARD CASES II

See the two scenarios below. Read each scenario and decide the best action to take based on what has been covered in the training, and your own knowledge and/or experiences. Use your AFGE Constitution, the LMRDA, CSRA, Statute, etc. to locate the source that supports your response. Use the space on the far right for your notes.



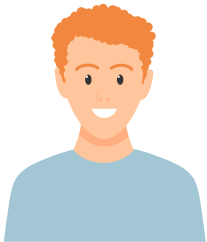
You are Vice President of your Local. Your longtime friend, **Sam**, is the Secretary-Treasurer. You have discovered that, over the past two years,

Sam has taken about \$2,000 from the Local's monies to reimburse himself for time he has spent keeping the Local's books and records.

You meet Sam at a park to talk, and he admits to it. Sam says, "This is no big deal; I will ask the membership to vote on an approval of my action." He promises that if the membership disapproves, he will pay the money back over time.

What should you do, if anything?

HARD CASES II



The Agency was not paying earned overtime to members of the bargaining unit properly.

Gerald, the long-time Chief Steward of the Local, entered a retainer agreement with an attorney, on behalf of the Local, to bring a suit against the Agency under the Fair Labor Standards Act. The attorney won a large settlement for the bargaining unit. Under the terms of the settlement, the Local was to distribute the funds to the bargaining unit. Gerald took the settlement monies and put the monies into a separate bank account under the name of AFGE Local 9999, with himself as the sole signature on the account.

The money sat in the account for three years, during which it earned interest. Gerald, with the backing of the attorney, refused to let any other officers have access to the funds or even the information about the account. After three years and lots of questions, Gerald begins to pay out the settlement. On the advice of the attorney, Gerald begins paying each bargaining unit member \$599. Were Gerald's actions correct?

Was there a better way of handling this situation?



PRACTICAL LEADERSHIP TOOLS AND SKILLS

New Leaders Training

REFLECTION POINT #2

1. What skills are needed to be an effective leader?

2. What are some qualities/attributes of an effective leader?



WELCOME TO LOCAL 9000

This case study will be referred to throughout the Officer's Skills section of this training. Please read thoroughly.

***This case study is based on a fictitious local. Any resemblance to an existing local or person is coincidental.*

Local 9000 represents four bargaining units at a military installation in a midsize Midwestern city. The installation has 100 buildings on 40 acres. In addition to 3,000 federal employees, the base population also includes 2,000 military personnel and 1,000 contractors.

Bargaining Unit 1 consists of Department of Defense ("DoD") Defense Finance and Accounting Service ("DFAS") employees. DFAS's function is to pay all DoD military and civilian personnel and retirees as well as major DoD contractors. They are General Schedule ("GS") employees performing accounting-type functions. There are 1,000 bargaining unit employees; and 200 are AFGE members (20% membership rate). 6 stewards are DFAS employees. Union representatives get "reasonable" official time. The employees are mostly white, in their 40s and 50s, and 40% are veterans. The bargaining unit is part of the AFGE DFAS Council, and the Council is currently conducting contract negotiations with DFAS. BU 1 has local supplements in the Council Master Agreement. The reports are that DFAS wants to make some changes in two of the supplements, dealing with parking and with the break room. No one from Local 9000 sits on the Council bargaining team. They have a regional Vice President in a nearby state who does sit on the bargaining team.

Bargaining Unit 2 consists of Air Force employees. They are a mix of GS and Wage Grade ("WG") employees. The GS employees work mainly in a research laboratory that designs equipment for the Air Force. The WG employees perform facilities maintenance functions, security, firefighting, and build the equipment designed by the research laboratory. There are 900 bargaining unit employees; and 400 are AFGE members (44% membership rate). 4 stewards are BU2 employees. There is a bank of hours to be used for official time. The employees are 60% white and 30% African-American, the average age is 50, and 70% are veterans. The bargaining unit is not part of a Council, and the collective bargaining agreement will expire in 2 years. To date, the local has not made any plans or taken any action to renegotiate the contract.

Bargaining Unit 3 consists of Defense Commissary Agency ("DECA") employees. DECA operates commissaries at military installations to provide low-cost groceries to military personnel, retirees, and their families. DECA is a non-appropriated fund agency, which means the employees are paid from funds that are not appropriated by Congress. They work in military exchanges and morale, welfare, and recreation programs and are paid from funds generated by those activities. While they are federal employees, they are not covered by many of the laws and Office of Personnel Management (OPM) regulations that cover other federal employees. DoD sets most of their personnel rules. There are 50 bargaining unit employees, and 12 are AFGE members (24% membership rate). BU3 has only one steward. "Reasonable" official time is given. There is high turnover among the employees, with many of them being spouses of active military personnel. Most of the employees are African-American, and the average age is 35. Only 20% are veterans. The bargaining unit is part of the AFGE DECA Council. The collective bargaining agreement will expire in 2 years.



WELCOME TO LOCAL 9000

This case study will be referred to throughout the Officer's Skills section of this training. Please read thoroughly.

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Bargaining Unit 4 consists of Federal Police Officers in the Federal Protective Service ("FPS") of the Department of Homeland Security ("DHS"). The Federal Protective Service (FPS) is a federal law enforcement agency that provides security and law enforcement services to federally owned and leased buildings, facilities, properties and other assets. Although they are called police officers, FPS employees have not been granted Law Enforcement Officer (LEO) status, which would allow them to retire earlier with full retirement benefits. There are 100 bargaining unit employees, and 30 are AFGE members (30% membership rate). BU4 has 3 stewards. They are allowed 10% of their time as official time. They guard buildings on the military installation and in the 5 federal buildings within a 100-mile radius. They are understaffed and have been for years. In addition, there are 25 poorly trained contract employees acting as guards. 70% of the bargaining unit employees are white, the average age is 45, and 43% are veterans. The bargaining unit is not part of a council, and the collective bargaining agreement expired 3 years ago.

Additional Information Below:

Of the remaining 950 civilian employees on the base, 200 are employed by the Environmental Protection Agency, which has research and laboratory facilities and its regional headquarters at the base. These employees are not organized by any union. The total number of bargaining unit employees represented by Local 9000 is 2050. There are 642 union members. The membership percentage is 31%.

The Local President, Rocky Squirrel, came out of BU 1 and was recently elected to a first term after a hard-fought campaign against the vice-president for BU2, Roger Rabbit. The vice presidents for BU 1, Minnie Mouse, BU2, Pooh Bear, and BU4, Bugs Bunny, are longtime local union activists. No one has expressed interest in being vice president for BU3, so that position is vacant.

The local has an Executive board with a mix of longtime local activists and new activists. The chief steward, Daisy Duck, is the former local president and serves as a mentor to the new local president. There aren't enough stewards in any of the bargaining units, but a new steward has been recruited in both BU2 and BU4, Tigger and Eeyore respectively.

The local has a Women's and Fair Practice Coordinator, Cheshire Cat, and a new legislative coordinator, Bullwinkle Moose, but the newsletter editor retired last year and has not yet been replaced.

The union office is centrally located and contains enough room for offices, but the meeting space will only hold 20 people. The next membership meeting for all bargaining units is scheduled for next week, and the agenda has not yet been drafted.



WELCOME TO LOCAL 9000

This case study will be referred to throughout the Officer's Skills section of this training. Please read thoroughly.

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The local's relationship with management is somewhat strained:

- Management balks at every request for information (asking for a "particularized need").
- There are rumors of reorganization/contracting out that management won't address.
- Management keeps cancelling the health and safety committee meetings at the last minute. Management often forgets to invite the union to employee meetings.
- Management won't let the union use the email system for announcements, even though it is provided for in the collective bargaining agreements of BU 1 and BU 4.
- Management of each bargaining unit won't allow union representatives to use crossover official time, that is, to use their official time to represent employees in another unit.

STRATEGIC PLANNING

Strategic Planning is a key skill/tool that teams and organizations use to increase effectiveness and achieve goals. It is important to spend time planning things that your Local needs to accomplish. The most basic steps of Strategic Planning:

Step 1: Determine where you are

- Discuss and determine where your Local is currently.
- Ask questions like what have you achieved, what are your organization's competencies (Strengths, current resources, etc.)

Step 2: Identify what's important

- Focus on where you want to take your Local over time, which sets the direction of the Local over the long term and clearly defines the mission. From here, you can determine the priorities.

Step 3: Define what you must achieve

- Define the expected objectives that clearly state what your Local must achieve to address the priorities

Step 4: Determine who is accountable

- This is how you're going to get to where you want to go. The strategies, action plans, and budgets are all steps in the process that effectively communicate how you will allocate time, human capital, and money to address the priority issues and achieve the defined objectives.

Step 5: Review, Reassess

- It's not over. It's never over. To ensure the plan stays real, you must schedule time to review and refine the plan as necessary.

As a leader in the Labor Movement, strategic planning is directly connected to generating the power we need to overcome the attacks launched against our union and working people. AFGE has adopted the Big Enough to Win strategy that focuses on Organizing, Legislation/Mobilization, Political Influence, Stronger Local Unions, and Education and Communication.

SWOT MATRIX



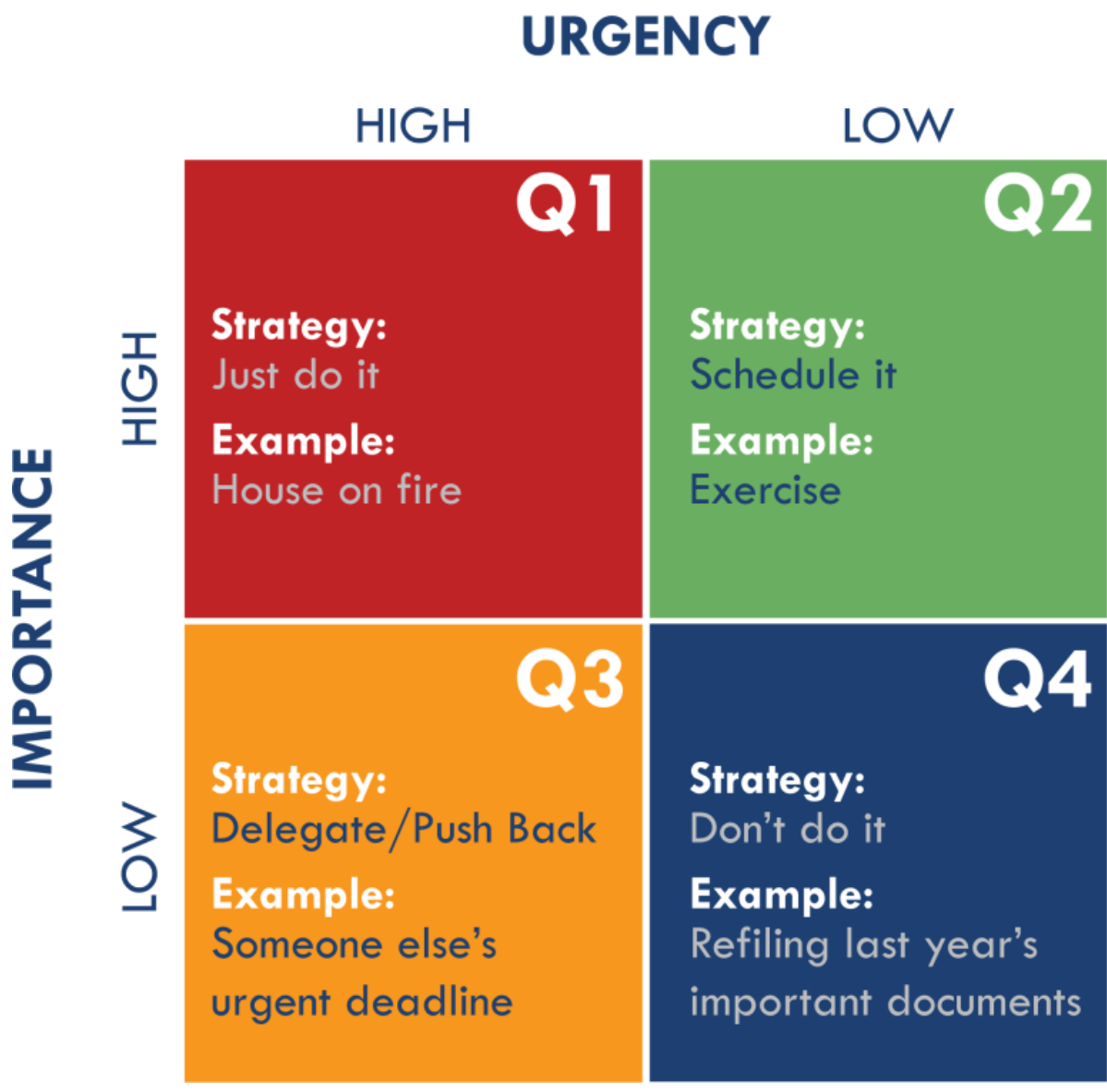
LOCAL PLANING TEMPLATE

GOAL	ACTION TO BE TAKEN	POINT PERSON	TIMELINE	COST
Organizing				
Legislation/Mobilization				
Political Influence				
Stronger Local Unions				
Education and Communication				

TIME MANAGEMENT

As a leader, time management is a key factor in determining how work gets done, what work gets done, by whom and when. Effective time management can save the team from procrastination, and burn out. Managing time in an appropriate way ensures strategic initiatives remain in focus.

Below is the Eisenhower Time Management Grid. What types of tasks belong in each quadrant?



COMMUNICATION TOOLS: MESSAGE DELIVERY

A big part of communicating is knowing the best tool to use for an audience. Match the Communications tool with the most appropriate audience below. You may use more than one audience for a tool.

1. Informal Meetings _____
2. One on One Interaction _____
3. Formal Meetings _____
4. Outlines/Talking Points _____
5. Newsletters _____
6. Charts and Other Analysis _____
7. Emails (Personal) _____
8. Testimonies _____
9. Meeting Agendas _____
10. Memorandums _____
11. Social Media (Facebook, etc.) _____
12. Bulletin Boards/Signs _____
13. Website _____
14. Press Release _____
15. Legal Document _____
16. Media Advisory _____
17. Letter to the Editor _____

DIFFERENT AUDIENCES

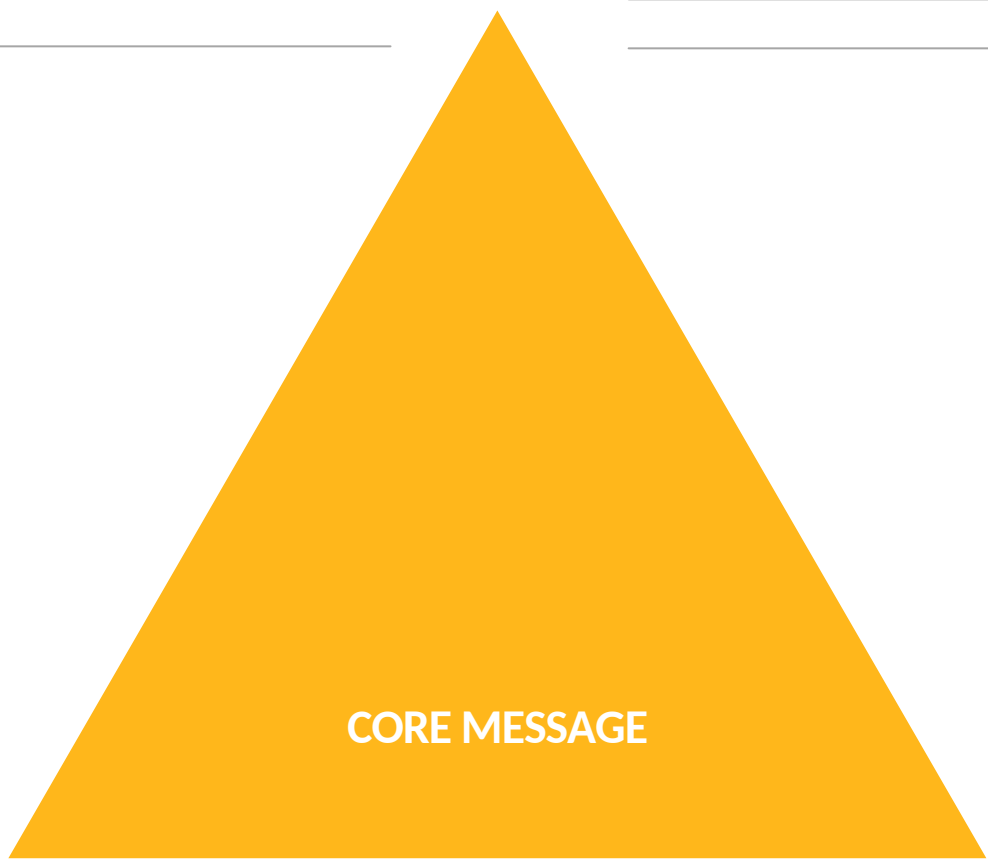
- LOCAL MEMBERS
- BARGAINING UNIT EMPLOYEES
- OTHER AGENCY EMPLOYEES
- OTHER FEDERAL EMPLOYEES
- MANAGEMENT OFFICIALS
- TAXPAYERS
- PUBLIC SERVICE RECIPIENTS AND BENEFICIARIES
- COMMUNITY INTEREST GROUPS
- CONGRESS
- AFGE ACTIVIST AND STAFF
- BROADER LABOR COMMUNITY

COMMUNICATION: THE MESSAGE TRIANGLE

The message triangle is a tool designed to help you speak to your audience successfully by getting across your key messages in a compelling, concise and credible manner. Using this triangle helps you communicate key messages in a way that resonates and is memorable.

KEY SUPPORTING POINT 1

KEY SUPPORTING POINT 2



CORE MESSAGE

KEY SUPPORTING POINT 3



MEMBERSHIP BUILDING SCENARIOS

In your group, discuss your assigned scenario, agree on an approach to the situation, and provide the rationale for your decision.

1. A potential member of the union comes to you alleging a contract violation. Several union members tell you that you should tell this person to join the union before you will handle their complaint. How do you respond?

2. Workers approach the union about racial discrimination in the promotion process in your agency. They want the union to do something about it. You are told by other workers of a different racial group that racial discrimination is not the business of the union and that if the union takes on this issue, they and some other members will resign. What do you do?

3. Contract negotiations are taking place. Members indicate that it is not clear why there is so much stress and strain at bargaining time since the union cannot negotiate around wages and benefits in any case. Your response?

MEMBERSHIP BUILDING SCENARIOS

In your group, discuss your assigned scenario, agree on an approach to the situation, and provide the rationale for your decision.

4. There is a very moldy smell in part of your building. In fact, there are some people who find themselves sneezing or coughing during much of the day. People complain about it, but they do not come to the union to address it. How should the union respond?

5. Management is clamping down on Official Time. It is making your job that much more difficult to do. When you go to the members they generally respond that it is your problem because it does not affect them. What do you say back?

6. Clients of your agency have been getting increasingly frustrated with service. They form an association and begin complaining to your agency director about not feeling that they are getting quality service. Should the union do anything about this?

REFLECTION POINT #3

My Personal Leadership Development Plan will include:

The Key Areas I will improve upon are:

What specific actions will I take in order to build an effective Local and be an effective local leader:



APPENDIXES

New Leaders Training



LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

New Leaders Training Appendixes

Labor-Management Reporting and Disclosure Act of 1959

[Public Law 86-257]

[As Amended Through P.L. 100-182, Enacted December 7, 1987]

【Currency: This publication is a compilation of the text of Public Law 86-257. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT To provide for the reporting and disclosure of certain financial transactions and administrative practices of labor organizations and employers, to prevent abuses in the administration of trusteeships by labor organizations, to provide standards with respect to the election of officers of labor organizations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the “Labor-Management Reporting and Disclosure Act of 1959”.

【29 U.S.C. 401 nt】 Enacted September 14, 1959, P.L. 86-257, sec. 1, 73 Stat. 519.

DECLARATION OF FINDINGS, PURPOSES, AND POLICY

SEC. 2. (a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees’ rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and

Sec. 3 LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT**2**

supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce.

[29 U.S.C. 401] Enacted September 14, 1959, P.L. 86-257, sec. 2, 73 Stat. 519.

DEFINITIONS

SEC. 3. For the purposes of title I, II, III, IV, V (except section 505), and VI of this Act—

(a) “Commerce” means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) “State” includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

(c) “Industry affecting commerce” means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry “affecting commerce” within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(d) “Person” includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code, or receivers.

(e) “Employer” means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly

owned by the Government of the United States or any State or political subdivision thereof.

(f) "Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

(g) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(h) "Trusteeship" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

(k) “Secret ballot” means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

(l) “Trust in which a labor organization is interested” means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

(m) “Labor relations consultant” means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

(n) “Officer” means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(o) “Member” or “member in good standing”, when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

(p) “Secretary” means the Secretary of Labor.

(q) “Officer, agent, shop steward, or other representative”, when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried nonsupervisory professional staff, stenographic, and service personnel.

(r) “District court of the United States” means a United States district court and a United States court of any place subject to the jurisdiction of the United States.

[29 U.S.C. 402] Enacted September 14, 1959, P.L. 86–257, sec. 3, 73 Stat. 520; amended November 6, 1978, P.L. 95–598, title III, sec. 320, 92 Stat. 2678.

TITLE I—BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

BILL OF RIGHTS

SEC. 101. (a)(1) EQUAL RIGHTS.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization’s constitution and bylaws.

(2) FREEDOM OF SPEECH AND ASSEMBLY.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) DUES, INITIATION FEES, AND ASSESSMENTS.—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except—

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) PROTECTION OF THE RIGHT TO SUE.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested em-

Sec. 102 LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT 6

ployer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party any such action, proceeding, appearance, or petition.

(5) SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

【29 U.S.C. 411】 Enacted September 14, 1959, P.L. 82-257, title I, sec. 101, 73 Stat. 522.

CIVIL ENFORCEMENT

SEC. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

【29 U.S.C. 412】 Enacted September 14, 1959, P.L. 86-257, title I, sec. 102, 73 Stat. 523.

RETENTION OF EXISTING RIGHTS

SEC. 103. Nothing contained in this title shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization.

【29 U.S.C. 413】 Enacted September 14, 1959, P.L. 86-257, title I, sec. 103, 73 Stat. 523.

RIGHT TO COPIES OF COLLECTIVE BARGAINING AGREEMENTS

SEC. 104. It shall be the duty of the secretary or corresponding principal officer of each labor organization, in the case of a local labor organization, to forward a copy of each collective bargaining agreement made by such labor organization with any employer to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement, and in the case of a labor organization other than a local labor organization, to forward a copy of any such agreement to each constituent unit which has members directly affected by such agreement; and such officer shall maintain at the principal office of the labor organization of which he is an officer copies of any such agreement made or received by such labor organization, which copies shall be available for inspection by any member or by any employee whose rights are affected by such agreement. The provisions of section 210 shall be applicable in the enforcement of this section.

7 LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT Sec. 201

【29 U.S.C. 414】 Enacted September 14, 1959, P.L. 86-257, title I, sec. 104, 73 Stat. 523.

INFORMATION AS TO ACT

SEC. 105. Every labor organization shall inform its members concerning the provisions of this Act.

【29 U.S.C. 415】 Enacted September 14, 1959, P.L. 86-257, title I, sec. 105, 73 Stat. 523.

TITLE II—REPORTING BY LABOR ORGANIZATIONS, OFFICERS AND EMPLOYEES OF LABOR ORGANIZATIONS, AND EMPLOYERS

REPORT OF LABOR ORGANIZATIONS

SEC. 201. (a) Every labor organization shall adopt a constitution and bylaws and shall file a copy thereof with the Secretary, together with a report, signed by its president and secretary or corresponding principal officers, containing the following information—

(1) the name of the labor organization, its mailing address, and any other address at which it maintains its principal office or at which it keeps the records referred to in this title;

(2) the name and title of each of its officers;

(3) the initiation fee or fees required from a new or transferred member and fees for work permits required by the reporting labor organization;

(4) the regular dues or fees or other periodic payments required to remain a member of the reporting labor organization; and

(5) detailed statements, or references to specific provisions of documents filed under this subsection which contain such statements, showing the provision made and procedures followed with respect to each of the following: (A) qualifications for or restrictions on membership, (B) levying of assessments, (C) participation in insurance or other benefit plans, (D) authorization for disbursement of funds of the labor organization, (E) audit of financial transactions of the labor organization, (F) the calling of regular and special meetings, (G) the selection of officers and stewards and of any representatives to other bodies composed of labor organizations' representatives, with a specific statement of the manner in which each officer was elected, appointed, or otherwise selected, (H) discipline or removal of officers or agents for breaches of their trust, (I) imposition of fines, suspensions, and expulsions of members, including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures, (J) authorization for bargaining demands, (K) ratification of contract terms, (L) authorization for strikes, and (M) issuance of work permits. Any change in the information required by this subsection shall be reported to the Secretary at the time the reporting labor organization files with the Secretary the annual financial report required by subsection (b).

(b) Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or

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corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year—

(1) assets and liabilities at the beginning and end of the fiscal year;

(2) receipts of any kind and the sources thereof;

(3) salary, allowances, and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during such fiscal year, received more than \$10,000 in the aggregate from such labor organization and any other labor organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international labor organization;

(4) direct and indirect loans made to any officer, employee, or member, which aggregated more than \$250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment;

(5) direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and

(6) other disbursements made by it including the purposes thereof;

all in such categories as the Secretary may prescribe.

(c) Every labor organization required to submit a report under this title shall make available the information required to be contained in such report to all its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member of such organization in any State court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report. The court in such action may, in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and cost of the action.

(d) **【Subsections (d) and (e) amended the National Labor Relations Act which is printed elsewhere in this compilation.】**

【29 U.S.C. 431】 Enacted September 14, 1959, P.L. 86-257, title II, sec. 201(a)-(c), 73 Stat. 524.

REPORT OF OFFICERS AND EMPLOYEES OF LABOR ORGANIZATIONS

SEC. 202. (a) Every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services) shall file with the Secretary a signed report listing and describing for his preceding fiscal year—

(1) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child derived directly or indirectly from, an employer whose employees such labor organization represents

or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer;

(2) any transaction in which he or his spouse or minor child engaged, directly or indirectly, involving any stock, bond, security, or loan to or from, or other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(3) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(4) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization;

(5) any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer; and

(6) any payment of money or other thing of value (including reimbursed expenses) which he or his spouse or minor child received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer except payments of the kinds referred to in section 302(c) of the Labor Management Relations Act 1947, as amended.

(b) The provisions of paragraphs (1), (2), (3), (4), and (5) of subsection (a) shall not be construed to require any such officer or employee to report his bona fide investments in securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934, in shares in an investment company registered under the Investment Company Act of 1940, or in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, or to report any income derived therefrom.

(c) Nothing contained in this section shall be construed to require any officer or employee of a labor organization to file a report under subsection (a) unless he or his spouse or minor child holds or has held an interest, has received income or any other benefit with monetary value or a loan, or has engaged in a transaction described therein.

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【29 U.S.C. 432】 Enacted September 14, 1959, P.L. 86-257, title II, sec. 202, 73 Stat. 525.

REPORT OF EMPLOYERS

SEC. 203. (a) Every employer who in any fiscal year made—

(1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefor, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization, except (A) payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution and (B) payments of the kind referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended;

(2) any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;

(3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

(4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or

(5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision (4); shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof, in each such case such information shall be set forth in such categories as the Secretary may prescribe.

(c) Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

(d) Nothing contained in this section shall be construed to require an employer to file a report under subsection (a) unless he has made an expenditure, payment, loan, agreement, or arrangement of the kind described therein. Nothing contained in this section shall be construed to require any other person to file a report under subsection (b) unless he was a party to an agreement or arrangement of the kind described therein.

(e) Nothing contained in this section shall be construed to require any regular officer, supervisor, or employee of an employer to file a report in connection with services rendered to such employer nor shall any employer be required to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer.

(f) Nothing contained in this section shall be construed as an amendment to, or modification of the rights protected by, section 8(c) of the National Labor Relations Act, as amended.

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(g) The term “interfere with, restrain, or coerce” as used in this section means interference, restraint, and coercion which, if done with respect to the exercise of rights guaranteed in section 7 of the National Labor Relations Act, as amended, would, under section 8(a) of such Act, constitute an unfair labor practice.

[29 U.S.C. 433] Enacted September 14, 1959, P.L. 86-257, title II, sec. 203, 73 Stat. 526.

ATTORNEY-CLIENT COMMUNICATIONS EXEMPTED

SEC. 204. Nothing contained in this Act shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this Act any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

[29 U.S.C. 434] Enacted September 14, 1959, P.L. 86-257, title II, sec. 204, 73 Stat. 528.

REPORTS MADE PUBLIC INFORMATION

SEC. 205. (a) The contents of the reports and documents filed with the Secretary pursuant to sections 201, 202, 203, and 211 shall be public information, and the Secretary may publish any information and data which he obtains pursuant to the provisions of this title. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) The Secretary shall by regulation make reasonable provision for the inspection and examination, on the request of any person, of the information and data contained in any report or other document filed with him pursuant to sections 201, 202, 203, or 211.

(c) The Secretary shall by regulation provide for the furnishing by the Department of Labor of copies of reports or other documents filed with the Secretary pursuant to this title, upon payment of a charge based upon the cost of the service. The Secretary shall make available without payment of a charge, or require any person to furnish, to such State agency as is designated by law or by the Governor of the State in which such person has his principal place of business or headquarters, upon request of the Governor of such State, copies of any reports and documents filed by such person with the Secretary pursuant to sections 201, 202, 203, or 211, or of information and data contained therein. No person shall be required by reason of any law of any State to furnish to any officer or agency of such State any information included in a report filed by such person with the Secretary pursuant to the provisions of this title, if a copy of such report, or of the portion thereof containing such information, is furnished to such officer or agency. All moneys received in payment of such charges fixed by the Secretary pursuant to this subsection shall be deposited in the general fund of the Treasury.

[29 U.S.C. 435] Enacted September 14, 1959, P.L. 86-257, title II, sec. 205, 73 Stat. 528; amended September 29, 1965, P.L. 89-216, sec. 2(a)-(c), 79 Stat. 888.

RETENTION OF RECORDS

SEC. 206. Every person required to file any report under this title shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

【29 U.S.C. 436】 Enacted September 14, 1959, P.L. 86-257, title II, sec. 206, 73 Stat. 529.

EFFECTIVE DATE

SEC. 207. (a) Each labor organization shall file the initial report required under section 201(a) within ninety days after the date on which it first becomes subject to this Act.

(b) Each person required to file a report under section 201(b), 202, 203(a), the second sentence of section 203(b), or section 211 shall file such report within ninety days after the end of each of its fiscal years; except that where such person is subject to section 201(b), 202, 203(a), the second sentence of section 203(b), or section 211, as the case may be, for only a portion of such a fiscal year (because the date of enactment of this Act occurs during such person's fiscal year or such person becomes subject to this Act during its fiscal year) such person may consider that portion as the entire fiscal year in making such report.

【29 U.S.C. 437】 Enacted September 14, 1959, P.L. 86-257, title II, sec. 207, 73 Stat. 529; amended September 29, 1965, P.L. 89-216, sec. 2(d), 79 Stat. 888.

RULES AND REGULATIONS

SEC. 208. The Secretary shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements. In exercising his power under this section the Secretary shall prescribe by general rule simplified reports for labor organizations or employers for whom he finds that by virtue of their size a detailed report would be unduly burdensome, but the Secretary may revoke such provision for simplified forms of any labor organization or employer if he determines, after such investigation as he deems proper and due notice and opportunity for a hearing, that the purposes of this section would be served thereby.

【29 U.S.C. 438】 Enacted September 14, 1959, P.L. 86-257, title II, sec. 208, 73 Stat. 529.

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CRIMINAL PROVISIONS

SEC. 209. (a) Any person who willfully violates this title shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(b) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report, or other information required under the provisions of this title shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(c) Any person who willfully makes a false entry in or willfully conceals, withholds, or destroys any books, records, reports, or statements required to be kept by any provision of this title shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(d) Each individual required to sign reports under sections 201 and 203 shall be personally responsible for the filing of such reports and for any statement contained therein which he knows to be false.

[29 U.S.C. 439] Enacted September 14, 1959, P.L. 86-257, title II, sec. 209, 73 Stat. 529.

CIVIL ENFORCEMENT

SEC. 210. Whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate. Any such action may be brought in the district court of the United States where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

[29 U.S.C. 440] Enacted September 14, 1959, P.L. 86-257, title II, sec. 210, 73 Stat. 530.

SURETY COMPANY REPORTS

SEC. 211. Each surety company which issues any bond required by this Act or the Employee Retirement Income Security Act of 1974 shall file annually with the Secretary, with respect to each fiscal year during which any such bond was in force, a report, in such form and detail as he may prescribe by regulation, filed by the president and treasurer or corresponding principal officers of the surety company, describing its bond experience under each such Act, including information as to the premiums received, total claims paid, amounts recovered by way of subrogation, administrative and legal expenses and such related data and information as the Secretary shall determine to be necessary in the public interest and to carry out the policy of the Act. Notwithstanding the foregoing, if the Secretary finds that any such specific information cannot be practicably ascertained or would be uninformative, the Secretary may modify or waive the requirement for such information.

[29 U.S.C. 441] Added September 29, 1965, P.L. 89-216, sec. 3, 79 Stat. 888; amended September 2, 1974, P.L. 93-406, title I, sec. 111(a)(2)(D), 88 Stat. 852.

TITLE III—TRUSTEESHIPS

REPORTS

SEC. 301. (a) Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Secretary within thirty days after the date of the enactment of this Act or the imposition of any such trusteeship, and semiannually thereafter, a report, signed by its president and treasurer or corresponding principal officers, as well as by the trustees of such subordinate labor organization, containing the following information: (1) the name and address of the subordinate organization; (2) the date of establishing the trusteeship; (3) a detailed statement of the reason or reasons for establishing or continuing the trusteeship; and (4) the nature and extent of participation by the membership of the subordinate organization in the selection of delegates to represent such organization in regular or special conventions or other policy-determining bodies and in the election of officers of the labor organization which has assumed trusteeship over such subordinate organization. The initial report shall also include a full and complete account of the financial condition of such subordinate organization as of the time trusteeship was assumed over it. During the continuance of a trusteeship the labor organization which has assumed trusteeship over a subordinate labor organization shall file on behalf of the subordinate labor organization the annual financial report required by section 201(b) signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship and the trustees of the subordinate labor organization.

(b) The provisions of sections 201(c), 205, 206, 208, and 210 shall be applicable to reports filed under this title.

(c) Any person who willfully violates this section shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(d) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any report required under the provisions of this section or willfully makes any false entry in or willfully withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such report is based, shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(e) Each individual required to sign a report under this section shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

[29 U.S.C. 461] Enacted September 14, 1959, P.L. 86-257, title III, sec. 301, 73 Stat. 530.

PURPOSES FOR WHICH A TRUSTEESHIP MAY BE ESTABLISHED

SEC. 302. Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the per-

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formance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

【29 U.S.C. 462】 Enacted September 14, 1959, P.L. 86-257, title III, sec. 302, 73 Stat. 531.

**UNLAWFUL ACTS RELATING TO LABOR ORGANIZATION UNDER
TRUSTEESHIP**

SEC. 303. (a) During any period when a subordinate body of a labor organization is in trusteeship, it shall be unlawful (1) to count the vote of delegates from such body in any convention or election of officers of the labor organization unless the delegates have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate, or (2) to transfer to such organization any current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship: *Provided*, That nothing herein contained shall prevent the distribution of the assets of a labor organization in accordance with its constitution and bylaws upon the bona fide dissolution thereof.

(b) Any person who willfully violates this section shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

【29 U.S.C. 463】 Enacted September 14, 1959, P.L. 86-257, title III, sec. 303, 73 Stat. 531.

ENFORCEMENT

SEC. 304. (a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

(b) For the purpose of actions under this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization (1) in the district in which the principal office of such labor organization is located, or (2) in any district in which its duly authorized officers or agents are engaged in conducting the affairs of the trusteeship.

(c) In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before

such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 302. After the expiration of eighteen months the trustee shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302. In the latter event the court may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate.

【29 U.S.C. 464】 Enacted September 14, 1959, P.L. 86-257, title III, sec. 304, 73 Stat. 531.

REPORT TO CONGRESS

SEC. 305. The Secretary shall submit to the Congress at the expiration of three years from the date of enactment of this Act a report upon the operation of this title.

【29 U.S.C. 465】 Enacted September 14, 1959, P.L. 86-257, title III, sec. 305, 73 Stat. 532.

COMPLAINT BY SECRETARY

SEC. 306. The rights and remedies provided by this title shall be in addition to any and all other rights and remedies at law or in equity: *Provided*, That upon the filing of a complaint by the Secretary the jurisdiction of the district court over such trusteeship shall be exclusive and the final judgment shall be *res judicata*.

【29 U.S.C. 466】 Enacted September 14, 1959, P.L. 86-257, title III, sec. 306, 73 Stat. 532.

TITLE IV—ELECTIONS

TERMS OF OFFICE; ELECTION PROCEDURES

SEC. 401. (a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimina-

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tion in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this title. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials

of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws as they are not inconsistent with the provisions of this title.

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h).

[29 U.S.C. 481] Enacted September 14, 1959, P.L. 86-257, title IV, sec. 401, 73 stat. 532.

ENFORCEMENT

SEC. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary

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may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

【29 U.S.C. 482】 Enacted September 14, 1959, P.L. 86-257, title IV, sec. 402, 73 Stat. 534.

APPLICATION OF OTHER LAWS

SEC. 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.

【29 U.S.C. 483】 Enacted September 14, 1959, P.L. 86-257, title IV, sec. 403, 73 Stat. 534.

EFFECTIVE DATE

SEC. 404. The provisions of this title shall become applicable—

(1) ninety days after the date of enactment of this Act in the case of a labor organization whose constitution and bylaws can lawfully be modified or amended by action of its constitutional officers or governing body, or

(2) where such modification can only be made by a constitutional convention of the labor organization, not later than the next constitutional convention of such labor organization after the date of enactment of this Act, or one year after such date, whichever is sooner. If no such convention is held within such one-year period, the executive board or similar governing body empowered to act for such labor organization between

conventions is empowered to make such interim constitutional changes as are necessary to carry out the provisions of this title.

[29 U.S.C. 481 nt] Enacted September 14, 1959, P.L. 86-257, title IV, sec. 404, 73 Stat. 535.

TITLE V—SAFEGUARDS FOR LABOR ORGANIZATIONS

FIDUCIARY RESPONSIBILITY OF OFFICERS OF LABOR ORGANIZATIONS

SEC. 501. (a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

(b) When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

(c) Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

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【29 U.S.C. 501】 Enacted September 14, 1959, P.L. 86-257, title V, sec. 501, 73 Stat. 535.

BONDING

SEC. 502. (a) Every officer, agent, shop steward, or other representative or employee of any labor organization (other than a labor organization whose property and annual financial receipts do not exceed \$5,000 in value), or of a trust in which a labor organization is interested, who handles funds or other property thereof 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. The bond of each such person shall be fixed at the beginning of the organization's fiscal year and shall be in an amount not less than 10 per centum of the funds handled by him and his predecessor or predecessors, if any, during the preceding fiscal year, but in no case more than \$500,000. If the labor organization or the trust in which a labor organization is interested does not have a preceding fiscal year, the amount of the bond shall be, in the case of a local labor organization, not less than \$1,000, and in the case of any other labor organization or of a trust in which a labor organization is interested, not less than \$10,000. Such bonds shall be individual or schedule in form, and shall have a corporate surety company as surety thereon. Any person who is not covered by such bonds 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. No such bond shall be placed through an agent or broker or with a 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. Such surety company shall be a corporate surety which holds a grant of authority from 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: *Provided*, That when in the opinion of the Secretary a labor organization has made other bonding arrangements which would provide the protection required by this section at comparable cost or less, he may exempt such labor organization from placing a bond through a surety company holding such grant of authority.

(b) Any person who willfully violates this section shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

【29 U.S.C. 502】 Enacted September 14, 1959, P.L. 86-257, title V, sec. 502, 73 Stat. 536; amended September 29, 1965, P.L. 89-216, sec. 1, 79 Stat. 888.

MAKING OF LOANS; PAYMENT OF FINES

SEC. 503. (a) No labor organization shall make directly or indirectly any loan or loans to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of \$2,000.

(b) No labor organization or employer shall directly or indirectly pay the fine of any officer or employee convicted of any willful violation of this Act.

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(c) Any person who willfully violates this section shall be fined not more than \$5,000 or imprisoned for not more than one year, or both.

【29 U.S.C. 503】 Enacted September 14, 1959, P.L. 86-257, title V, sec. 503, 73 Stat. 536.

PROHIBITION AGAINST CERTAIN PERSONS HOLDING OFFICE

SEC. 504. (a) No person who is or has been a member of the Communist Party or who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotic laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of title II or III of this Act¹ any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as a consultant or adviser to any labor organization,

(2) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any labor organization,

(3) as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organization, or in a position having specific collective bargaining authority or direct responsibility in the area of labor-management relations in any corporation or association engaged in an industry or activity affecting commerce, or

(4) in a position which entitles its occupant to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in whole or substantial part devoted to providing goods or services to any labor organization, or

(5) in any capacity, other than in his capacity as a member of such labor organization, that involves decisionmaking authority concerning, or decisionmaking authority over, or custody of, or control of the moneys, funds, assets, or property of any labor organization,

during or for the period of thirteen years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) if the offense is a Federal offense, the sentencing judge or, if the offense is a State or

¹ Law erroneously omitted a comma.

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local offense, the United States district court for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements under section 994(a) of title 28, United States Code, determines that such person's service in any capacity referred to in clauses (1) through (5) would not be contrary to the purposes of this Act. Prior to making any such determination the court shall hold a hearing and shall give notice of such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The court's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection.

(b) Any person who willfully violates this section shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(c) For the purpose of this section—

(1) A person shall be deemed to have been “convicted” and under the disability of “conviction” from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

(2) A period of parole shall not be considered as part of a period of imprisonment.

(d) Whenever any person—

(1) by operation of this section, has been barred from office or other position in a labor organization as a result of a conviction, and

(2) has filed an appeal of that conviction, any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual employer or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of such person's conviction on appeal, the amounts in escrow shall be returned to the individual employer or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute from assuming any position from which such person was previously barred.

[29 U.S.C. 504] Enacted September 14, 1959, P.L. 86-257, title V, sec. 504, 73 Stat. 536; amended October 12, 1985, P.L. 98-473, chapter VIII, sec. 803, 98 Stat. 2133.

[Note: Section 505 amended the Labor Management Relations Act of 1947 which is printed elsewhere in this compilation.]

TITLE VI—MISCELLANEOUS PROVISIONS

INVESTIGATIONS

SEC. 601. (a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

【29 U.S.C. 521】 Enacted September 14, 1959, P.L. 86-257, title VI, sec. 601 73 Stat. 539.

EXTORTIONATE PICKETING

SEC. 602. (a) It shall be unlawful to carry on picketing on or about the premises of any employer for the purpose of, or as part of any conspiracy or in furtherance of any plan or purpose for, the personal profit or enrichment of any individual (except a bona fide increase in wages or other employee benefits) by taking or obtaining any money or other thing of value from such employer against his will or with his consent.

(b) Any person who willfully violates this section shall be fined not more than \$10,000 or imprisoned for not more than twenty years, or both.

【29 U.S.C. 522】 Enacted September 14, 1959, P.L. 86-257, title VI, sec. 602 73 Stat. 539.

RETENTION OF RIGHTS UNDER OTHER FEDERAL AND STATE LAWS

SEC. 603. (a) Except as explicitly provided to the contrary, nothing in this Act shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State, and, except as explicitly provided to the contrary, nothing in this Act shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law or law of any State.

(b) Nothing contained in titles I, II, III, IV, V, or VI of this Act shall be construed to supersede or impair or otherwise affect the provisions of the Railway Labor Act, as amended, or any of the obligations, rights, benefits, privileges, or immunities of any carrier,

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employee, organization, representative, or person subject thereto; nor shall anything contained in said titles (except section 505) of this Act be construed to confer any rights, privileges, immunities, or defenses upon employers, or to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended.

【29 U.S.C. 523】 Enacted September 14, 1959, P.L. 86-257, title VI, sec. 603, 73 Stat. 540.

EFFECT ON STATE LAWS

SEC. 604. Nothing in this Act shall be construed to impair or diminish the authority of any State to enact and enforce general criminal laws with respect to robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, or assault which inflicts grievous bodily injury, or conspiracy to commit any of such crimes.

【29 U.S.C. 524】 Enacted September 14, 1959, P.L. 86-257, title VI, sec. 604, 73 Stat. 540.

SERVICE OF PROCESS

SEC. 605. For the purposes of this Act, service of summons, subpoena, or other legal process of a court of the United States upon an officer or agent of a labor organization in his capacity as such shall constitute service upon the labor organization.

【29 U.S.C. 525】 Enacted September 14, 1959, P.L. 86-257, title VI, sec. 605, 73 Stat. 540.

ADMINISTRATIVE PROCEDURE ACT

SEC. 606. The provisions of the Administrative Procedure Act shall be applicable to the issuance, amendment, or rescission of any rules or regulations, or any adjudication, authorized or required pursuant to the provisions of this Act.

【29 U.S.C. 526】 Enacted September 14, 1959, P.L. 86-257, title VI, sec. 606, 73 Stat. 540.

OTHER AGENCIES AND DEPARTMENTS

SEC. 607. In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this Act and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this Act. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the

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performance of his functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.

[29 U.S.C. 527] Enacted September 14, 1959, P.L. 86-257, title VI, sec. 607, 73 Stat. 540.

CRIMINAL CONTEMPT

SEC. 608. No person shall be punished for any criminal contempt allegedly committed outside the immediate presence of the court in connection with any civil action prosecuted by the Secretary or any other person in any court of the United States under the provisions of this Act unless the facts constituting such criminal contempt are established by the verdict of the jury in a proceeding in the district court of the United States, which jury shall be chosen and empaneled in the manner prescribed by the law governing trial juries in criminal prosecutions in the district courts of the United States.

[29 U.S.C. 528] Enacted September 14, 1959, P.L. 86-257, title VI, sec. 608, 73 Stat. 541.

PROHIBITION ON CERTAIN DISCIPLINE BY LABOR ORGANIZATION

SEC. 609. It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of section 102 shall be applicable in the enforcement of this section.

[29 U.S.C. 529] Enacted September 14, 1959, P.L. 86-257, title VI, sec. 609, 73 Stat. 541.

DEPRIVATION OF RIGHTS UNDER ACT BY VIOLENCE

SEC. 610. It shall be unlawful for any person through the use of force or violence, or threat of the use of force or violence, to restrain, coerce, or intimidate, or attempt to restrain, coerce, or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the provisions of this Act. Any person who willfully violates this section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

[29 U.S.C. 530] Enacted September 14, 1959, P.L. 86-257, title VI, sec. 610, 73 Stat. 541.

SEPARABILITY PROVISIONS

SEC. 611. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[29 U.S.C. 531] Enacted September 14, 1959, P.L. 86-257, title VI, sec. 611, 73 Stat. 541.

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TITLE VII—AMENDMENTS TO THE LABOR MANAGEMENT
RELATIONS ACT, 1947, AS AMENDED

【Note: Section 701 through Section 706 contain amendments to the National Labor Relations Act and the Labor Management Relations Act of 1947 which are incorporated into the text of each statute and are printed elsewhere in this compilation. Section 707 contains the effective date of this title's amendments.】



5 USC CHAPTER 71

New Leaders Training Appendixes

5 USC Chapter 71

SUBCHAPTER 1— GENERAL PROVISIONS

7101. Findings and purpose

(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protections of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest.

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

7102. Employees' Rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right-

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

7103. Definitions; application

(a) For the purpose of this chapter—

(1) "person" means an individual, labor organization, or agency:

(2) "employee" means an individual—

(A) employed in an agency; or

(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority:

but does not include—

- (i) an alien or noncitizen of the United States who occupies a position outside the United States;
- (ii) a member of the uniformed services;
- (iii) a supervisor or a management official;

(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the International Communication Agency;

or

- (v) any person who participates in a strike in violation of section 7311 of this title;

(3) "agency" means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office, but does not include—

- (A) The General Accounting Office;
- (B) The Federal Bureau of Investigation;
- (C) The Central Intelligence Agency;
- (D) The National Security Agency;
- (E) The Tennessee Valley Authority;
- (F) The Federal Labor Relations Authority; or
- (G) The Federal Service Impasses Panel;
- (H) The National Imagery Office;

(4) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by an agency;

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

- (5) "dues" means dues, fees, and assessments;
- (6) "Authority" means the Federal Labor Relations Authority described in section 7104(a) or this title;
- (7) "Panel" means the Federal Service Impasses Panel described in section 7119(c) of this title;
- (8) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;
- (9) "grievance" means any complaint—
- (A) by any employee concerning any matter relating to the employment of the employee;
 - (B) by any labor organization concerning any matter relating to the employment of any employee; or (i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or affecting conditions of employment;
 - (C) by any employee, labor organization, or agency concerning-
 - (i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
 - (ii) law, rule or applicable regulation
- (10) "supervisor" means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority;
- (11) "management official" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;
- (12) "collective bargaining" means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;
- (13) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;
- (14) "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—
- (A) relating to political activities prohibited under subchapter III of chapter 73 of this title;
 - (B) relating to the classification of any position; or
 - (C) to the extent such matters are specifically provided for by Federal statute:

(15) "professional employee" means—

(A) an employee engaged in the performance of work—

(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

(ii) requiring the consistent exercise of discretion and judgment in its performance;

(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and (iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph(A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

(16) "exclusive representative" means any labor organization which—

(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

(i) on the basis of an election, or

(ii) on any basis other than an election, and continues to be so recognized in accordance with the provisions of this chapter.

(17) "firefighter" means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

(18) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b) (1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

(A) the agency or subdivision has a primary function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

7104. Federal Labor Relations Authority

(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

(c)(1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

(A) the date on which the member's successor takes office, or

(B) the last day of the Congress beginning after the date on which the member's term of office would (but for subparagraph) expire. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) A Vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

(f) (1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

(2) The General Counsel may—

(A) investigate unfair labor practices under this chapter.

(B) file and prosecute complaints under this chapter, and

(C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

7105. Powers and duties of the Authority

(a) (1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority—

(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

(E) resolves issues relating to the duty to bargain in good faith under section 7117(c) of this title;

(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title:

(G) conduct hearings and resolve complaints of unfair labor practices under Section 7118 of this title;

(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

(b) The Authority shall adopt an official seal which shall be judicially noticed.

(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating in the inquiry.

(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.

(e) (1) The Authority may delegate to any regional director its authority under this chapter—

(A) to determine whether a group of employees is an appropriate unit;

(B) to conduct investigations and to provide for hearings;

(C) to determine whether a question of representation exists and to direct an election; and

(D) to supervise or conduct secret ballot elections and certify the results thereof.

(2) The Authority may delegate to any administrative law judge appointed under subsection(d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection(c) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after

the later of—

(1) the date of the action; or

(2) the date of the filing of any application under this subsection for review of the action; the action shall become the action of the Authority at the end of such 60-day period.

(g) In order to carry out its functions under this chapter, the Authority may—

(1) hold hearings:

(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority.

Subchapter II— Rights and Duties of Agencies and Labor Organizations

7114. Representation rights and duties

(a) (1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

(3) Each agency shall annually inform its employees of their rights under paragraph (2)(B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate

representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from—

(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

(B) exercising grievance or appellate rights established by law, rule, or regulation;

except in the case of grievance or appeal procedures negotiated under this chapter.

(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

(c) (1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

7115. Allotments to representatives

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

- (1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or
- (2) the employee is suspended or expelled from membership in the exclusive representative.

(c) (1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

- (2) (A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.
- (B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

7116. Unfair labor practices

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
- (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
- (3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
- (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;
- (5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;
- (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;
- (7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date

the rule or regulation was prescribed; or

- (8) to otherwise fail or refuse to comply with any provision of this chapter.

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

- (2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

- (3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

- (4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

- (5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

- (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

- (7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

- (B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

- (8) to otherwise fail or refuse to comply with any provision of this chapter. Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative except for failure—

- (1) to meet reasonable occupational standards uniformly required for admission, or

- (2) to tender dues uniformly required as a condition of acquiring and retaining membership. This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121(e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(e) The expression of any personal view, argument, opinion or the making of any statement which—

- (1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election.

- (2) corrects the record with respect to any false or misleading statement made by any person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation, shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions,

(A) constitute an unfair labor practice under any provision of this chapter, or

(B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

7118. Prevention of unfair labor practices

(a) (1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

(A) of the charge;

(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and (C) of the time and place fixed for the hearing.

(3) The labor organization of agency involved shall have the right to file an answer to the original and any amended complaint and to appeal in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(4) (A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of-

(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period, the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such Purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the

preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter. If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

7120. Standards of conduct for labor organizations.

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor

organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

Subchapter III— Grievances

Section 7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under—

(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination), may, during the 60-day period beginning on the day on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order

unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States District Court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

Subchapter IV—Administrative and Other Provisions

7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section—

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative, shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

7132. Subpoenas

(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

(1) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence. No subpoenas shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.



**29 CFR PART 458 (UP TO DATE AS OF
5/01/2023) STANDARDS OF CONDUCT**

New Leaders Training Appendixes

This content is from the eCFR and is authoritative but unofficial.

Title 29 – Labor

Subtitle B – Regulations Relating to Labor

Chapter IV – Office of Labor-Management Standards, Department of Labor

Subchapter B – Standards of Conduct

Part 458 Standards of Conduct

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PART 458—STANDARDS OF CONDUCT

Authority: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 03-2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 01-2020, 85 FR 13186 (March 6, 2020).

Source: 45 FR 15158, Mar. 7, 1980, unless otherwise noted. Redesignated at 50 FR 31311, Aug. 1, 1985.

Subpart A—Substantive Requirements Concerning Standards of Conduct

§ 458.1 General.

The term *LMRDA* means the Labor-Management Reporting and Disclosure Act of 1959, as amended (29 U.S.C. 401 *et seq.*). Unless otherwise provided in this part or in the CSRA or FSA, any term in any section of the LMRDA which is incorporated into this part by reference, and any term in this part which is also used in the LMRDA, shall have the meaning which that term has under the LMRDA, unless the context in which it is used indicates that such meaning is not applicable. In applying the standards contained in this subpart the Director will be guided by the interpretations and policies followed by the Department of Labor in applying the provisions of the LMRDA and by applicable court decisions.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 78 FR 8026, Feb. 5, 2013]

§ 458.2 Bill of rights of members of labor organizations.

(a)

- (1) **Equal rights.** Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.
- (2) **Freedom of speech and assembly.** Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions; and to express at meetings of the labor organization his views upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

- (3) **Dues, initiation fees, and assessments.** Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date this section is published shall not be increased, and no general or special assessment shall be levied upon such members, except:
- (i) In the case of a local organization,
 - (A) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or
 - (B) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or
 - (ii) In the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations,
 - (A) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than 30 days written notice to the principal office of each local or constituent labor organization entitled to such notice, or
 - (B) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or
 - (C) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.
- (4) **Protection of the right to sue.** No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceedings, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a 4-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof.
- (5) **Safeguards against improper disciplinary action.** No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined, except for nonpayment of dues by such organization or by any officer thereof unless such member has been
- (i) served with written specific charges;
 - (ii) given a reasonable time to prepare his defense;
 - (iii) afforded a full and fair hearing.
- (b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall not be a defense to any proceeding instituted against the labor organization under this part or under the CSRA or FSA.

- (c) Nothing contained in this section shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization.
- (d) It shall be the duty of the secretary or corresponding principal officer of each labor organization, in the case of a local labor organization, to forward a copy of each agreement made by such labor organization with an agency, Department or activity to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement, and in the case of a labor organization other than a local labor organization, to forward a copy of any such agreement to each constituent unit which has members directly affected by such agreement; and such officer shall maintain at the principal office of the labor organization of which he is an officer, copies of any such agreement made or received by such labor organization, which copies shall be available for inspection by any member or by any employee whose rights are affected by such agreement. An employee's rights under this paragraph shall be enforceable in the same manner as the rights of a member.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31312, Aug. 1, 1985]

§ 458.3 Application of LMRDA labor organization reporting requirements.

The reporting provisions of parts 402, 403, and 408 of this chapter shall apply to labor organizations subject to the requirements of the CSRA or FSA.

(Approved by the Office of Management and Budget under control number 1215-0188)

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15116, Mar. 31, 1994; 63 FR 33780, June 19, 1998]

§ 458.4 Informing members of the standards of conduct provisions.

- (a) Every labor organization subject to the requirements of the CSRA, the FSA, or the CAA shall inform its members concerning the standards of conduct provisions of the Acts and the regulations in this subchapter. Labor organizations shall provide such notice to members by October 2, 2006 and thereafter to all new members within 90 days of the time they join and to all members at least once every three years. Notice must be provided by hand delivery, U.S. mail or e-mail or a combination of the three as long as the method is reasonably calculated to reach all members. Such notice may be included with the required notice of local union elections. Where a union newspaper is used to provide notice, the notice must be conspicuously placed on the front page of the newspaper, or the front page should have a conspicuous reference to the inside page where the notice appears, so that the inclusion of the notice in a particular issue is readily apparent to each member.
- (b) A labor organization may demonstrate compliance with the requirements of paragraph (a) of this section by showing that another labor organization provided an appropriate notice to all of its members during the necessary time frame.
- (c) Labor organizations may use the Department of Labor publication Union Member Rights and Officer Responsibilities under the Civil Service Reform Act (available on the OLMS Web site at <http://www.dol.gov/olms>) or may devise their own language as long as the notice accurately states all of the CSRA standards of conduct provisions as set forth in the fact sheet.

- (d) If a labor organization has a Web site, the site must contain a conspicuous link to Union Member Rights and Officer Responsibilities under the Civil Service Reform Act or, alternatively, to the labor organization's own notice prepared in accordance with paragraph (c) of this section.

[71 FR 31492, June 2, 2006, as amended at 78 FR 8026, Feb. 5, 2013]

TRUSTEESHIPS

§ 458.26 Purposes for which a trusteeship may be established.

Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of (a) correcting corruption or financial malpractice, (b) assuring the performance of negotiated agreements or other duties of a representative of employees, (c) restoring democratic procedures, or (d) otherwise carrying out the legitimate objects of such labor organization.

§ 458.27 Prohibited acts relating to subordinate body under trusteeship.

During any period when a subordinate body of a labor organization is in trusteeship, (a) the votes of delegates or other representatives from such body in any convention or election of officers of the labor organization shall not be counted unless the representatives have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate; and (b) no current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship shall be transferred directly or indirectly to the labor organization which has imposed the trusteeship; *Provided, however,* That nothing contained in this section shall prevent the distribution of the assets of a labor organization in accordance with its constitution and bylaws upon the bona fide dissolution thereof.

§ 458.28 Presumption of validity.

In any proceeding involving § 458.26, a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution and bylaws shall be presumed valid for a period of 18 months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for purposes allowable under § 458.26. After the expiration of 18 months the trusteeship shall be presumed invalid in any such proceeding, unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under § 458.26.

ELECTIONS

§ 458.29 Election of officers.

Every labor organization subject to the CSRA or FSA shall conduct periodic elections of officers in a fair and democratic manner. All elections of officers shall be governed by the standards prescribed in sections 401 (a), (b), (c), (d), (e), (f) and (g) of the LMRDA to the extent that such standards are relevant to elections held pursuant to the provisions of 5 U.S.C. 7120 or 22 U.S.C. 4117 .

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated and amended at 50 FR 31311, 31312, Aug. 1, 1985]

ADDITIONAL PROVISIONS APPLICABLE

§ 458.30 Removal of elected officers.

When an elected officer of a local labor organization is charged with serious misconduct and the constitution and bylaws of such organization do not provide an adequate procedure meeting the standards of § 417.2(b) of this chapter for removal of such officer, the labor organization shall follow a procedure which meets those standards.

[62 FR 6094, Feb. 10, 1997]

§ 458.31 Maintenance of fiscal integrity in the conduct of the affairs of labor organizations.

The standards of fiduciary responsibility prescribed in section 501(a) of the LMRDA are incorporated into this subpart by reference and made a part hereof.

§ 458.32 Provision for accounting and financial controls.

Every labor organization shall provide accounting and financial controls necessary to assure the maintenance of fiscal integrity.

§ 458.33 Prohibition of conflicts of interest.

- (a) No officer or agent of a labor organization shall, directly or indirectly through his spouse, minor child, or otherwise
 - (1) have or acquire any pecuniary or personal interest which would conflict with his fiduciary obligation to such labor organization, or
 - (2) engage in any business or financial transaction which conflicts with his fiduciary obligation.
- (b) Actions prohibited by paragraph (a) of this section include, but are not limited to, buying from, selling, or leasing directly or indirectly to, or otherwise dealing with the labor organization, its affiliates, subsidiaries, or trusts in which the labor organization is interested, or having an interest in a business any part of which consists of such dealings, except bona fide investments of the kind exempted from reporting under section 202(b) of the LMRDA. The receipt of salaries and reimbursed expenses for services actually performed or expenses actually incurred in carrying out the duties of the officer or agent is not prohibited.

§ 458.34 Loans to officers or employees.

No labor organization shall directly or indirectly make any loan to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of \$2,000.

§ 458.35 Bonding requirements.

Every officer, agent, shop steward, or other representative or employee of any labor organization subject to the CSRA or FSA (other than a labor organization whose property and annual financial receipts do not exceed \$5,000 in value), or of a trust in which a labor organization is interested, who handles funds or other property thereof shall be bonded in accordance with the principles of section 502(a) of the LMRDA. In enforcing this requirement the Director will be guided by the interpretations and policies followed by the Department of Labor in applying the provisions of section 502(a) of the LMRDA and by applicable court decisions.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 78 FR 8026, Feb. 5, 2013]

§ 458.36 Prohibitions against certain persons holding office or employment.

The prohibitions against holding office or employment in a labor organization contained in section 504(a) of the LMRDA are incorporated into this subpart by reference and made a part hereof. The prohibitions shall also be applicable to any person who has been convicted of, or who has served any part of a prison term resulting from his conviction of, violating 18 U.S.C. 1001 by making a false statement in any report required to be filed pursuant to this subpart, or who has been determined by the Director after an appropriate proceeding pursuant to §§ 458.66 through 458.92 to have willfully violated § 458.27: *Provided, however,* That the Director or such other person as he may designate may exempt a person from the prohibition against holding office or employment or may reduce the period of the prohibition where he determines that it would not be contrary to the purposes of the CSRA or the FSA and this section to permit a person barred from holding office or employment to hold such office or employment.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31312, Aug. 1, 1985, as amended at 78 FR 8026, Feb. 5, 2013]

§ 458.37 Prohibition of certain discipline.

No labor organization or any officer, agent, shop steward, or other representative or any employee thereof shall fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of the CSRA or FSA or this subchapter.

§ 458.38 Deprivation of rights under the CSRA or FSA by violence or threat of violence.

No labor organization or any officer, agent, shop steward, or other representative or any employee thereof shall use, conspire to use, or threaten to use force or violence to restrain, coerce, or intimidate, or attempt to restrain, coerce, or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the provisions of the CSRA or FSA or of this subchapter.

Subpart B—Proceedings for Enforcing Standards of Conduct

§ 458.50 Investigations.

- (a) When he believes it necessary in order to determine whether any person has violated or is about to violate any provision of §§ 458.26 through 458.30, the Chief, DOE may cause an investigation to be conducted.
- (b) When he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this part (other than §§ 458.2, 458.26 through 458.30 or 458.37), a District Director may conduct an investigation.
- (c) The authority to investigate possible violations of this part (other than § 458.2 or 458.37) shall not be contingent upon receipt of a complaint.

[50 FR 31312, Aug. 1, 1985. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

§ 458.51 Inspection of records and questioning.

In connection with such investigation the Chief, DOE or a District Director or his representative may inspect such records and question such persons as he may deem necessary to enable him to determine the relevant facts. Every labor organization, its officers, employees, agents, or representatives shall cooperate fully in any investigation and shall testify and produce the records or other documents requested in connection with the investigation. This section shall be enforced in accordance with the procedures in §§ 458.66 through 458.92.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31312, Aug. 1, 1985; 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

§ 458.52 Report of investigation.

The Chief, DOE may report to interested persons concerning any matter which he deems to be appropriate as a result of an investigation of possible violations of §§ 458.26 through 458.30. The District Director may report to interested persons concerning any matter which he deems to be appropriate as a result of an investigation of possible violations of any provision of this part (other than §§ 458.2, 458.26 through 458.30 and 458.37).

[50 FR 31312, Aug. 1, 1985. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

§ 458.53 Filing of complaints.

A complaint alleging violations of this part may be filed with any district office, or any other office of the Office of Labor-Management Standards.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 63 FR 33780, June 19, 1998]

PROCEDURES INVOLVING BILL OF RIGHTS OR PROHIBITED DISCIPLINE

§ 458.54 Complaints alleging violations of § 458.2, Bill of rights of members of labor organization, or § 458.37, prohibition of certain discipline.

Any member of a labor organization whose rights under the provisions of § 458.2 or § 458.37 are alleged to have been infringed or violated, may file a complaint in accordance with § 458.53: *Provided, however,* That such member may be required to exhaust reasonable hearing procedures (but not to exceed a 4-month lapse of time) within such organization.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985]

§ 458.55 Content of complaint.

- (a) The complaint shall contain appropriate identifying information and a clear and concise statement of the facts constituting the alleged violation.
- (b) The complainant shall submit with his complaint a statement setting forth the procedures, if any, invoked to remedy the alleged violation, including the dates when such procedures were invoked and copies of any written ruling or decision which he has received.

§ 458.56 Service on respondent.

Upon the filing of a complaint, a copy of the complaint shall be served upon the respondent, and a written statement of such service shall be furnished to the District Director.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

§ 458.57 Additional information and report.

Upon the filing of a complaint pursuant to §§ 458.54 through 458.56, the District Director shall obtain such additional information as he deems necessary, including the positions of the parties and any offers of settlement.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

§ 458.58 Dismissal of complaint.

If the District Director determines that a reasonable basis for the complaint has not been established, or that an offer of settlement satisfactory to the complainant has been made, he may dismiss the complaint. If he dismisses the complaint, he shall furnish the complainant with a written statement of the grounds for dismissal, sending a copy of the statement to the respondent.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

§ 458.59 Review of dismissal.

The complainant may obtain a review of a dismissal by filing a request for review with the Director within fifteen (15) days of service of the notice of dismissal. A copy of such request shall be served on the District Director and the respondent, and a statement of service shall be filed with the Director. The request for review shall contain a complete statement of the facts and reasons upon which a request is based.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997; 78 FR 8026, Feb. 5, 2013]

§ 458.60 Actionable complaint.

If it appears to the District Director that there is a reasonable basis for the complaint, and that no offer of settlement satisfactory to the complainant has been made, he shall refer the matter to the Chief Administrative Law Judge, U.S. Department of Labor, for the issuance of a notice of hearing as set forth in § 458.69.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

§ 458.61 Transfer and consolidation of cases.

In any matter arising pursuant to the regulations in this subchapter, whenever it appears necessary in order to effectuate the purposes of the CSRA or FSA or to avoid unnecessary costs or delay, the District Director may consolidate cases within his own area or may transfer such cases to any other area, for the purpose of consolidation with any proceedings which may have been instituted in, or transferred to, such area.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

§ 458.62 Hearing procedures.

The proceedings following issuance of the notice of hearing shall be as provided in §§ 458.69 through 458.92 of this part.

PROCEDURES INVOLVING ELECTION OF OFFICERS

§ 458.63 Complaints alleging violations of § 458.29, election of officers.

- (a) A member of a labor organization may file a complaint alleging violations of § 458.29 within 1 calendar month after he has
 - (1) exhausted the remedies available under the constitution and bylaws of the labor organization and of any parent body, or
 - (2) invoked such available remedies without obtaining a final decision within 3 calendar months of such invocation.
- (b) The complaint shall contain a clear and concise statement of the facts constituting the alleged violation(s), the remedies which have been invoked under the constitution and bylaws of the labor organization and when such remedies were invoked.
- (c) The complainant shall submit with his complaint a copy of any ruling or decision he has received in connection with the subject matter of his complaint.

§ 458.64 Investigations; dismissal of complaint.

- (a) If it is determined after preliminary inquiry that a complaint is deficient in any of the following respects, the District Director shall conduct no investigation:
 - (1) The complainant is not a member of the labor organization which conducted the election being challenged;
 - (2) The labor organization is not subject to the CSRA or FSA;
 - (3) The election was not a regular periodic election of officers;
 - (4) The allegations, if true, do not constitute a violation or violations of § 458.29;
 - (5) The complainant has not complied with the requirements of § 458.63(a).
- (b) If investigation discloses
 - (1) that there has been no violation or

- (2) that a violation has occurred but could not have affected the outcome or
- (3) that a violation has occurred but has been remedied, the Chief, DOE shall issue a determination dismissing the complaint and stating the reasons for his action.
- (c) A determination dismissing the complaint may be reviewed by the Director, but only on the basis of deciding whether the Chief, DOE's decision was arbitrary and capricious. The request for review must be made within fifteen (15) days after service of notice of dismissal.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997; 78 FR 8026, Feb. 5, 2013]

§ 458.65 Procedures following actionable complaint.

- (a) If the Chief, DOE concludes that there is probable cause to believe that a violation has occurred which may have affected the outcome and which has not been remedied, he shall proceed in accordance with §§ 458.66 through 458.92.
- (b) The challenged election shall be presumed valid pending a final decision thereon as hereinafter provided in §§ 458.66 through 458.92, and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.
- (c) When the Chief, DOE supervises an election pursuant to an order of the Administrative Review Board issued under § 458.70 or § 458.91, he shall certify to the Administrative Review Board the names of the persons elected. The Administrative Review Board shall thereupon issue an order declaring such persons to be the officers of the labor organization.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 62 FR 6094, Feb. 10, 1997; 78 FR 8026, Feb. 5, 2013; 81 FR 33389, May 26, 2016]

OTHER ENFORCEMENT PROCEDURES

§ 458.66 Procedures for institution of enforcement proceedings.

- (a) Whenever it appears to the Chief, DOE that a violation of any provision of §§ 458.26 through 458.30 has occurred and has not been remedied, he shall immediately notify any appropriate person and labor organization. Within fifteen (15) days following receipt of such notification, any such person or labor organization may request a conference with the Chief, DOE or his representative concerning such alleged violation.
- (b) Whenever it appears to a District Director that a violation of this part (other than § 458.2, §§ 458.26–458.30, or § 458.37) has occurred and has not been remedied, he shall immediately notify any appropriate person and labor organization. Within fifteen (15) days following receipt of such notification, any such person or labor organization may request a conference with the District Director or his representative concerning such alleged violation.
- (c) At any conference held pursuant to this section, the Chief, DOE or District Director may enter into an agreement providing for appropriate remedial action. If no person or labor organization requests such a conference, or upon failure to reach agreement following any such conference, the Chief, DOE or District Director shall institute enforcement proceedings by filing a complaint with the Chief Administrative Law Judge, U.S. Department of Labor, and shall cause a copy of the complaint to be served on each

respondent named therein. If an agreement is reached and the Chief, DOE or District Director concludes that there has not been compliance with all the terms of the agreement, he may refer the matter to the Director for appropriate enforcement action or file a complaint with the Chief Administrative Law Judge.

[50 FR 31313, Aug. 1, 1985. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997; 78 FR 8026, Feb. 5, 2013]

§ 458.67 Standards complaint; initiation of proceedings.

A complaint filed under § 458.66 shall constitute the institution of a formal enforcement proceeding in the name of the Chief, DOE or District Director, who shall be the only complaining party in the proceeding and shall, where he believes it appropriate, refrain from disclosing the identity of any person who called the violation to his attention (except in proceedings involving violations of § 458.29, Election of officers). The complaint shall include the following:

- (a) The name and identity of each respondent.
- (b) A clear and concise statement of the facts alleged to constitute violations of the CSRA or FSA or of this part.
- (c) A statement of the relief requested.
- (d) In any complaint filed by the Chief, DOE on the basis of a complaint received from a member of a labor organization pursuant to § 458.63, a statement setting forth the procedures, if any, followed to invoke available remedies, including the dates when such procedures were invoked, and the substance of any ruling or decision received by the complaining member from the labor organization or any parent body.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

§ 458.68 Answer.

- (a) Within twenty (20) days from the service of the complaint the respondent shall file an answer thereto with the Chief Administrative Law Judge and shall serve a copy on all parties. The answer shall be signed by the respondent or his attorney or other agent or representative.
- (b) The answer
 - (1) shall contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or
 - (2) shall state that the respondent admits all of the allegations in the complaint. Failure to file an answer to or plead specifically to any allegation in the complaint shall constitute an admission of such allegation.

Subpart C—Hearing and Related Matters

§ 458.69 Notice of hearing.

The Chief Administrative Law Judge shall issue and cause to be served upon each of the parties a notice of hearing. The notice of hearing shall include the following:

- (a) The name and identity of each party and the case number.
- (b) A statement of the authority and jurisdiction under which the hearing is to be held.
- (c) A statement of the time and place of the hearing which shall be not less than fifteen (15) days after service of the notice of hearing.

§ 458.70 Administrative Law Judge.

Each enforcement proceeding instituted pursuant to this part shall be conducted before an Administrative Law Judge designated by the Chief Administrative Law Judge for the Department of Labor except, however, that when the Administrative Law Judge approves a stipulated agreement for appropriate remedial action, he shall prepare his recommended decision and order adopting that agreement and transfer the case to the Administrative Review Board. The Administrative Review Board may order the remedial action set forth in the stipulated agreement or take such other action as it deems appropriate.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 78 FR 8026, Feb. 5, 2013; 81 FR 33389, May 26, 2016]

§ 458.71 Procedure upon admission of facts.

The admission of all the material allegations of fact in the complaint shall constitute a waiver of hearing. Upon such admission, the Administrative Law Judge without further hearing shall prepare his recommended decision and order in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint.

§ 458.72 Motions and requests.

- (a) Motions and requests made prior to the hearing shall be filed with the Chief Administrative Law Judge. The moving party shall serve a copy of all motions and requests on all other parties. Motions during the course of the hearing may be stated orally or filed in writing and shall be made part of the record. Each motion shall state the particular order, ruling, or action desired, and the grounds therefor. The Administrative Law Judge is authorized to rule upon all motions made prior to the filing of his report.
- (b) A party may request the attendance of witnesses and/or the production of documents at a hearing held pursuant to this part, by written application before the hearing or orally during the hearing. Copies of an application filed before the opening of the hearing shall be served on the other parties, who may file written objections to the request within seven (7) days after such service. The Administrative Law Judge after consideration of any objections, shall grant the request provided the specified testimony and/or documents appear to be necessary to the matters under investigation. If the Administrative Law Judge denies the request he shall set forth the basis for his ruling. Upon the failure of any party or officer or employee of any party to comply with such a request which has been granted by the Administrative Law Judge, the Administrative Law Judge and the Administrative Review Board may disregard all related evidence offered by the party failing to comply with the request or take such other action as may be appropriate.
- (c) Employees who have been determined to be necessary as witnesses at a hearing shall be granted official time only for such participation as occurs during their regular work hours and when they would otherwise be in a work or paid leave status. Participation as witnesses includes the time necessary to travel to and from the site of a hearing, and the time spent giving testimony and waiting to give testimony, when such time falls during regular work hours.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 78 FR 8026, Feb. 5, 2013]

§ 458.73 Prehearing conferences.

- (a) Upon his own motion or the motion of the parties, the Administrative Law Judge may direct the parties or their counsel to meet with him for a conference to consider:
 - (1) Simplification of the issues;
 - (2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitations;
 - (3) Stipulations, admissions of fact, and contents and authenticity of documents;
 - (4) Limitation of the number of expert witnesses; and
 - (5) Such other matters as may tend to expedite the disposition of the proceeding.
- (b) The record shall show the matters disposed of by order and by agreement in such prehearing conferences. The subsequent course of the proceeding shall be controlled by such action.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985]

§ 458.74 Conduct of hearing.

Hearings shall be conducted by an Administrative Law Judge and shall be open to the public unless otherwise ordered by the Administrative Law Judge.

§ 458.75 Intervention.

Any person desiring to intervene in a hearing shall file a motion in writing in accordance with the procedures set forth in § 458.72 or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. Such a motion shall be filed with the Administrative Law Judge who shall rule upon such motion.

§ 458.76 Duties and powers of the Administrative Law Judge.

It shall be the duty of the Administrative Law Judge to inquire fully into the facts as they relate to the matter before him and to prepare, serve and submit his recommended decision and order pursuant to § 458.88. Upon assignment to him and before transfer of the case to the Administrative Review Board, the Administrative Law Judge shall have the authority to:

- (a) Grant requests for appearance of witnesses or production of documents;
- (b) Rule upon offers of proof and receive relevant evidence;
- (c) Take or cause depositions to be taken whenever the ends of justice would be served thereby;
- (d) Limit lines of questioning or testimony which are immaterial, irrelevant, or unduly repetitious;
- (e) Regulate the course of the hearing and if appropriate, exclude from the hearing persons who engage in misconduct and strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

- (f) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon his own motion;
- (g) Dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions to amend pleadings; also to recommend dismissal of cases or portions thereof, and to order hearings reopened prior to issuance of his recommended decision and order;
- (h) Examine and cross-examine witnesses and introduce into the record documentary or other evidence;
- (i) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
- (j) Continue, at his discretion, the hearing from day-to-day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;
- (k) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice and also concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided*, That the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's recommended decision and order, of the matters so noticed, and shall be given adequate opportunity to show the contrary;
- (l) Correct or approve proposed corrections of the official transcript when deemed necessary; and
- (m) Take any other action necessary under the foregoing and not prohibited by these regulations.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 78 FR 8026, Feb. 5, 2013]

§ 458.77 Rights of parties.

Any party shall have the right to appear at such hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent prescribed by the Administrative Law Judge. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

§ 458.78 Rules of evidence.

The technical rules of evidence do not apply. Any evidence may be received, except that an Administrative Law Judge may exclude any evidence or offer of proof which is immaterial, irrelevant, unduly repetitious, or customarily privileged. Every party shall have a right to present his case by oral and documentary evidence and to submit rebuttal evidence.

§ 458.79 Burden of proof.

In a hearing concerning an alleged violation of § 458.2 (Bill of rights of members of labor organizations) or § 458.37 (Prohibition of certain discipline), the complainant shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. In a hearing concerning an alleged violation of §§ 458.26–458.30, the Chief, DOE shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. In a hearing concerning an alleged violation of other standards of conduct matters, the District Director shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

§ 458.80 Unavailability of Administrative Law Judges.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Law Judge shall designate another Administrative Law Judge for the purpose of further hearing or issuance of a recommended decision and order on the record as made, or both.

§ 458.81 Objection to conduct of hearing.

- (a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.
- (b) Automatic exceptions will be allowed to all adverse rulings. Rulings by the Administrative Law Judge shall not be appealed prior to the transfer of the case to the Administrative Review Board, but shall be considered by the Administrative Review Board only upon the filing of exceptions to the Administrative Law Judge's recommended decision and order in accordance with § 458.88.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 78 FR 8026, Feb. 5, 2013]

§ 458.82 Motions after a hearing.

All motions made after the transfer of the case to the Administrative Review Board, except motions to correct the record under § 458.76(l), shall be made in writing to the Administrative Review Board. The moving party shall serve a copy of all motion papers on all other parties. A statement of service shall accompany the motion. Answers, if any, must be served on all parties and the original thereof, together with a statement of service, shall be filed with the Administrative Review Board after the hearing, within seven (7) days after service of the moving papers unless it is otherwise directed.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 78 FR 8027, Feb. 5, 2013]

§ 458.83 Waiver of objections.

Any objection not duly urged before an Administrative Law Judge shall be deemed waived.

§ 458.84 Oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

§ 458.85 Transcript.

An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript will be provided to the parties, in accordance with the provisions of part 70 of this title, or they may be examined in the district office in whose geographic jurisdiction the hearing has been held.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 63 FR 33780, June 19, 1998]

§ 458.86 Filing of brief.

Any party desiring to submit a brief to the Administrative Law Judge shall file the original within ten (10) days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause, the Administrative Law Judge may grant a reasonable extension of time. Copies of such brief shall be served on all of the parties to the proceeding. Requests for additional time in which to file a brief under authority of this section made after the hearing shall be made in writing to the Administrative Law Judge and copies thereof served on the other parties. A statement of such service shall be furnished. A request for extension of time shall be received not later than three (3) days before the date such briefs are due. In the absence of the Administrative Law Judge such requests shall be ruled upon by the Chief Administrative Law Judge. No reply brief may be filed except by permission of the Administrative Law Judge.

§ 458.87 Proposed findings and conclusions.

Within fifteen (15) days following the close of the hearing, the parties may submit proposed findings and conclusions to the Administrative Law Judge, together with supporting reasons therefor, which shall become part of the record.

§ 458.88 Submission of the Administrative Law Judge's recommended decision and order to the Administrative Review Board; exceptions.

- (a) After the close of the hearing, and the receipt of briefs, or findings and conclusions, if any, the Administrative Law Judge shall prepare his recommended decision and order expeditiously. The recommended decision and order shall contain findings of fact, conclusions, and the reasons or basis therefor including credibility determinations, and recommendations as to the disposition of the case including the remedial action to be taken.
- (b) The Administrative Law Judge shall cause his recommended decision and order to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transfer the case to the Administrative Review Board including his recommended decision and order and the record. The record shall include the complaint, the notice of hearing, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, exhibits, documentary evidence and any briefs or other documents submitted by the parties.
- (c) Exceptions to the Administrative Law Judge's recommended decision and order may be filed by any party with the Administrative Review Board within fifteen (15) days after service of the recommended decision and order, in accordance with 29 CFR part 26. The Administrative Review Board may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served on the other parties. Requests for extension of time must be received no later than three (3) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Administrative Review Board.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 78 FR 8027, Feb. 5, 2013; 86 FR 1785, Jan. 11, 2021]

§ 458.89 Contents of exceptions to Administrative Law Judge's recommended decision and

order.

- (a) Exceptions to an Administrative Law Judge's recommended decision and order shall:
 - (1) Set forth specifically the questions upon which exceptions are taken;
 - (2) Identify that part of the Administrative Law Judge's recommended decision and order to which objection is made;
 - (3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions and include the citation of authorities unless set forth in a supporting brief.
- (b) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

§ 458.90 Briefs in support of exceptions.

- (a) Any brief in support of exceptions shall be filed in accordance with 29 CFR part 26, contain only matters included within the scope of the exceptions, and contain, in the order indicated, the following:
 - (1) A concise statement of the case containing all that is material to the consideration of the questions presented;
 - (2) A specification of the questions involved and to be argued;
 - (3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.
- (b) Answering briefs to the exceptions may be filed with the Administrative Review Board within ten (10) days after service of the exceptions.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 78 FR 8027, Feb. 5, 2013; 86 FR 1785, Jan. 11, 2021]

§ 458.91 Action by the Administrative Review Board.

- (a) After consideration of the Administrative Law Judge's recommended decision and order, the record, and any exceptions filed, the Administrative Review Board shall issue its decision affirming or reversing the Administrative Law Judge, in whole, or in part, or making such other disposition of the matter as it deems appropriate: *Provided, however,* That unless exceptions are filed which are timely and in accordance with § 458.89, the Administrative Review Board may, at its discretion, adopt without discussion the recommended decision and order of the Administrative Law Judge, as contained in his recommended decision and order, shall, upon appropriate notice to the parties, automatically become the decision of the Administrative Review Board.
- (b) Upon finding a violation of the CSRA, FSA or this part, the Administrative Review Board may order respondent to cease and desist from such violative conduct and may require the respondent to take such affirmative action as it deems appropriate to effectuate the policies of the CSRA or FSA.
- (c) Upon finding no violation of the CSRA, FSA or this part, the Administrative Review Board shall dismiss the complaint.

[78 FR 8027, Feb. 5, 2013]

§ 458.92 Compliance with decisions and orders of the Administrative Review Board.

When remedial action is ordered, the respondent shall report to the Director, within a specified period, that the required remedial action has been effected. When the Director finds that the required remedial action has not been effected, he shall refer the matter for appropriate action to the Federal Labor Relations Authority (in the case of labor organizations covered by the CSRA), the Foreign Service Labor Relations Board (in the case of labor organizations covered by the FSA), or the Board of Directors of the Office of Compliance (in the case of labor organizations covered by the Congressional Accountability Act).

[78 FR 8027, Feb. 5, 2013]

§ 458.93 Stay of remedial action.

In cases involving violations of this part, the Administrative Review Board may direct, subject to such conditions as it deems appropriate, that the remedial action ordered by stayed.

[78 FR 8027, Feb. 5, 2013]



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