

INTERNAL UNION ELECTIONS – UNION PUBLICATIONS & UNION RESOURCES

Title IV of the Labor Management Reporting and Disclosure Act of 1959, as Amended (LMRDA or the Act) establishes election procedures that must be followed by all unions covered by this Act, regardless of whether their Constitution and Bylaws so provide. The Act does not spell out detailed procedures; rather, it sets minimum requirements. Beyond this, elections are to be conducted according to the Constitution and Bylaws of each union, as long as the union's rules do not conflict with the provisions of the Act.

Under Section 1209 of the Postal Reorganization Act, unions of U.S. Postal Service employees are subject to the LMRDA. Therefore, the LMRDA administered by the United States Department of Labor must be followed concerning internal union elections. In addition, sections of the Act contain provisions affecting the use of a labor union publication in internal union elections.

Section 401(g) of the LMRDA provides that: "No monies received by any labor organization by way of dues, assessment, or similar levy, and no monies of an employer shall be contributed or applied to promote the candidacy of any person in any election subject to the provisions of this title. Such monies of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for holding an election."

This means that since a union publication is funded by the union, it cannot be used for the purpose of promoting the candidacy of any individual running for union office. Also, a union website funded by the union or which involves the use of union resources to operate also cannot be used to promote (or attack) anyone's candidacy. The same is

true regarding the use of any union facilities and equipment. Such activity is an indirect expenditure of union funds which is prohibited under Section 401(g) of the LMRDA.

To avoid promoting the candidacy of any person, union publications should afford fair and comparable treatment or publicity to candidates for union office and be fair and impartial in reporting the activities of candidates.

Does the Act prevent a union-financed newspaper or magazine from including a section in which all bona fide candidates may state their case?

The Act prohibits the use of union funds to promote the candidacy of any person in an election subject to the provisions of this Act. Whether publicity in the union newspaper promotes the candidacy of any person is a matter of fact to be determined in each case. However, if a union newspaper merely makes **equal space** available to each bona fide candidate running for any particular office, it would be difficult to show this promoted the candidacy of any particular individual, **provided** the newspaper made a reasonable and demonstrable effort to advise all of the candidates of the availability of the publication for this purpose.

The law is specific in this regard. A union newspaper has the choice of all candidates for a particular office — or none. Once the publication (after consultation with their executive board and/or election committee, or due to provisions in their constitution) decides to open the newspaper to candidates, it must offer space to all candidates for that particular office.

For example: If the local union decides it is only going to give space to certain offices, this is legal provided that all candidates for those certain offices are afforded equal space in the newspaper.

Paid political advertising is legal provided that all candidates are given an equal opportunity to purchase space

for an ad. And, provided that one or more candidates is given free space and all other candidates are required to pay for the space.

Also, a union may neither attack a candidate in a union-financed publication nor urge the nomination or election of a candidate in a union-financed letter to the members.

If a local endorses candidates for national or state APWU office at a regular or specially called meeting of the general membership, the union may print this information as a **straight news story**. This news story can be reported only if the decision is made by the general membership (at a regular or specially called meeting) and not if the endorsement is made only by the executive board. However, the story must be written strictly as a news item and must not be allowed to drift over the line into an area of propaganda for (or against) those candidates who are endorsed — or who failed to gain an endorsement.

Moreover, the printing of such endorsement in a news story should be distributed to the publications normal mailing list. To increase the circulation in an effort to reach a larger audience only for the purpose of publicizing such endorsements could be construed as employing union funds and/or equipment to advance the candidacy of a candidate or candidates.

A "Letters to the Editor" column should not be used for the purpose of advancing the candidacy of an individual or individuals nor should it be used to attack a candidate or candidates. Letters to the Editor should either be eliminated or closely monitored during the election period in order to avoid conflict with the intent of the law.

These laws are not intended to restrict anyone's rights, but rather to protect the rights of the membership and to ensure equal treatment for all candidates.

UNION ELECTION GUIDELINES

If not addressed in the local constitution, the executive board and/or election committee should determine **prior to nomination** for local election, the criteria to be used for articles to be published which pertain to candidates in the election. The criteria should be approved at a general membership meeting.

Examples of these criteria are:

1. To decide whether or not to accept candidates' campaign articles for publication.

2. To decide if all offices will be accepted. (Under federal law, a union has the right to restrict campaign articles to specific offices). However, all candidates' campaign articles for the agreed upon offices must have **equal access** to the publication.

3. If campaign articles will be accepted, a decision should be made as to the maximum number of words permitted in the article and how they will be counted.

Following are some suggestions for counting words:

a) An individual's name is counted as one word.

b) Acronyms are counted as one word (e.g. APWU, COPA, USPS).

c) Words that cannot stand alone, such as with a prefix are counted as one word (e.g. pre-arbitration).

d) Hyphenated words are verified in a pre-designated dictionary. A hyphenated word in the dictionary is counted as one word. If the word is not hyphenated in the dictionary it is counted as two words. (Candidates should be advised in advance as to which dictionary will be used for the word count.)

e) If a word in the candidate's statement is not hyphenated and listed in the dictionary both ways (hyphenated or as two words), it is counted as two words (e.g. lay-off, lay off).

f) Words in the dictionary that are listed as two words, are counted as two even though written as one word in the candidate's statement (e.g. work force, work room).

g) A word hyphenated in the candidate's statement, but listed as one word (no hyphen) in the dictionary is counted as one word.

4. Candidate statements must be equally presented. This means when the candidate's statement is prepared for printing in the publication, all typographical enhancements must be removed, so as not to draw more attention to one statement over another. Bold face type, bulleted or numbered lists, type set in all caps, underlined type, or extra punctuation are examples of typographical enhancements.

5. It must be determined if candidates will be allowed free space or paid advertising space. Whatever the decision, all candidates must be treated equally. If it is decided to accept paid advertising, it must be at the regular advertising rate. If the publication does not have a regular advertising rate, determine a reasonable advertising rate and charge all candidates the same, consistent with the space used.

6. All "Letters to the Editor" should be reviewed during the election period and if necessary, restrict any letters which are nothing more than support or endorsement of a candidate. To avoid possible violations of federal law, some publications restrict all "Letters to the Editor" during the election period.

7. Officers' reports, editorials, news stories, etc. come under the same federal regulations. Therefore, this material must be carefully reviewed and references of support (or opposition) towards a candidate or candidates must be removed.

Any criteria established must be administered equally to all candidates.

UNION ELECTIONS REVIEW

No subject is more difficult for the union editor - and laden with more confusion and controversy - than internal union elections.

Past experience has shown that it is not possible to establish simple rules by which one can easily determine in all cases whether the union publication (or website) is being used for the proper reporting of news, or is being used for impermissible campaigning. Following are some general questions and answers concerning union publications and union elections. **Keep in mind that this is only a guide. Most situations involving elections depend upon the circumstances in order to determine if a violation of election laws may be involved.**

1. Does federal law place any restrictions on the role that union newspapers and union websites can play in elections of union officers?

Yes, Title IV, of the Labor-Management Reporting and Disclosure Act of 1959, as Amended (LMRDA), has been interpreted as establishing certain minimum standards for the conduct of elections of union officers.

Section 401(g) provides that no funds of a labor organization which come from dues, assessments, or similar levy can be used to promote the candidacy of any person in an election of officers subject to the provisions of Title IV. Thus, a union publication or union website that is paid for with union funds, or involves the use of union resources, cannot be used to promote (or attack) any candidate in any election of union officers.

2. What does "promote the candidacy of any person" mean?

To promote the candidacy of any person means to show a preference for a particular candidate or group of candidates. This is prohibited regardless of whether the

preference is shown by actively supporting one candidate or by attacking another candidate.

3. Is it a violation of the LMRDA for a union publication to carry articles and pictures during an election period concerning the activities of incumbent officers who are candidates in the election?

No, but the publication must be careful to observe the distinction between reporting on activities of officers that are of legitimate news interest to members and reporting on these activities in such a manner as to promote the candidacy of the officers.

For example, the number, size and display of articles and pictures concerning such officers should not be excessive in relation to normal coverage or to other matters in the publication. The content of such articles should be closely examined to ensure they cannot be considered to promote the candidacy of the officers.

4. Is a union publication prohibited from including a section in which all candidates may present their views?

The law does not prohibit the use of such a section but extreme care must be taken to ensure that all candidates for the same office are treated on an equal and nondiscriminatory basis. This includes space, use of pictures, size of pictures, use of color in pictures, type size, display and time allowed to submit material.

5. If an incumbent officer who is a candidate in an election has a regular column in a union publication, must publication of the column be halted during the election period?

No. An officer who regularly writes a column for a union publication need not halt that column during an election in which he or she is a candidate. The column can appropriately report on regular current union business, but it cannot be used to promote the candidate's campaign in

any manner and should be carried in its customary location.

6. May a union publication refuse to make any space available to candidates for campaign purposes?

Yes. A union publication may refuse to publish any campaign material if all candidates are treated equally.

7. May a union publication charge candidates for the inclusion of campaign material?

Yes. A union publication may charge for election advertisements if advertising space is available at the same rate and on a nondiscriminatory basis to all candidates and if all candidates receive equal treatment.

8. Do the restrictions discussed above apply only to the period between nominations and elections?

No. This period may begin prior to the nomination of candidates. Usually, the election period begins when nominations for office take place. However, this is considered a "gray area." Depending upon the circumstances, it could be determined that the election period began before nominations took place.

A suggestion is to follow a policy of continuity in the local union publication during the six months prior to a union election. Keep doing what has been done and avoid change without very good reason.

9. Are there any restrictions concerning the use of a union publication's mailing list?

The LMRDA forbids discrimination in favor of or against any candidate with respect to the use of lists of members. For example, if a copy of the mailing list is given to a candidate or if a candidate is allowed to copy it, similar notice and treatment must be afforded all other candidates.

10. May a union publication be used for the notice of nominations?

Yes. The LMRDA requires that all members in good standing be given a "reasonable opportunity" to nominate candidates of their own choice. A union must give

reasonable notice of: The offices to be filled by election; the date and time for submitting nominations; the place for submitting nominations; and the proper forum for submitting nominations, that is, whether written, orally from the floor, or by some other method.

Methods for reasonable notification include: Timely publication in a union newspaper which (1) is reasonably calculated to reach all members in good standing and (2) actually provides reasonable opportunity for nominations to be made.

11. May a union publication be used to fulfill the notice of election requirements of the LMRDA?

Yes. A union must mail a notice of election to each member at his/her last known home address not less than 15 days before the election. The notice must specify the date, time, and place of the election and the offices to be filled and must be in a form reasonably calculated to inform the members of the impending election.

Publication of the notice in a union newspaper is considered adequate notice if the newspaper is mailed to the last known address of each union member and if the union can reasonably expect this form of publication to bring the notice to the members' attention.

A conspicuous front-page notice would normally satisfy this requirement. On the other hand, a notice published among, and indistinguishable at a glance from classified advertisements would normally not be considered reasonably calculated to inform all members. At the very least, the front-page of the publication should contain a conspicuous item alerting the member to the notice contained elsewhere in the paper.

12. As Editor, I realize the line between permissible reporting and impermissible campaigning may be difficult to draw. What are some examples of subtle publication practices that might endanger an election?

First of all, an editor should be fair and impartial when

reporting the activities of candidates. During the election period, an editor should avoid changes in the publication that could be interpreted as promoting the candidacy of an individual.

Examples of subtle publication practices:

a) The president of a local union, who is a candidate for office in an election, traditionally has a column in the local union publication that is carried on an inside page. However, a few months before the election the president's column is transferred to the front page.

b) For no discernible journalistic reason, and just prior to the election, the local union publication begins to use a larger or more attractive picture than had been previously used, of an incumbent officer who is a candidate for reelection.

c) In advance of the election, the local union publication carries stories about insignificant events in which the accomplishments of the individuals who are candidates for office in the election are puffed out of proportion.

d) Suddenly, and without reason, photos of a non-incumbent candidate for local union office appear in the publication. The photos are of non-events, staged events, or of real events in which the featured member-candidate would not be expected to participate.

e) Uncomplimentary photos of opposition candidates are printed.

f) An incumbent candidate for local union office, a few months prior to local union election, begins writing a column in the local publication. Prior to this no such written report was given to the membership even though one was expected and would have been considered to be a normal function of the person's office.

g) A non-incumbent candidate submits an article for publication in the newsletter a few months prior to the election. The article makes no mention of the fact that the

individual is a candidate. However, this person has never submitted an article in the past even though the publication was open for contributions by the membership.

13. Could it be a violation to send E-mail messages to APWU members and other locals or post information on the local's website encouraging the nomination and/or election of a candidate for union office?

Yes. Any use of union facilities and equipment for the purpose of promoting someone's candidacy is an indirect expenditure of union funds which is a prohibited activity under Section 401(g) of the LMRDA.