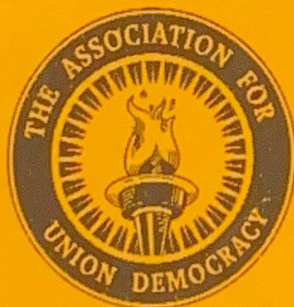


How to Get an Honest Union Election

by Herman Benson



For a Strong
Labor Movement

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Contents

The dangers	3
Why they steal votes	5
Sloppy elections	7
How they steal elections	8
A few words about the law	11
Who can vote	13
Qualifications for running for office	13
Campaigning	17
Impartial election agencies	30
Election safeguards	32
Secret ballot	32
Observers	33
Paper ballots and the war on inflation	37
Elections by mail ballot	39
In person voting by paper ballot	46
Voting by machine	49
Counting the ballots	52
Conclusion	54
A set of election rules approved by a federal judge	55



"NOW WE WILL HAVE TO RUN IT HONESTLY AS USUAL
FOR A CHANGE!"

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Cartoons by Frank Bresinger

The dangers

“How can we get a fair and square election in our local?” We hear that question more and more at the Association for Union Democracy; and it is not easy to answer, which is why we have decided to print this little booklet. If your union’s constitution and bylaws already provide reasonably democratic election rules, and if your leadership is fair-minded enough to enforce them impartially, your troubles are mostly over. But, then, you wouldn’t be asking the question.

If, however, your bylaws are defective, or if your leadership violates even the best bylaws, you surely do have a problem. If you suspect that an election has been illegal, or even stolen, you might, under certain limited conditions, complain to the U.S. Department of Labor, or even get into state or Federal court; but that should be a last resort, often an expensive and difficult move, when all else fails. The suggestions in this booklet are intended to help you try to resolve some of the issues right within the union.

This handbook warns against election fraud and vote stealing, but that could be misleading, because more elections are lost than stolen. That is, most defeated opposition candidates simply failed to convince enough local members to vote for them. But that doesn’t diminish the need for this handbook. Even if most local officers who are declared elected are actually and genuinely elected with an honest plurality, it is still essential to know how to prevent election fraud. There is too much at stake to get careless.

Look at it this way: if you were a bank teller reading a handbook on detecting counterfeit money, you would study it carefully even though most bills that pass through your hands are actually genuine. The bank’s concern goes beyond the desire to protect individual clients from getting stuck with phoney. Counterfeiting must be driven out relentlessly not for the sake of an individual but to protect the integrity of the nation’s monetary system.

Election fraud in unions debases the integrity of the labor movement as surely as counterfeiting debases the nation’s coinage. Stealing elections does more than cheat one individual candidate to the advantage of another. It destroys confidence in union government; it undermines the basis of free democratic trade unionism; it destroys the right of workers to control their own unions and imposes an officialdom upon them. By defending honest elections, we defend the labor movement and uphold the character of unions as genuine workers’ institutions. Honest elections bolster confidence in union leadership as the genuine choice of the members.

How widespread?

How widespread is the danger of stolen union elections? No one really knows; we can only speculate. In your international, surely in your local, old time unionists will have strong opinions on the subject, especially those who have run for office; and their opinions should be enlightening. Hear them out, and then reach your own conclusion about your union.

We do know that the U.S. Department of Labor reports the existence of about 68,000 local unions affiliated with U.S.-based internationals. They select officers, executive board members, stewards, and members of various committees. To fill these posts, there must be anywhere from 200,000 to 350,000 unionists, or even more, who serve in one capacity or another, most of them elected, without salary or for token payments.

Nobody fights to the death over jobs which entail hard work and often nerve-wracking responsibility and give in return, not money, but interesting activity, occasionally some prestige, and mostly the self-satisfaction of helping fellow workers. Often, with only a single candidate available, there is no contest at all. But even when there is rivalry, most candidates are too proud to stoop to stealing votes. They are ready to do a thankless job if their brother and sister unionists want them; if not, so much the worse for the voters!

It is these hundreds of thousands of activists, dedicated to unionism, who keep it strong as a force for social justice. A fair and honest electoral system permits this kind of unionist to dominate the labor movement and shape its character as a true representative of wage earners.

When the representative works without pay or public recognition and the spur is service to others, there is hardly any motive for stealing elections. It would be like fighting viciously for the right to wash dishes after a Saturday night party. But in certain positions, labor officials can do more than serve humanity; they can serve themselves instead. And when Big Money enters, beware!

In most internationals and in some locals, the officers control great sums of cash and enormous powers. Their own salaries and perquisites soar. They pass out lucrative jobs to loyal supporters. They have influence over huge insurance funds. We're talking about millions and millions of dollars.

Despite that, many labor leaders are ready to stand on the record and let their jobs hang upon the decisions of union members in fair elections. Outside the area of public government, certainly in no other private institutions, nowhere else does the disposition of such vast accumulations of wealth and power hinge directly and immediately upon the democratic decision of people.

Sometimes the expected happens: carried away by temptation, some labor leaders decide to hold on, come what may; they have no intention of facing the risks of democratic elections. In some industries, they can make secret deals with

crooked employers. And then, attracted by the lure of Big Money, organized crime families force their way into positions of power in some unions.

Crooked officials and racketeers don't need to embellish their motives with hypocrisy. There for the take, they are just as adept at stealing elections as stealing money, and surely as skillful. Other labor leaders, however, who would never stoop to stealing money are perfectly capable of stealing elections; and for that, they require a flexible capacity for rationalization. They have to convince themselves that they falsify election results, not for their own benefit—not at all! but only to protect foolish or misguided workers from the tragic consequences of voting out the old dependable leaders and replacing them with new and unpredictable ones. A strange malady warps the minds of this kind of leaders, afflicting them with a refracted sense of reality. Because they have disposed so long of such quantities of money, power, and jobs, they confuse the union's interests with their own. They forget that the union was there before them and will endure when they are gone. Actually they are powerful only because the union is strong; but they imagine that the union is strong only because they hold power in it. And so they determine to hold that power at all costs—for the good of the workers, of course! When one union official was caught stealing votes, here is how he justified his behavior:

I took an oath to uphold the tenets and doctrines which our Constitution sets forth; which calls upon all of us to preserve, protect, unify, and solidify our International Union. In the heat of a bitter election, to preserve the principles I took an oath to uphold, I did what I thought was right. I dedicated myself to prevent the destruction of our organization by individuals who I personally assessed to be extreme radicals; seeking only to infiltrate into positions of leadership in our union to cause dissolution in the labor movement with their subversive propensities. . . . My history in the labor movement has been to support my International Officers in the servicing of my fellow members. . . .

With such noble sentiments as a guide, he was willing to subvert union democracy and protect the union—against its own members.

Why they steal votes

They steal votes to guarantee their own "election." Of course. But that's only part of the truth, because frequently they stuff ballot boxes even when they could just as easily win reelection even in an honest count. Why?

Why do dictatorial rulers run controlled elections in their countries in which they report 99% for the regime? Hardly anyone believes these results. And authoritarian dictators and totalitarian tyrants don't have to steal elections; they don't even have to schedule them. But it is an effective device for demoralizing potential opposition. An opposition needs some

means of verifying the extent of its support among the people. In Poland, Solidarity was an historic event in the struggle against tyranny because the people succeeded in demonstrating that millions of people opposed the dictatorial state.

Bear that in mind when you think about dishonest union elections. In unions, votes are stolen not only to win but to win big enough to demoralize all rivals. Those who steal elections aim to make insurgency appear futile and impossible; they want to be elected today and never to be challenged again. In a truly democratic atmosphere, very few ruling administrations can last indefinitely. Those in power get flabby, voters become restless, the opposition begins to get a hearing from the membership. But what if there is no opposition? Stealing votes is a way to avoid future opposition. Look at it this way:

You and your colleagues finally decide to run an opposition ticket. You can prove that the incumbents have been careless with the union's money; you know there is favoritism in hiring; members get a raw deal in negotiations; you are confident you could get better pension and insurance benefits. Dissatisfaction seems to be growing among the members. You pool resources, spend money, print literature, hire a lawyer to protect your election rights. You plan, you work: up early to reach the job sites, up late to get out mailings. All the things you must do to run a serious campaign. And it looks good, members respond and urge you on. You think maybe you can make it. Then comes election day and the results are reported by the official tellers (administration-appointed, of course).

All right, so you lost. You can't win them all. But here comes the hard question. How did you really do? How badly were you beaten?

Suppose after all that work, the election committee announces that the administration slate got 2,000 votes and you got only 200. Ten to one! How do you feel now? The hell with it, you say. never again; the membership is too stupid or doesn't give a damn. If they want that cruddy bunch, let them have it. You decide the whole thing is hopeless; why break your head against a wall of indifference? In the next election you are out of the picture; the administration coasts in without opposition.

But for all you know, the reported returns may have been a fraud; it may never have happened that way at all; votes may have been stolen wholesale. Now, consider a quite different scenario:

This time, you manage to get an honest count. The administration was reelected with 1,200 votes. You got 1,000. Sure, you lost, but considering the administration's usual advantages, you did remarkably well. Obviously the ranks are responding to your message. Now you know, now you are sure there is widespread discontent; and you may do better next time now that the administration's aura of invincibility has been lifted. You prepare for the next election knowing that victory is possible, confident that you have forced the administration to be more responsive. Win or lose in a fair election, you can ac-

compish something for the membership and be proud of it.

An honest count, then, is more than a matter of winning an election; win or lose, it is your obligation to insist that votes be accurately reported. It is not your personal prestige that is at stake, or theirs, but the survival of union democracy and the possibility of change.

Sloppy elections

Election fraud is not the only curse. Another problem—a lesser but still harmful one—is an election run honestly, but so sloppily that confidence in the outcome is undermined. For example, consider a local where ballots are handed out slipshod, and voters mark them right out in the open. Everyone takes for granted that all this is O.K., because that's how it has always been done. But it is not; it is improper and it is illegal. The law requires a secret ballot election of officers in your local.

You may not take it seriously in your local, because you are sure that your local officers and election committee are honest and dependable, and that the results are an accurate reflection of the voters' choice. But it is dangerous to get members accustomed to bad election habits. Who knows? Some day the officials may not be so honest. Besides, any member could challenge the election and probably succeed in having it voided.

Sometimes even the most trustworthy leaders bridle at suggestions for new election procedures, considering proposals for change as a slur on their integrity. They are like honest bookkeepers whose system for filing vouchers is hopelessly chaotic but who resent instructions to adopt more efficient methods as an implied accusation that they are pilfering money. Not at all!

One day the president of a local subdivision, running for reelection in a mail ballot referendum, came to the Association for Union Democracy to complain that the election would be fraudulent. He was a dissident; the local leadership wanted to defeat him and was supporting a rival candidate in the subdivision election. Ballots from about 200 voters were customarily mailed to the union office where they were held, without controls, until they were counted by an official election teller, a person appointed by the local administration, the same that was eager to defeat our complainant. Not good procedure.

The union's reputation for running fair elections was excellent. It gave opposition slates full opportunity, at union expense, to reach the entire membership. It retained a fine impartial outside agency to run the election of its local officers. True, the election in this small local subdivision was supervised by the union's own appointee, but she was a person known to our AUD staff for her integrity. It seemed obvious that our complainant's fears of a stolen election were baseless. Nevertheless we suggested that the complainant go back to the union and request that ballots be mailed to a locked postbox

which would be opened only on the day of the count in full view of observers for both sides.

When the union's election teller rejected the request, insulted by this apparent questioning of her reputation for integrity, our complainant was now certain that the election would be stolen. Actually, however, he won reelection by a 2 to 1 vote. Nevertheless, he was justified in asking for guarantees, and the union was wrong to reject the request. What if the vote had gone the other way and our complainant had been defeated? One-third of the voters might have been convinced that the election had been stolen. Lesson: even in the best union, scrupulous election procedures are essential so that voters can be confident that their choice of officers is respected.

How they steal elections

How do they steal elections? Human ingenuity is boundless—and this is one of the less admirable products of that principle. We cite some examples here, not because you are likely to encounter exactly these situations, but only to alert you to the multifarious varieties of strange electoral practices.

IUE (electrical workers)

One experience is amply documented. In 1964, while mail ballots were being counted in the election of IUE president, tellers discovered that their man, the incumbent, was falling behind badly. At that point, the count was taking place at two different locations; and the insurgent, who was running ahead, was adequately represented by observers at both of them. The tellers simply opened up three additional counting locations but refused to allow additional observers for the challenger. At the unguarded spots, the "count" was based upon the unchecked imagination of the pro-incumbent tellers. The incumbent was declared elected, but a later recount by the U.S. Labor Department revealed that the challenger, who had been swindled out of thousands of votes, had actually won by a large majority.

Seamen

A seaman tells this story: Seamen visited one union hall or another all over the country to pick up ballots. Right outside one hall was a U.S. postbox, red, white, and blue and tried and true, especially placed there for the election. Inside the hall, voters marked ballots in secret, sealed them in an envelope, and deposited them in the mail box as they left the hall. What could be fairer? Flawless? Safe? Not quite. When the hall closed for business, some nasty person turned the box upside down, removed the ballots, and substituted others marked predictably for the administration. It appears that someone had forgotten to bolt the postbox into the concrete.

A waterfront worker tells this one: Members voted right in the union hall by dropping paper ballots into a locked ballot box in the presence of observers. In a little anteroom, just off

the voting hall, the incumbent officials had prepared a duplicate box, identical with the one in use, except that it was already pre-stuffed with ballots efficiently marked for the incumbents. The voting dragged out all day; observers got a bit tired. Two of the pro-administration cronies, pretending to be tipsy, acted out a rehearsed fracas in the hall which diverted attention from the real ballot box for just a moment. In one swift graceful motion, the officials, standing by, switched boxes. Nothing to it.

Truckdrivers

A truck driver tells how he came early to be among the first to vote at his local, where ballots were customarily deposited in a frail wooden box. Having studied American History in public school, and knowing all about George Washington and the cherry tree, he concealed under his jacket a sharp little hatchet. He was fourth in line, so that only three votes had been cast when his turn came; at which moment, he drew forth the little hatchet, hacked open the magic box, and watched scores of ballots come tumbling out. In the few minutes that it took our hero to reach the box, those three fertile slips of paper had proliferously multiplied.

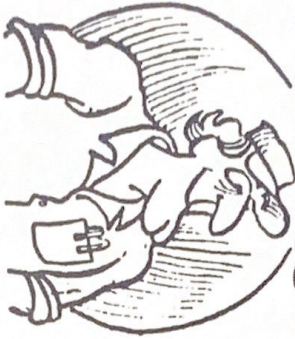
Postal workers

Pretty crude stuff, you will say. Then consider the tale told by a postal worker about the mail ballot election in his local. Members mailed ballots to a locked postbox. No one was permitted access to the box until the count was scheduled, at which time the ballots were removed from the box under the watchful scrutiny of diligent observers from both sides. The sacks of mail were carried into the trunk of a passenger car, and the trunk locked in the sight of all. A local union election committee member drove the car toward the union hall for the count, and other committee members got into the car with him. Observers for both sides drove right behind, never losing sight of the locked trunk. When they arrived at the hall, the sacks were opened and the ballots counted in full view of the observers. Now, you guess. How was the election stolen?

Simple. The trunk had a removable partition that could be opened from the rear passenger seats. While the car was being driven slowly by a presumably prudent driver, the election committee members, still careful to make sure that the observers in the car behind could keep the outside rear in view, removed ballots from the sacks and replaced them with predictable ones.

How reliable are these stories? I know the sources and I believe. In any event, union elections can inspire great imagination, the kind of creativity that could be better directed to running a union more effectively for the membership. For insurgents, critics, and oppositionists, election day can be a time for the exercise of informed and diligent skepticism.

TOM TERRIFIC



I'VE DECIDED TO RUN FOR UNION OFFICE, I'M FOOLHARDY ENOUGH TO THINK I CAN DO GOOD!

YES DEAR, BUT DO YOU HAVE THE VOTES?

HE ELICITS SUPPORT!

YEH! THATS RIGHT!

WE CAN HAVE A DECENT UNION AGAIN

HE GETS A WARNING! THE BOSS SAYS THERES MORE THAN ONE WAY TO WIN, AND HE KNOWS EM ALL, GUB!

SORRY, I WILL NOT SHIRK MY DUTY, NO DISRESPECT INTENDED

YOUR VOTE CAN MAKE THE DIFFERENCE... IF IT'S COUNTED OF COURSE

WE DID IT! THERE BUT FOR THE GRACE OF THE VOTERS AND THE AID BOOKLET GO I!

Tom Terrific

A few words about the law

Certain rights in union elections are, presumably, protected by law, especially federal law; and it is true that the law can sometimes be of great help. But that fact sometimes deludes unionists into imagining that if they rush quickly to the nearest government enforcement agency, discover that rare, dedicated, able lawyer (especially one who works for nothing and can live on air), and file several fast-acting (and, of course, successful) lawsuits, all will be well and their union restored promptly to decency, democracy, militancy, and beauty. But there are no legal quick fixes.

The law can never substitute for hard work inside your union, only supplement it. If you are not ready for that, then forget it. If you bring genuine issues to the membership, publish handbills and newsletters, sometimes run candidates for office, make realistic proposals for reform, and try to win membership support, then and then only, the law and the lawyers may give you that extra measure of support to make your efforts effective. But if you expect to avoid all that time-consuming activity by finding someone else to do the job for you—judges, church ministers, lawyers, the mayor, administrative agencies, the D.A., congressmen, reporters, professors, even AUD, or whoever—you will search eternally in vain. Like this pamphlet, the law helps only those who help themselves. And you can hardly expect to do it alone like an avenging lone ranger. You'll probably have to organize a caucus, prepare a slate of candidates, involve other members in the campaign, and collect money. Yes, you should be aware of all your legal rights, but as a guide to action, not as a substitute.

Public and private employees

The rights of private employees inside their unions have a substantial measure of protection under federal law, particularly the Labor Management Reporting and Disclosure Act (LMRDA); and the rights of federal government workers, under the Civil Service Reform Act. Postal workers, as an exception, are the only federal employees whose unions are explicitly subject to the LMRDA. But other public employees, that is, those working for city, state, and local government agencies, have few protections under federal law; the election of officers of unions composed exclusively of state, city, and local employees are not covered at all by federal law. But if a predominantly public employees union enrolls even a few private employees, any election of officers in which those private employees can vote *are* covered by LMRDA. Local gov-

ernment employees may be protected by state law. In one instance, a New Jersey state judge ruled that the LMRDA, by analogy, offers a guide to what are reasonable democratic practices in public employee unions under state law.

This pamphlet will find it convenient and helpful to mention the LMRDA, but these references should not be considered an adequate guide to your legal rights. A list of other available literature which you might want to study is appended here in a brief bibliography. Our principal aim here is to offer a guide *inside your union* in the hope of avoiding the need to appeal outside. In the end, despite your best efforts, you may be forced to go to an outside government agency or even to sue in court. In a way, this booklet is an effort to make that course unnecessary.

Union "officers" defined

In the main, we will discuss the election of union *officers*. Not that other elections are not important—they are—but only because the elections of union officers in the private sector is regulated by federal law; consequently, we can draw upon a large body of experience, opinion, and administrative regulations as a guide to what is already widely considered as reasonable, and often indispensable, in the conduct of fair, honest, democratic union elections.

The LMRDA defines an "officer" as "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 members of its executive board or similar governing body." The term "constitutional officer" includes any post or individual that is listed in the union's constitution (or bylaws) as an officer. The election of stewards or trustees is not subject to the law unless the holders of these posts are listed as officers in the union constitution or become members of the executive board by virtue of their office.

(Note: any reference in this booklet to the "constitution" is meant to include bylaws, and vice versa.)

Keep this in mind however: even though the election provisions of federal law do apply only to "officers," procedures which are proper to safeguard those elections are usually appropriate to most voting, except on minor matters. What you learn in this connection will have some bearing on fair referendums, election of stewards and shop committee members, voting on contracts, and other major decisions made by membership vote. Even though such safeguards are not required by federal law in all voting, you might want to incorporate them into your union law, that is, in your constitution.

And further to simplify this account, we will concentrate mainly on the election of *local* officers, which—according to federal law—must be by secret ballot vote of the local members. (*International* officers must be elected either by secret ballot vote of the membership or by delegates at conventions. If they are elected by *membership vote*, most of what applies

to the election of local officers will be relevant, except that nomination procedures are usually more elaborate for international office. If they are elected by *delegates*, then those delegates must be elected by secret ballot and virtually everything that applies to local officers applies to their election.)

Local officers must be elected every three years; international officers every five years.

Who can vote?

The D of L rules provide that all members in good standing can vote, although a union may establish certain “reasonable” restrictions like, for example, requiring a minimum six months membership prior to the election, or barring apprentices. Such qualifications are usually established in the union constitution. (Reminder: this handbook refers to “bylaws” and to “constitutions” without distinction. Where one is mentioned, the other is also implied.) To be in good standing, a member must be paid up in dues or must not have fallen in arrears for a period longer than specified in the constitution, usually one to three months.

However, members on checkoff may not be barred from voting if they have fallen in arrears only because an employer has failed to forward their dues to the union. A member who has been suspended after legal union disciplinary proceedings may be barred from voting.

These aspects of election procedure seldom cause too much trouble. At worst, a few individuals are affected, which could cause problems only in a very close election. Real difficulties can arise if the practical arrangements for an election make it impossible for whole groups to cast their ballots: construction workers, for example, may be scattered all over a state or region and may be required to travel long distances to get to polling places. Factory workers may not be able to reach the polls because they are scheduled to work during the balloting period. The law, as applied, requires the union to make arrangements for them to vote: by keeping polls open, or establishing more polling places, or by allowing absentee or mail balloting, or any other practical means.

Qualifications for running for office

Obviously you can't run for office unless you are nominated for a spot on the ballot. Write-in votes are excluded in some unions; and, in any event, your chances as a write-in candidate are usually nil. The precise procedures for nominations and the qualifications for candidacy are often set out in union constitutions. You must study these rules or you are liable to find yourself in the wrong place at the wrong time—and off the ballot.

The law provides that any member in good standing can run for office, subject to “reasonable” qualifications. (Naturally there are disputes over precisely what is “reasonable.”)

And there must be “a reasonable opportunity for the nomination of candidates.” We do not intend to reach the fine points here. Look through the suggested literature in our bibliography. We do want to point up some common pitfalls.

Meeting attendance rules

Some unions require that candidates for office must have attended a certain number of local union meetings in a given period before the election. For example: half of all meetings during the previous year —or two. In that event, if you fall even a single meeting short of the required quota, you simply cannot run. This kind of rule is tricky, and trips up many a potential candidate, which is usually its real purpose. It almost always excludes the vast majority, often more than 95% of the membership so that the pool of possible candidates is narrowed down to a small select circle, mostly incumbents.

In its decision of 1977 in *Local 3489 United Steelworkers*, the U.S. Supreme Court voided a local Steelworkers meeting attendance rule which excluded 96% of the local membership from running for office. It was a wise decision. Except under extraordinary circumstances, no more than 5-10% of the members attend any one union meeting. That figure drops to perhaps 2% for those who attend, say, half of all meetings in a year, so that meeting attendance rules almost always automatically disqualify 90-98% of the membership.

The Court's decision in *Local 3489* seemed to have resolved the issue by effectively ruling out meeting attendance rules; but that conclusion turned out to be an illusion which overlooked the U.S. Labor Department's uncanny talent for finding loopholes. The Department now accepts as valid meeting attendance rules which in practice still exclude over 90% of the membership but which include provisions for excusing absentees. The Labor Department may be ready to cut the heart out of a Supreme Court decision, but so far its point of view has not been expressed by a single federal court. At this writing (1987), the Department is trying to defend its position in a federal court in California, but so far without success. If you plan to run for office, don't hesitate to challenge any meeting attendance requirement. (See page 66 for update on these rules)

Continuous good standing

Another stumbling block is the rule, one which the courts have found legal, which requires candidates to remain in *continuous* good standing for a specified period prior to nominations. That period can be lengthy, even as long as two years. For example: in order to be eligible to run in January 1988, you may be required to remain in good standing for every single month since January 1986. That means if you inadvertently fall in arrears for even a single month in all that time, you would lose the right to run.

However, the Department of Labor has ruled that the union must provide “a reasonable grace period during which members may make up missed payments without loss of eligibility

for office.” There’s that elusive “reasonable” again. (*Election of Officers of Labor Organization*, 452.37, September 1978)

Like the meeting attendance rule, the good-standing rule would surely disqualify a huge proportion of the membership except for this: in many unions, most members are on check-off; and their dues are automatically transmitted to the union by the employer. The law provides that a member on check-off cannot be ruled delinquent if the employer fails to turn over the dues on time, so that this disqualifying rule does not ordinarily affect those on checkoff.

But here’s the rub: unionists are sometimes laid off for extended periods, at which point the unionists, and not the employer, are suddenly responsible for paying the dues. By the time a member is aware of the lapse, he or she may have already have fallen behind in dues; and there goes the right to run for years, depending on how often the union elects its officers. That same kind of oversight can occur when a worker changes jobs, or is out for illness, or takes an extended leave of absence during which time he or she is off the checkoff list.

Construction workers and some other trades may have to be especially vigilant. Part of their dues may be in the form of a work tax which is checked off by their employers. But they, themselves, may have to pay an additional monthly amount to the union office.

At worst, a continuous good standing rule can become a handy device that permits a repressive officialdom to prevent opposition. The incumbents, in control of the local, need only prefer charges against any potentially strong opposition candidate, even on trivial charges, bring in a verdict of guilty, and suspend the victim’s union membership for even a brief period, which is enough to bar the would-be rival from running for office. Sometimes such a repressive ploy can be successfully resisted in court, but the remedy is difficult, usually expensive, and always uncertain.

Watch out:

It’s sad (but sometimes also a little annoying) to meet those irate unionists who have been barred from the ballot because they missed meetings or once were just a little late in paying dues and who now come looking for help. True, justice is on their side; the rules *are usually unreasonable*. But now they want someone else to compose lengthy complaints, file difficult suits, and perhaps appeal from one court to another. And all they had to do at the outset, to avoid all this trouble, was to attend those meetings and pay their dues on time.

Lesson? If you intend to run for office, look ahead. 1. Attend meetings. 2. Pay your dues, in advance if necessary.

Substitute candidates

Sometimes an insurgent candidate who has accepted nomination for a top post, say president, suddenly withdraws when it is too late to select a replacement. Your group may have decided to unite around that one candidate to give your side

the best chance of defeating the incumbent. But now the only other candidate remaining on the ballot, the administration choice, coasts in without opposition. Or, you may have planned to run a complete slate for all posts only to discover that several of your people pull out at the last minute, leaving blank spaces on your ticket. Now, even if you win the election, you may not be able to control the executive board. This kind of incident could be disastrous. You have to wait two or three years for a second chance; and life is short.

Good personal reasons, like illness, might have prompted the withdrawal. Could be. But it also could be something else. Your candidate may have been threatened and walked away, understandably, out of fear. Or have been promised something. Perhaps stooges were planted by the other side. Yes, my darling daughter, such nasty things do happen. What to do? The Teamsters for a Democratic Union, with lots of experience, suggests if you suspect such possibilities, that you nominate duplicate backup candidates. If anyone withdraws from your slate, for good cause or bad, the backup candidate fills the vacated spot. If your first-choice candidate stays for the run, the backup steps out before the withdrawal deadline.

Nominations

Even though you meet all the technical requirements, you must be formally nominated before you can get on the ballot. Federal law gives every member the "equal" right to nominate candidates and a "reasonable" opportunity to make those nominations. These are rather elastic criteria.

Unions must give timely notice not only of the elections but also of the nominations. It is not sufficient to whisper the news at midnight on some deserted winter beach. Precise details are usually prescribed in union bylaws. The notice should include the date, time, place, and procedures for making nominations and must be calculated to reach all members in time; there can be a mailing to the union membership list, publication in the union paper, or any other "reasonable" means that will get the news to the entire membership.

A good favorable position on the ballot, usually at the top, can make the difference in a close election. Some unions follow the rule that those nominated earliest get the best spots. Using that tricky procedure, the chair need only recognize his friends first, usually the incumbents, to guarantee their names favorable placement on the ballot. If you become the victim of this ploy, make your protest at the meeting—and later in writing. The fairest method for assigning ballot positions is by drawing lots.

Seconding the nomination

Some unions require that candidates be nominated and the nominations seconded only by members who are themselves in good standing. If that's the rule in your union, obviously you must make sure that you follow it . . . and keep a written record of who made your nominations just in case there is a dispute.

Campaigning

If your ambition is limited to *running* for office, you need only be nominated and get listed on the ballot. But if you sincerely want to be *elected*, you need much more: you have to convince members to vote for you; you have to campaign.

Under federal law you must be allowed some opportunity to campaign. On this subject, you can get valuable information from literature published by the U.S. Labor Department. In this connection, however, we confront certain annoying facts of life. As you go from the right to vote, to the right to nominate, to the right to be a candidate, and finally to the right to campaign, the gap widens between what the law and the Labor Department say your rights are supposed to be and what they actually are in the union. If kids are to survive on the streets, they must know more than what nice parents tell them. If your election campaign is to survive in the union, you must know more than what the Labor Department teaches.

Most candidates are defeated simply because they don't win enough votes, not because ballot boxes are stuffed. It would be ludicrous to insist on all your legal rights, to guard carefully against vote-stealing, fight hard for all the procedural niceties, only to discover that you have exhausted all your time, money, and energy with nothing left for reaching the voting membership. To put it crudely, your first job is to make sure you can get enough support to make their stealing worthwhile! Then try to make sure that those votes are really counted.

How do you convince members to vote for you? That's your problem. You know why you're running, not we. You might criticize the incumbent's past performance, you may have a great plan on how to run the union, on how to handle contract negotiations and grievances, on how to safeguard the insurance funds, and how to run a fair hiring hall. You may claim more experience than those in office. All that is up to you. This handbook is not devoted to getting you elected; for all we know, your opponent may be the better candidate. But that's beside the point. Whatever you stand for, for better or worse, you are entitled to a fair election. Not because you will necessarily make a wonderful labor leader, but because the membership deserves the right to select its own officers in fair, democratic elections.

Advantages of incumbency

If you are running as an independent against an administration slate, or if you are part of an insurgent ticket, you will have to campaign especially hard, because union officers, like officials in public life, enjoy the normal, built-in advantages of incumbency. They are up front at union meetings all year round; their activities are highlighted in the union paper; they have favors, big and little, to dispense.

(An opposition often does have one advantage: it has not been responsible for running the union. It can freely criticize

the leadership's defects while its own have never been tested.) There's no point to moaning about it; you've got to overcome it, if you hope to win. The law is designed in part, not to eliminate all the incumbents' normal advantages, but to prevent them from adding illegal, unfair, and undemocratic trappings. Precisely because incumbents do enjoy a favorable position, the law is intended to keep them from taking away your rights. High among those is the right to campaign.

A campaign period

The right to campaign established by federal law was not intended as a paper promise. The union must actually allow a period for campaigning before ballots are cast. Various ploys which are invented to evade this requirement are illegal. For example: the election comes so close to nominations that you hardly have a chance to breathe, much less campaign. Or, nominations and elections may even be set for the very same meeting; no time there to squeeze in a campaign. Such procedures in themselves would not necessarily violate the law, but they must not so short-circuit the election process that no candidates could possibly get their message to voters.

There must be some interlude for campaigning. How long a period? It must be "reasonable," the usual term that provides employment for lawyers, judges, and government officials. The campaign period could even come before nominations are formally in order, in which case all members who announce their intention of running should be entitled to all the rights of a candidate. The union cannot deny them the right to campaign on the ground that they are not yet "official" candidates.

Candidates rights; members rights

We have been referring only to the rights of *candidates* in the election period. But unionists have rights as union *members* which apply all year round whether they are candidates or not: these are the basic civil liberties of free speech, free press, and the right to assemble which are established by LMRDA Title I, the Bill of Rights. Unionists have the right, during elections and at other times, to criticize their officials, to meet together in caucuses, to publish newsletters, to distribute handbills to members. These are the democratic rights of free expression which are taken for granted in public life. Since you always possess these rights in your union, you can certainly exercise them during the election.

Many union reformers who are determined to effect a change in their union in the face of an entrenched officialdom begin their activity long before an election is due, sometimes many months, even years, in advance. They use the time to formulate a platform; they point up issues at meetings; they keep the membership informed by handbills and mailings; they agree on an opposition slate, so that when election time rolls around, their campaign culminates a long, sustained effort. Federal law protects all these activities.

In addition to their basic civil liberties as union members, candidates have other rights during an election campaign:

"Equality"

The law provides that all candidates must be treated equally; the union cannot favor one over the other by allowing privileges not afforded to all. The sentiment, embodied in law, is lovely; but enforcement is feeble. However, the rule does give some measure of protection against gross unfairness.

In "normal" times (no elections), union officials can easily turn the union newspaper into a puff sheet with pictures and stories of their comings and goings, doings and sayings. They can take the platform at meetings, expound on their great services to mankind; they can denounce their critics as union wreckers and bosses' agents and restrict any replies. They can send mailings to all members at union expense with their own views on assorted subjects even distantly related to union needs.

During the election period that kind of flagrant self-promotion is supposed to cease. At least, they must do it more subtly. Of course, normal union business continues during the election period so that, for example, the union newspaper could legitimately report news on the activities of the incumbents. Example: the local president has addressed a large labor rally on health and safety. But, if on the eve of the voting, the local's paper ran a banner headline announcing that the town's Charity League had awarded the local president a plaque as "Labor Leader of the Century," those running in opposition would have strong grounds for a post-election complaint. You might even be able to convince a federal judge to force the union to give you equivalent space before the election. If you announce your candidacy early, even before the official nominations date, any use of the union paper as a puff sheet for the incumbents after your announcement will be subject to legal challenge.

Even if the law's spirit were obeyed to the last jot and tittle, the incumbents' self-restraint during the brief election period could hardly offset the advantages they enjoyed the rest of the year. But the law does muffle the shrill tone of self-promotion, at least until the ballots are cast.

Membership lists and mailings

In one respect, the requirement for "equality" can have real significance. The law mandates the union, upon request, to mail out the campaign literature of candidates, *at their own expense*, to the entire membership. This requirement is considered so vital that the law makes it the only election provision which explicitly permits a private suit by candidates. In other respects, the LMRDA forces complainants to process their appeals through the Department of Labor. But not in this connection. If you are denied the right to mailings, you can sue directly in federal court to enforce that right.

In many unions, those mailings are the only means of reaching the entire membership; it is a right guaranteed only

to candidates for office and only during the election period. In most cases, if you are to run a serious campaign, you will have to insist upon that right.

Possession of membership lists

The union is not required to give you physical possession of a copy of the list, but only to mail your campaign material to it. However, in accordance with the rule of "equality," if the union permits any candidate to have a copy, it must make copies available to all. But this is one of those equal rights which is difficult to enforce. Incumbents seldom need to be provided with an election-day copy of the official list. They have had years to compile their own, complete with telephone numbers. If you know that have such a list, you might demand that the union provide one for you.

Number of mailings

You must pay for the costs of all your own mailings, like all other candidates. And, on that basis, you are entitled to send out as many as you like, even if your opponents send none. Here, too, there is a rule of "reason": the union must be able to handle the requests. If necessary it can hire extra help—at the candidates' expense of course. It is not likely that you alone could afford so many mailings that it would tax the ability of the union to comply with your requests. Presumably, however, there could be a flood of requests from many candidates. The main point is that the officials cannot properly refuse to send out additional mailings for you merely because they have already done one.

Most locals, unless they are exceptionally small, use a commercial service for their mailings, one which prints the address labels and mails the union's paper and other communications to the membership. A reputable firm has a fixed price per thousand for processing each aspect of a mailing and that is all you should have to pay. But some fly-by-night service, eager to curry favor with the incumbents, might, upon their request, try to jack up your costs and waste your money. If you are convinced that they are trying to rip you off, protest—in writing, of course—and demand to see the union's paid bills for past mailings.

What should it cost? As this is written in early 1987, the Association for Union Democracy pays its unionized mailing service a total of \$25 for addressing 3,000 envelopes; a total of \$25 to fold 3,000 single 8½x11 sheets; and a total of \$120 to insert that single sheet into a business envelope, seal them, affix the postage using a meter, and delivering the lot to the post office. The whole 3,000 mailing costs \$170, plus the cost of first class postage.

Selected mailings

Mailings are expensive, so that you may want to mail literature only to portions of the list specially tailored to the interests of separate groups: pensioners, skilled trades, employees

of particular shops or departments, residents of selected postal zip code areas, etc. The union is obliged to comply with your request for selective mailings provided that its membership list is normally arranged and maintained to make that possible.

Mailing contents

The union is not permitted to censor the contents of your campaign mailings. In fact, you need not permit anyone to read your literature in advance. It is improper for the union to reject your mailing on the ground that it is "libelous," or even to demand that you reveal the contents of your envelopes before it will process the mailing. You might submit the mailing in sealed envelopes so that the union or its mailing service need only affix addresses and deliver them to the post office. It would be improper for the incumbents to hold up your mailing on the pretext, for example, that it must be reviewed by the union's attorney.

First class and bulk rates

Your union is likely to have the right to mail at reduced rates with a bulk rate permit. You may be able to use that service. But remember that bulk rate mail is unpredictable and slow, slow. If time presses, and you want to make sure that voters get your message early, you will have to mail first class, which is more expensive. Apart from timeliness, first class mail offers an advantage which could prove crucial. If a first class letter is misaddressed or delivered to an obsolete address, it is returned to the sender. That gives you some test of the accuracy of the list used for your mailing. Be sure, then, to include a return address on the outside of your mailing envelope so that those bad pieces get back to you. (Post cards are not first class and will not necessarily be returned to you.) If a large batch of incorrectly addressed envelopes are returned to you, and your opponents have had the use of a more accurate list, this fact could be a critical element in any post-election challenge.

If that same list is used for mailing out ballots in a mail vote, then the union or its election agent should receive approximately the same number of defective envelopes as you. Before the votes are tallied, you can demand an accounting of the ballots in those misdirected envelopes. Where are they? You want to see them to make sure that they were never voted by some mysterious stranger.

If the union used a more accurate list than the list provided for your mailing, was the better list made available to your opponent, especially if that rival was an incumbent? Later, if you challenge the validity of the election you can offer those defective envelopes as evidence. If you lost by 50 votes and you can show that 100 members never received your literature because it was misaddressed by the union office, you have a cogent argument to bolster your case.

Mailing coupon

Every piece of election literature can include a coupon which readers can return, listing their names, addresses, and telephone numbers. Especially mailings which reach the entire membership. Coupons should permit signers to ask only for more information, not necessarily to express support for your presumably admirable campaign. You want as wide a response as possible, not only from convinced voters. Returned coupons offer some evidence that the mailing was actually received. More important, they allow you to compile your own mailing list.

Was it really mailed?

How do you know that your whole mailing ever reached the post office?

Between the time you deliver your literature to the union office and the time it is supposed to be mailed, the whole thing or part could accidentally be dumped in the city sewer. That's a mean thought, but we live in a mean world. It probably won't happen, but it could, which is the kind of unpleasant turn of events not touched on in Labor Department publications.

A mailing service that is accustomed to doing little favors for the administration might drop the sack containing your mailing in some obscure corner of the post office where it might be overlooked for days. If your mail is not delivered to voters within a few days, you should make a prompt inquiry-complaint at the post office.

If your union is blessed with an ordinarily fair-minded leadership, you need not worry. But if you suspect hanky-panky, you could have a serious problem, not always easy to handle. You should try to stay with the mailing from the time it reaches the mailing house until it gets to the post office, but that could be difficult in practice; it's hard to hang around if they claim that they need a few days to get to your job. You can demand a post office receipt for the number of pieces mailed, but that's not completely reliable evidence, even though it looks good on paper. No clerk is likely to have the time to make an actual count.

But if you are uneasy, make demands for assurances despite the difficulties. And put it in writing. Ask for mailing receipts, ask to be present while the mailing is processed. Your insistence might curb the versatility of an unreliable election committee. If every request is denied, and later you challenge the election, your letters may reveal that the whole election atmosphere was suspect. Such a suggestion may have limited legal status, but in practice it could help your case.

Summary on mailings

There are more ways to campaign than we can dream of. If we devote all this space to mailings, it is not necessarily because it is the most effective method. Other approaches can be more persuasive: home visits, telephone calls, face to face

conversations, worksite discussions at lunch time, factory gate distributions by supporters in the shop, etc.

The problem is that most other methods, especially in large unions, are limited in reach: few members come to meetings, lists of shops under contract are not always available, the number of workers on your own job is usually small. The right to reach *all members* by mail is the one guaranteed means of getting your message to all voters, and that right is available only for the brief election period. Locals are not required to hold elections more frequently than every three years, so opportunity knocks infrequently and then only for a few weeks.

If you are serious about running, and especially if you have the long-range objective of reforming your union, you must use that opportunity. It is one right worth demanding and fighting for by all legal means. If your right to mailings is denied, you can file suit in federal court during the election campaign period. A court suit cannot win an election. It is always advisable to weigh alternatives prudently before going to court. But if it is the only way to exercise your right to reach the membership, and if you can afford it, sue if you must.

A letter

Like other requests, your request for the use of the mailing list should be made early and in writing. A letter addressed to the local secretary or election committee can read like this:

Dear Brother (or Sister):

I hereby announce my candidacy for office in Local in the coming election, and I wish the local to have my campaign literature mailed to the membership. In addition to one or more mailings to the entire membership of the local, I intend to make targeted mailings to these well-defined subdivisions of the membership: (list them here: pensioners, stewards, zip codes, etc.). Please inform me promptly of the procedures for these mailings and include your best cost estimates.

Fraternally yours

Note: This and other letters are based upon suggestions by the Teamsters for a Democratic Union which notes that they do not have to be typed or literary. But be sure to keep a copy.

Send the letter by certified mail, return receipt requested, to the local office or deliver it by hand and get a signed receipt.

Mailings are only one means of reaching the membership and they can be expensive, especially if the pressure of time requires first-class postage. If your local membership is a thousand or two, you should be able to afford at least one round. With a much larger membership, mailings get so costly that you may look for more economical ways to campaign.

By mail or otherwise

We have referred in detail only to mailings because they are often the most reliable means of reaching the entire membership. However, the law requires the union "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. . . ." Note the words "or otherwise."

In its explanatory pamphlets, the Labor Department says, "Each candidate may choose his own ways of campaigning for election according to his own ingenuity and resources." Although the D of L does not explicitly say so, you can ask the union to place your campaign literature in hiring halls, union halls, or on board ship in maritime unions. If the administration gives such privileges to its own candidates, or any other, you surely have the same "equal" right.

Union meetings

All candidates are entitled to equal rights to campaign at union meetings during the election period. The key word is *equal*. If none of the candidates are permitted to speak at meetings on behalf of their candidacy, you may be denied the privilege. But if your rival is allowed to make an election speech, you have the same right; however, your chance could come at a different meeting. All this may not help much, because few members usually attend meetings.

Union newspaper

The requirement for equality during the election period applies to union publications, which may not be used to promote any individual candidate. If one candidate gets space to campaign, by rights the others should get equal space. But this rule can be tricky to enforce, because the paper will usually report the regular or special activities of the incumbents, presumably unrelated to the campaign and will often run their regular columns. Any press notice helps to build their image, but it's hard to prove that such attention constitutes "campaigning." However, if during the campaign period, the incumbent candidates' most trivial doings are touted in banner headlines while all your activities are blanked out, you will have strong grounds for an election protest. You might even get a federal judge, in the pre-election period, to order them to stop.

Plant gates

If you know where members work, you can pass out your stuff at plant gates. But in many large amalgamated locals, with dozens of shops under contract, only the officials have a complete list. If you can get a list from the union office, congratulations! But some union officials hide this information under deep cover like the recipe for a home-made atom bomb. They are not obligated to give you the list unless they give it to other candidates. But incumbents don't need a spe-

cial list at election time; they already have it, or carry it around in their heads.

You can get most of this information, but it can take time and trouble, and so you should start compiling it far in advance of the election.

Follow your local newspaper carefully. Over the months, news stories will refer to shops under contract. Lists of retirees sometimes name the shops where they worked.

Section 104 of the LMRDA requires a local union upon request to give a copy of all collective bargaining agreements it has made with any employer "to any employee . . . whose rights . . . are directly affected by such agreement." You are permitted to inspect, at the local union office, copies of other agreements which affect you but which may have been signed by some higher union body like a district council or international union. If the union refuses your request, you can complain to the U.S. Labor Department which is responsible for enforcing this section of the law or sue in federal district court. Shops covered by the agreements should be on record. One federal district court has ruled that the local union must permit a member to inspect any contract that it has signed with any employer.

If employers under contract make contributions into a pension or welfare plan, the trustees of that plan must have records. You can write to the administrator of your plan somewhat as follows:

"I hereby request that you send me promptly a complete list of all employers and employee organizations sponsoring theFund. I am a member of Local..... and I am covered by this Fund. I understand that federal law requires you to comply with this request." If you have trouble getting this information, you should apply to the U.S. Labor Department which has the responsibility of monitoring pension funds under federal law (ERISA); the information you want is supposed to be available to fund participants.

Home visits and phone calls

Nothing is more effective than direct face to face talk. The obvious problem is that you need names, addresses, and telephone numbers; and the law does not establish your right to copy the membership list, only to inspect it once within 30 days before the election. You can remedy this disadvantage slightly by compiling your own list months, or even years, before an election. Use one election to prepare for the next.

You don't necessarily have the right to physical possession of the membership list, or even the right to copy it; but you have equal rights. If you suspect that other candidates (usually incumbents) are getting preferential treatment and are being supplied with lists, you can send this letter to the local:

"It has come to my attention that certain lists may be available to candidates for office in the current election in addition to those made available to me so far. Please make available to me the following and other lists not yet made available to

me but made available to other candidates: telephone numbers of eligible voters, members who voted in the last election, eligible members who did not vote in the last election, names of companies employing local members" [add whatever you feel is appropriate and hope for the best.]

"The law provides that all candidates be granted equal access to such resources. Please reply by [insert date]."

Contributions from unions and employers

LMRDA Section 401(g) forbids "an employer" or "any labor organization" from contributing to promote any candidate for union office. When this provision was adopted in 1959, it restrained union officials from using the union's own resources to assure their own reelection, and it discouraged employers from using their massive resources to help elect a union leadership amenable to their interests. Since then, however, decisions of federal courts and interpretations by the U.S. Labor Department have transformed these rules from a defense of union democracy into a bulwark for entrenched bureaucracy.

Union contributions

In accordance with 401(g) it is impermissible for the incumbents, while denying others the same privilege, to make free use of union records, union printing and mailing equipment, telephones and typewriters, meeting halls, etc. for their own campaign activities. Presumably, union staff employees should be barred from campaigning at times when they are being paid by the union. Under the best of circumstances, who can adequately police these rules? No one can watch them all day, listen in on their phone calls, and patrol offices at night to monitor the xerox machine.

No staff campaigning on union time? Anyone who knows anything about internal union politics knows that the union staff is almost everywhere an administration political machine which, law or no law, works zealously to reelect the administration which pays their salaries.

If some errant or miscalculating staff members support an opposition against the administration they are in danger of being fired by the administration, a practice facilitated by the U.S. Supreme Court in *Finnegan v. Leu*.

The 401(g) protection against staff campaigning has been cut to ribbons by the U.S. Department of Labor, which has ruled that where staff reps have no set working hours it is not possible to separate union time from personal time so that they are effectively free to campaign at almost any time. Moreover, the Department permits them to campaign "incidental to regular union business" whatever that may mean. With D of L blessing, therefore, any officialdom with even the most minimal skills of bureaucracy, can easily manipulate the staff as a powerful election apparatus.

Suppose during an election campaign that a national union administration anticipates trouble in a big local where oppo-

sition sentiment is rising. It is not permitted to dispatch a crew of staff members from the international office for the express purpose of campaigning for its slate. No problem. It discovers an urgent need for some kind of union campaign in the area; its missionaries swoop down, travel and expenses paid by the union of course. They call special meetings to denounce greedy employers and right wing politicians who are out to destroy the union, exploit the workingclass, and abuse suffering humanity. Who can object to spending union money for so worthy a cause? And if these missionaries hang around, proselytize for the candidates, and pass out election literature at plant gates, it is presumably on their own time and only incidental to "regular" union business.

When the Labor Department sanctions this kind of not-so-covert electioneering, it dilutes the law's prohibitions against using union resources to support official candidates and permits the staff to be turned into a disciplined election apparatus for the incumbents.

These are some difficulties that you cannot whisk away. But you *can* reduce their impact by protesting vigorously in the union and to the Labor Department especially when you find the staff or administration going beyond what even the Labor Department will tolerate. Example: If they use union stationery in soliciting votes or campaign contributions, *that's* going too far.

Employer contributions

The law prohibits employer contributions to candidates for union office, which would be an excellent restriction *if* it was enforced to prevent employers who have some interest in your collective bargaining agreement from favoring candidates to their liking. The problem here is twofold:

1. The employer who deals with your union has so many subtle and not-so-subtle ways of practicing favoritism that it is hard to control, even under the best of circumstances.

2. If that were not enough, the Department of Labor has defined the word "employer" so broadly that dissenters and oppositionists could find their access to campaign funds seriously limited. By "employers," the D of L means *any employers*, whether or not they have anything to do with your union or bargaining. If you have some close friends who own a small business and hire a few workers, say a restaurant or insurance brokerage business, you are barred from accepting their contributions. That kind of restriction seldom hurts any incumbent officialdom which usually has ample access to money and other campaign support. But it could kill your chances of getting your campaign off to a fast start.

Here, then, is another example of a provision which was intended to strengthen union democracy but which can be perverted into a means of curtailing it.

Campaigning on company property: A factory management may permit representatives of the union administration to campaign for its slate on company property and then bar your

supporters from entering the company premises during non-working time: parking lots, lunch rooms, etc. Such a practice could violate the election provisions of the LMRDA or the NLRA. Here is a variant of a letter which one reform group, the Teamsters for a Democratic Union, suggests you might send to the company:

I am informed that(name)....., conducted campaign activity on your property on behalf of candidates for election to office in Local As you know, this could not have occurred without the knowledge of your supervisory personnel. Unless all candidates receive the same campaign rights, this practice will constitute an employer contribution to the campaign of Please contact me immediately to arrange for equivalent time on your property for supporters of my slate. If I have not heard from you within 48 hours, my representative will visit the company and arrange to campaign on the spot. I trust you will instruct your supervisors not to interfere.

Like all your rights, you must be vigilant to enforce this one. The company may adopt an official policy which denies anyone the right to enter its premises exclusively for the purpose of union election campaigning. But note that tricky formulation: "exclusively." The plant stewards may be administration supporters, and the local officers may come into the shop ostensibly for discussing grievances, collecting voluntary political action funds, and other motherhood purposes. If "incidentally" they campaign for office, the Labor Department is likely to be quite understanding.

Testimonial dinners: At strategic moments, committees of admirers arrange testimonial dinners honoring the local officials, or any convenient object of adoration, for their great services to humanity. Other union locals, friendly employers, and other vulnerable victims buy tickets and pay generously for ads in the banquet journal. Many never show up, leaving their money behind.

Funds raised at these affairs usually vanish, leaving no smoke trail in the infinity of outer space. When the dinner is unofficial, the organizers are responsible to no one but their own conscience, a very lenient regulator. When the affair comes just before an election, you don't need Sherlock Holmes to figure out where at least part of the money goes. The practice is hard to police, but do your best. You might publicly demand a strict report on what happened to the money; you might, just for practice, complain to the Labor Department. If you have a court case going on some other election-related matter, let the judge know what's going on.

Some sordid facts of life

If you are running for office, you're old enough to know where some campaign treasuries come from. Interested em-

ployers have been known to distribute substantial sums of money to union officials, under the table, for services rendered to the company or withheld from the membership; and some of it seeps into election campaign funds. The payments are illegal, improper, immoral; but, like other crimes that society has never eradicated: dope peddling, loan-sharking, car stealing and chop shops, it has continued for generations. You might imagine that if our courts and public authorities have been unable to eradicate the pervasive, pernicious institutions of extortion and bribery, they would at least take them into account and be extra zealous in protecting the election rights of the rank and file membership. Don't count on it. Some judges prefer to soar in the clouds of sterilized abstraction.

More on union funds

A union is not permitted to use its resources to help elect any candidate to union office. But there is no prohibition against using union funds for legal aid to assure a fair election. That distinction, between trying to elect a candidate and trying to assure the right of the union membership to a fair election, is an important one. A clear case would be that of a union local which uses its own funds for legal action to challenge the outcome of an election for international officers which it considered illegal.

If you are convinced that an election was improperly conducted, you can ask your union, or any other, to finance the legal costs of your appeal to void the results.

The long view

If you plan to run a marathon, you've got to harden yourself up with practice. We emphasize the difficulties not to deter you from running for union office but to help you get ready. In unions where fair treatment and honest counts are normal, just run and let the members decide. But in other unions, you'd better take the long view.

Art is long, time is fleeting. Anyone can jot down a long list of valuable ideas. But to carry them out! If your election is about to take place, and you have just gotten around to reading these lines, you are already late. You have to look ahead and prepare months ahead, many months. In some unions, it takes reformers years to learn the ropes. Start planning as soon as you even think you might possibly run—even before! Study your international constitution and local bylaws. Try to become reasonably familiar with your rights under federal law; compile lists of shops under local contract, piece together your own mailing lists. Be a boy scout. Be prepared!

Outside agencies

This handbook is intended for those who want to strengthen union democracy. (Since we live in a free country, we can't stop anyone from studying it for hints on how to steal elections.) As a good democrat, you have to convince the voters before you can win elections. It is hard enough to induce people to vote your way; it can sometimes be even more difficult to get those votes counted honestly and accurately. You may have to work at it, remembering that more than your own individual interests are at stake: your local members are entitled to have their votes recorded the way they were cast; unionists should select their leadership and not have one imposed by ballot-jugglers. How to assure an honest count?

Even in unions with good honest leaders, the election committee is usually dominated by the administration. Even when the election is really honest, the losers often doubt it, and sometimes even the membership. One way to retain the confidence of the members in the integrity of the election process is to have an independent outside agency supervise the election. But not any old agency!

The union's own accounting firm or lawyers are too close to the incumbents to provide the necessary stamp of independence. The agency should be clearly independent of the officials, impartial, familiar with the law, skilled at running It is possible to find such an agency. Here are some things to ask about before making a selection:

1. Does the agency agree to supervise only some limited aspect of an election or does it insist upon substantial control? This test will indicate whether the agency can be used by unscrupulous officials to whitewash a suspect election, to give the appearance but not the reality of outside supervision. If supervision is missing at any one point, that's where the votes can be stolen. If only three tires on your car are perfect, you can be killed when the fourth blows out.

One union used an outside agency to inspect tally sheets that were sent to the national office. But how the ballots were tabulated and what may have happened in transit remained a mystery. The certification of such an election by an outside agency is meaningless. It is like hiring a bank teller to count money without checking whether the notes were forged or stolen. You want an agency that will not lend itself to that kind of partial "supervision" but which demands enough control to assure an honest election.

It would be reassuring if an outside agency were available to run an election in all its aspects from start to finish. But that is unlikely, because no private agency has powers or resources on a governmental scale, which inevitably limits what it can do. You will surely have to live with at least two limitations: 1. Unless the union specifically requests it, no

agency is likely to insist upon supervising the nomination process, and 2. No agency will have the authority or the ability to search through union records to determine the legitimacy or accuracy of the eligible voters list; the agency will have to accept the official list provided by the union officers.

Even if your union does retain an impartial outside agency to run the general election, you may still have to seek recourse in court or at the Labor Department if you challenge the nominations or the official voters list.

2. Whom does the agency use at the polls? No agency can afford to keep a permanent fulltime staff ready for any election, no matter how big. Temporary help must usually be recruited for the occasion. But who are they? One reputable agency will not employ anyone who has connections with the union which retains it; it hires those whose impartiality is assured, law students for example. But another agency might not have such prudent standards; it might hire upon recommendation of the union officials; it might even use union staff employees. An election under such conditions might be above-board; but you would be abnormal not to feel nervous.

3. What other unions use the service? Do they have a reputation for integrity? And don't rush to conclusions. Get a good sampling of the agency's regular customers. Even a crooked union officialdom might sometimes use a reputable election agency. And an adaptable agency might run an election any way its customer wants, even honestly.

4. Visit the agency, get a copy of its regulations, find out what elections it has run recently, ask all your questions.

5. Compare prices. Do the costs seem reasonable? But beware of cutrate proposals. What does the service cover? You are now in the critical area: to do an effective, honest monitoring job covering the whole election process, a reputable agency must charge more than a lackadaisical competitor which is willing to let things slide. A dependable service will surely insist upon printing the ballots and controlling them; it will rent the machines, oversee the mailings, receive the ballots and—of course—count them. *You want all that.* And it is bound to cost. Some unions buy luxury automobiles for business agents who complain about the high cost of using an outside election agency. But fair elections are worth more.

If your election is supervised by a reliable agency, or perhaps by the U.S. Labor Department under court order, many of your misgivings will be allayed, but not all. The Labor Department runs elections in accordance with the union's bylaws, except when those bylaws conflict with the law; and it tends to accept the union president's interpretation of the bylaws. Private agencies, even the best, are in the business of running elections and are retained by incumbent officials and not oppositionists. No agency wants to get the reputation of being "unreasonable." You may no longer have to worry about outright theft; but you should remain alert and do everything necessary to protect your interests.

Election safeguards

Some locals elect officers by mail ballot. Others, by in-person balloting which requires voters to come to the polling place; in-person votes can be cast either by paper ballots dropped in a box or by pushing levers on a machine. A very large local might use all three methods: mail ballots for absentee voters, paper ballots at some sites, and machines at other sites. Each voting method requires special safeguards, but some aspects are common to all.

Secret ballot

Federal law requires a secret ballot, really secret. The Labor Department may be lax in other respects, but it usually insists upon secrecy. If voting is out in the open so that the voters' identity can be linked to their choices, the Labor Department, upon complaint, is likely to challenge the validity of an election. The requirement for secrecy is absolute, and not the option of the individual voter. If a member deliberately reveals how he or she voted—by signing the ballot, for example, or showing it to business agent—that vote is invalid. You can challenge it. A rigid enforcement of the secrecy rule is fair and necessary: to prove their loyalty to the incumbents in the quest for favors, some voters may expose their marked ballots. If that practice were condoned, other voters who insisted upon secrecy would be suspect as dissidents. Everyone's vote must be secret to safeguard anyone's right to secrecy.

If the proposed election rules do not guarantee secrecy, you should complain promptly to the Labor Department before the election begins: ask it to advise local officers that they are endangering the validity of the election and might be compelled to do the whole thing over. This is one of the rare services that your Labor Department office might agree to perform before the election.

Here is how the secret ballot is explained by the Labor Department:

The act defines a secret ballot as "the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote . . . cast in such a manner that the person expressing such choice cannot be identified with the choice expressed." To secure secrecy at the polls, a union should provide such facilities as curtains, screens, partitions, separate rooms, booths, or separate voting areas. In addition to providing facilities for a secret ballot, the union is respon-

sible for insuring that voters do actually cast their votes in secret. (*Electing Union Officers*, 1980 p. 15)

Whether the voter wants it or not, the union must insist that he or she cast the ballot in secret. If a voter deliberately exposes the marked ballot (especially to prove loyalty to the business manager) you can challenge that ballot.

Inspecting the membership list

Every candidate has the right to inspect the membership list once within 30 days before the election. But this right is of limited value. For one thing, you are not entitled to copy the list unless other candidates are given that privilege. For another, the inspection is limited to those members who are working under a contract which requires maintenance of membership. By inspecting the list, you can at least get an official membership count which could be of some value.

What are the extras for?

If your count showed 1,000, but on election day the union produces a list of 1,500 voters, what accounts for the population explosion? That kind of discrepancy could give you substantial grounds for challenging the list and perhaps the whole election.

Observers

Federal law gives all candidates the right to select observers to monitor the election process on their behalf: at the polls, at the count, and at every other stage of the procedure. As Sec. 401(c) LMRDA puts it: "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."

In its official regulation, 452.107, the Labor Department explains this provision as follows: "This right encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of tally sheets. If there is more than one polling place, the candidate may have an observer at each location. If ballots are being counted at more than one location or at more than one table at a single location, a candidate is entitled to as many observers as necessary to observe the actual counting of ballots. . . . The observer is not required to be a member of the labor organization unless the union's constitution and bylaws require him to be a member." And in its pamphlet *Electing Union Officers* (p. 16, 1980) the Department adds: "In a mail ballot election, candidates must be permitted to have an observer present at the preparation and mailing of the ballots and at their receipt, opening, and counting."

Do you really need observers? You may not want to bother. In your bones, you know the election committee will give you a square deal even though you are an oppositionist. If so,

be grateful for so fine a union, keep it that way, and good luck to you. Remember, however, that even the most honest election committee may face legitimate judgment calls; why not have your own representative there to defend your interests? Even an honest judge must listen to all sides in an argument.

If you are running just to see your name up in lights and don't care about results, that's one thing. But if you want to win, or even make a good showing, and you suspect that someone may try to steal votes, then you must have observers. And, once you do decide to post them, you need them wherever and whenever hanky-panky is possible. A boiler that leaks under pressure at only one point can be as dangerously defective as one that leaks like a sieve. What's the good of watching carefully in the morning if there's no one there in the afternoon? What's the good of watching while ballots are dropped into the box if you don't know what happens when they are removed for the count? It takes only a moment to switch boxes or dump in forged ballots.

Who can serve? Some locals require observers to be members of that local. In most unions they must be members of the international. In rare cases, outsiders can observe. In the government-supervised miners election of 1972, the U.S. Labor Department permitted student teams from the Association for Union Democracy, not to serve as official observers for candidates, but simply to watch the voting; but that was unusual.

How many observers? The Labor Department regulation says, ". . . a candidate is entitled to as many observers as necessary to observe the actual counting of ballots."

You should recruit enough observers to assure a fair election, which means at least one observer at each and every point where ballots are cast, checked, and counted. If there are three voting machines in a single room, send at least three observers, one for each machine. Later, when the count is called off from each machine by one person and jotted down on a tally sheet by another, you might need two observers at each machine: one to monitor what is called out, the other to watch what is jotted down.

If there are several stations at which voter qualifications are being checked, a single observer could become dizzy trying to watch everything. You shouldn't have to rely upon whirling dervishes; send one observer to each spot. If votes are tallied at several positions on a long table or two, post one observer at every single spot. The dangers here are not dredged up out of someone's sick imagination; the election for president of one of the country's biggest international unions was stolen when the devious election committee suddenly opened up additional counting stations and refused to permit the opposition to assign additional observers to cover the new spots.

How do you get observers? You must take positive action to get observers. The law gives you only the *right* to have observers; if you do not choose to exercise that right, that's your hard luck. If you fail to try to post observers before or

during the election, no one will listen to your sore-loser complaint that you had no observers. It's one thing to be denied observers after making the request. It's quite a different story if you never asked. Your side has the right to post observers. Their side has no right to steal votes. But if you don't exercise your rights, they may choose to exercise their non-rights.

Before the election, inform the union in writing (always in writing) that you intend to post observers and ask for an advance list of the exact addresses of all locations where votes will be cast and later counted. Request a clear set of rules under which observers will be recognized and allowed to perform their duties. If there is no reply, or you feel that the reply gives no assurance that there will be a fair election, complain immediately to the Labor Department. If you act fast and soon enough before the election and can get an experienced attorney, you might be able to get into federal court to establish your right to have functioning observers.

In any event, whatever the union office does, you will choose your observers, give them written credentials authorizing them to represent you, and instruct them to ask for admittance to all known election sites. If, after all this, they are excluded or prevented from serving, you will surely have substantial grounds for challenging the validity of the election.

To repeat: put your requests in writing. If the balloting is by mail, you might write a letter along these lines to the local secretary or chairman of the election committee:

I am a candidate for office in the coming local election and I wish to assign observers to monitor all phases of the election process. To make this possible, please send me promptly all information related to the functioning of observers including the following: checking of the ballots before printing, certification of the number of ballots printed, procedures for safeguarding ballots before, during, and after the voting, procedures for mailing the ballots and for picking them up from the post office, dates and places for tallying the results. I trust that you will support any requests by my observers to their employers for time off to carry out their duties as observers.

This is only a guide. Modifications will have to be made if the election is by in-person voting or if requests for absentee ballots are honored.

Duties of observers: Duties will vary according to your local's precise election system. Observers must be firm enough to assert every right that a candidate possesses. At the same time, they should remain cool and dignified and orderly so that no pretext is provided to biased election officials to exclude them. If the rules are violated and observers' requests for fair treatment are ignored, they should make their protest clearly, even in writing, with a carbon retained for the record. If observers are not permitted to function, they should prepare a documented case for challenging the election.

Signing the tally sheets

The U.S. Labor Department suggests that observers should initial or sign the official tally sheet after the count. There doesn't seem to be any legal requirement that your observers sign anything. You should use your best judgment here. If you or your observers sign the sheets, that gives some assurance that no one can easily make a fast switch later. On the other hand, there is no reason why you should be under pressure to sign anything that could be misinterpreted to mean that you accept the accuracy or the legality of the tally. You and your observers are not lawyers, and at the time of the tally you may not be aware that some procedures violated the law. Or later, you may recall some suspicious actions that you overlooked in the heat of the voting. Do not be intimidated into signing anything that might undermine your candidate's appeal rights. If you feel it advisable to sign, but you have misgivings about the propriety of the election process, you can write, above your signature, "under protest" or "signature not intended to affirm the validity of this tally."

Challenged ballots

If an observer has good reason to suspect that a voter is not really eligible, the vote can be challenged. Perhaps the person is not listed on the voters' list or cannot present proper identification. In any election by paper ballot, it is simple to set aside the challenged ballot. When the voting is by machine, the challenged voter will vote by paper ballot instead.

Challenged votes should be segregated. Each ballot is placed in an unmarked inner envelope and sealed to protect its secrecy. The sealed envelope goes inside a second outer envelope. On the outside of that outer envelope, the voter's name and identification are noted with a comment on the kind of challenge.

If, after all uncontested ballots are counted, it is obvious that the challenged ballots could not have affected the outcome, they are often never counted, but simply stored unopened with the election records that, by law, must be retained for one year.

Let us assume, as one example, that 100 ballots were challenged. If, without considering the challenges, the leading candidate had already won by more than 101 votes, it is obvious that the 100 challenged ballots could change nothing, no matter how they were cast.

But, if the difference between the candidates is less than the number of challenges (in our example, less than 100) the election committee will have to rule on their validity. Votes which are declared valid will be counted into the totals before the final results are certified.

In any event, detailed records of the disposition of all challenges should be retained so that any union appeals body, or the U.S. Labor Department, or the courts can assess the facts if the validity of the election is ever contested.

Paper ballots and the war on inflation

Paper ballots are required at some point in almost every election. The trouble is that uncontrolled paper ballots have a natural biological tendency to proliferate. The clearest warning that the miners' election of 1969 would be stolen came when the number of ballots printed far exceeded the number of union members. Two sets of ballots, like two sets of books, is a promise of fraud.

The simplest way to steal an election is to stuff the ballot boxes. Flocks of ballots hibernating in some dark corner can be activated at any time and slipped into the boxes before the election, during the voting, or added during the count.

Not only dishonest election officials, but anyone, can be responsible for an inflationary flood of ballots. They can be forged, and why not? If currency and ration coupons can be forged, why not paper ballots. The skills are transferable. One "special representative" of a New York building trades union was forced to resign when he was indicted—and later convicted—for forging fifty-dollar bills. One reputable outside election agency sometimes uses color-tinted and specially watermarked paper to make it difficult for anyone to duplicate its ballots. Obviously, then, if you insist upon precautions against forgery in your election, you are not necessarily a victim of paranoia.

Printing the ballots

You want to know accurately how many ballots were printed and how many were mailed to voters. If *too many* ballots were printed, what happened to the surplus? If *too few* ballots were mailed to voters, where are the unmailed ballots?

How many ballots should be printed? Obviously not many more than the total number of local members. If your local has, say, 1,000 members you can understand perhaps 1,100 to allow for replacing those misaddressed or for other contingencies. But 1,500? or 2,000? Let the government print paper money. But don't let your union officials print too many paper ballots!

If you don't have access to an official membership count, you can easily get the figures. You have a legal right to inspect the voters list once within 30 days before the election; you can't do much with that right, but you can take a count.

Every union must file financial reports with the U.S. Labor Department, and they are available to the public. You know what the average dues payments are. Take the figure reported for total dues payments, divide it by the average payment per member and you get an approximate figure for the actual membership.

You know how many ballots *should* be printed. But how many are actually printed? That's not always so easy to discover. Why not request that the firm which prints the ballots be required to submit an affidavit, with copies available upon request to all candidates? If the union election committee re-

sists such a simple request, scream out your protest so that all the members hear about it.

A cooperative printer can help shape the quality of your election. The question is, with whom does the printer cooperate? Ballots are usually printed by the same company that prints the union paper, its bylaws, circulars, stationery, etc. Naturally printers want to please a good-paying customer; to them that means the union officialdom; and the company is likely to focus a fishy eye on any oppositionists who make unusual and unfamiliar requests, like, how many ballots did you print? If you want election controls to begin at the printer, where they are needed, you'll probably have to press hard to write them into the union bylaws or official election rules. Otherwise, ballots can begin to flutter about like migrating Monarch butterflies.

Where are the leftovers?

After the votes are in, your observers should check one essential fact: where are the leftover ballots? Presumably you know, or should know, how many ballots were printed. Let us say, 1,500. You know, presumably, that 1,300 of these were mailed to members. Perhaps an additional 50 ballots were sent to voters who claimed never to have received theirs. That makes 1,350. What about the remaining 150 which should never have been used? You want them physically produced, counted, and stored with other election records. If the unused ballots have vanished into the wide blue yonder, were they illegally used in this election? If that's what you think, you can make a formal protest, to be included in a possible post-election complaint.



"WE FIRMLY BELIEVE IN ECONOMY, WE MARK YOUR BALLOTS FOR YOU AND SAVE POSTAGE COSTS!"

Elections by mail ballot

Elections by mail ballot are simplest and easy to run honestly. Unfortunately, they are just as easy to steal. When ballots are mailed to voters, returned by mail, and counted at a secure central location, no army of election officials is required. A good mailing service and a few clerks can handle most of the work. If it is all on the up and up, candidates need only a few dependable observers. But once you suspect the possibility of fraud, be doubly suspicious and trebly cautious during a mail ballot.

The crude way to steal an election by mail, like any other election, is simply to falsify the count. But that lazy, inept method is defective, because it could readily be exposed by an honest recount. There are more subtle and more effective methods which are not so readily detected.

In most union elections, at least half the membership never bothers to vote. When there's an election by mail, those who don't vote usually can't remember if they ever received a ballot. Some unscrupulous union officials, who convince themselves that the fate of the working class depends upon their repeated reelection, have worked out various tricks to ensure that the outcome is predictably favorable to them no matter how the members vote. One method: Over the years, they develop a list of members who customarily do not vote. They keep down the local's postage costs by not bothering to mail the ballots to those who won't vote anyway.

Then, just to make sure nothing is wasted, the officials mark the ballots for themselves and drop them into the mail. Neat, especially since they can use genuine ballots to cast invalid votes.

There is another variant: Ballots are actually mailed to all the voters. But the incumbent officials, with the cooperation of a flexible election committee, keep a running tally of those who have already voted and—more important—of those who have not voted. Toward the end of the period assigned for voting, the incumbents take the extra ballots in their possession, mark them properly for themselves of course, and mail them in the names of those who never voted.

If a few alert members complain that they never got ballots, the election committee need only send "replacements" for ballots presumably lost in the mail. If a few duplicate ballots show up in the final count, they might not be noticed; if they are detected, only those few duplicates will be challenged.

One hint right here: if duplicate ballots, presumably from the same voters, show up in the mail sacks, that could be a

sign that something is seriously wrong. If the incumbents refuse to wait for the final tally and insist upon examining the ballots as they arrive, watch out! They might be preparing a list of nonvoters.

How many ballots were mailed to voters?

Even if you succeed in monitoring the number of ballots manufactured at the printing plant, you still need to know how many are actually mailed to voters. If too few are mailed, someone may be holding back ballots for private use. If too many are mailed, they may be going to an illicit list. How can you know?

Practically, it may be difficult to work out, but your observers do have the right to watch the whole mailing process and accompany the ballots as they are delivered to the post office. If you insist upon your rights and they are denied, make a formal protest in writing, keep a copy of course, and record the incidents for a possible post election complaint. If there is time and you can afford a good lawyer, you might even get recourse in court before the election is over.

Ask for a copy of the post office receipt noting the number of pieces mailed. If the union uses a commercial mailing service, ask for its receipt stating the number of pieces mailed. These precautions are only partially effective: no post office clerk is likely to make an actual count; mailing receipts are not necessarily accurate. But by showing that you are alert to hanky-panky, you can place limits on possible fraud.

In all your election literature, ask those who do not receive ballots in the mail *to inform you* as well as the union office. Explain why: if too many members complain about not getting ballots, something is obviously wrong, and you want to know about it. Where are those ballots? If they were mis-addressed and returned to the union office, you want to inspect all the undelivered ballot envelopes.

Remember your objectives: to check the number of ballots printed, the number mailed out to voters, the number received from voters, and the number of ballots left over unused. We offer only some suggestions; you will think of others. If there are major discrepancies, and you can prove it, you may decide to challenge the validity of the election.

Secrecy of the marked ballot; identifying the voters

Any practice which permits a second person to identify voters with their choice violates the secrecy of the ballot and endangers the validity of the whole election. For that reason, the ballot itself should contain nothing that can identify the voter. On the other hand, there must be some method for determining whether the ballot has been received from a member in good standing entitled to vote. Is it a valid ballot?

To serve these two separate purposes, a double envelope system is usually employed. When the ballot is received in the mail from the voter, the ballot itself is enclosed in an unmarked, sealed inner envelope. That inner envelope is itself

enclosed in a second envelope, an outer envelope which does identify the voter but not his or her vote. The outer envelope will list the voter's name, possible signature, or union book number, etc. To determine whether the enclosed ballot is valid, the election committee and the observers will inspect the identifying information on the outer envelope only. But to assure absolute secrecy, if the ballot is valid, the inner envelope containing the marked ballot, *still unsealed*, is removed from the outer envelope. The two envelopes are then placed in separate containers so that it is impossible to determine how the voter marked the ballot. Only then, after the envelopes are separated, can the inner envelope be opened to count the ballot. (Like all election documents, the envelopes must be preserved for one year.)

To repeat: it would be improper for the election committee to open the outer envelope bearing the voter's identification and then immediately proceed to open the inner envelope containing the marked ballot, because such a procedure would make it possible to determine how that member voted. Before the ballot is inspected or counted, the two envelopes must be physically separated.

Some ballots may be challenged, in which case, neither envelope is opened until a later stage when all challenged ballots are disposed of.

To sum up, in a mail ballot election, the envelope *mailed to the voter* could contain the following:

1. Voting instructions
2. An unmarked ballot with no means of identifying the voter
3. An inner envelope for sealing the marked ballot
4. An outer envelope for mailing the sealed ballot. This outer envelope only must provide some means of identifying the voter.

Voters then check the ballot for the candidates of their choice. They seal the marked ballot inside the unmarked inner envelope. They place the sealed inner envelope inside the outer mailing envelope. If their identity is not already indicated on the outer envelope, they place their required identifying information on the outside of the outer envelope, seal the outer envelope and mail the whole thing.

It is essential to identify the voter on the outer envelope. Otherwise it would be impossible to determine whether the ballot inside has been cast by a legitimate voter. If your observers and the election committee had no means of identifying voters and checking their eligibility, anyone with access to a supply of surplus ballots could easily swamp the election with phoney votes.

Inaccurate addresses

No matter how perfect the system or how honest the election committee, some of the addresses are bound to be incorrect; some voters will have moved without leaving forwarding addresses. Misaddressed envelopes, containing bal-

lots, will be returned to the sender. But where will they end up? If these ballots are returned to the *union office*, where they can float around without controls, you may have grounds for misgivings.

Of course, your observers have the right to be present during the whole election process, but in practice it is extremely difficult to exercise that theoretical right. Theoretically your observers can remain at the union hall, watch the mail, and count the number of ballots returned for faulty addresses. They can record the names of those who presumably never got ballots; and, later at the count, see whether other ballots mysteriously appear under the names of people who presumably never really received them.

But you can hardly have someone hanging around the union office all day long; and, if you could, it would be hard for them to carry out the assignment. It would be easy to control the whole process if the election committee maintained a separate, special postbox to receive all undelivered mail and opened that box every day or two only in the presence of observers.

For another suggestion on how to check the accuracy of the union's mailing list, we refer the reader back to the section of this booklet on campaign mailings. If, when you used the list for your own mailing, you got back a lot of mis-addressed mail, you will suspect that the same happens to the official ballot mailing; and you will want to watch those returned ballots.

All this underlines a simple basic fact: if the union uses a reputable outside agency to conduct its elections, that agency will surely take full control of all the election mail and thereby put your mind at rest.

Storing and safeguarding the voted ballots

Mail balloting sometimes stretches out over weeks to allow time for the marked, voted ballots to arrive in the mails. Where are they stored and how are they safeguarded until it is time for the count?

In some unions, ballots are mailed by voters to the union office where they hang around for days, even weeks, until the official deadline for receiving mail ballots has passed. Not a very reassuring practice! No one except fulltime officials and employees of the administration can watch those ballots constantly for so long a period. And no one can know with certitude how respectfully those ballots are handled, or mishandled. It is quite possible that all goes according to Hoyle. It may be so for all you know, but can you be absolutely sure? And even if everything is actually perfectly proper, some members, especially those whose candidates have been defeated, are bound to find it suspect. Honest or not, such a procedure is not calculated to strengthen confidence in the integrity of the elections.

Ballots should be mailed by voters to a locked postbox rented especially for the occasion. Strict instructions should

be given to the postal authorities that no one is to have access to the box until the time officially set for a count. At that point, and only then, the union election tellers should open the box in full view of the candidates' observers. From then on, the observers should carefully monitor every step until the count is completed and the results announced. The U.S. Labor Department puts it this way:

"Prior arrangements should be made with postal officials not to release ballots except to authorized election officials in the presence of candidates or their observers at the scheduled time for the pickup. . . . Only election officials and authorized clerical personnel should handle the ballots and the election records, and always within the view of the observers." (*Electing Union Officers*, p. 28. 1980)

If your union is running its own election and not using the services of a reliable outside election agency like the American Arbitration Association, and if it has not made adequate provisions for safeguarding the ballots, you may want to demand the use of a locked postbox. If so, make that request promptly, perhaps even before the election announcement is posted. If the administration, in your opinion, cannot present reasonable arguments to reject your proposal you can draw your own conclusions. You will surely want to watch every move with double care. And keep the membership informed.

When to start the count

Mailed ballots keep arriving every day. Should they be opened and counted as they arrive, say, every few days? Or should they be allowed to accumulate until the end of the voting period and then opened all at once and counted? That depends upon whether you feel the ballots are safe from tampering.

When mail ballots are counted daily, the administration usually has an advantage. Unlike the opposition, an administration has easy access to all local records. Once it knows who has voted and who has not, even an honest administration can utilize that information to step up its campaign among those non-voters whom it counts on for support. An unscrupulous administration, with surplus ballots in its pocket, and aware of who has not voted, can mail in fraudulent ballots in the name of the non-voters. If the ballots are opened only at the last moment, they have less time to perform this service with efficiency.

On the other hand, if the ballots are not well protected and are lying around on someone's desk in the union office, you may want them counted immediately before anyone gets the chance of "losing" or transforming them.

But, if the ballots are securely protected in a locked postbox, it seems preferable to bar all access to the box, to accumulate all ballots until the deadline, and begin the count only

then. The Labor Department suggests that once ballots are picked up from the post office, "The tally should be conducted promptly by the authorized election officials, all in the presence of the candidates or their observers." We should add this: when the election committee picks up those ballots, the observers should accompany the ballots during the trip from the post office to the hall where they will be tallied.

(Note: These comments, like other statements in this booklet, are based upon the experiences of unionists in many locals. Readers can help others by sending us reports on their own experiences.)

Before the count: Checking the authenticity of ballots; discovering multiple voting

Before the actual count begins, the ballot is still sealed in its inner envelope. The outside of the outer envelope must contain information to identify the voter. *Before the outer enveloped is opened* that information must be inspected 1. to determine whether it has been mailed by an eligible voter in good standing, and 2. to guard against multiple voting. Have two or more envelopes been received in the name of any single voter?

There are various systems for proceeding with this kind of check. Each outer envelope, for example, can be compared individually with the eligible voters list and a check marked before the voter's name as the envelope is processed. Envelopes can be arranged alphabetically by name or arithmetically by book number and then checked against the list; multiple voting will become immediately apparent.

At this point, you or your observers have an opportunity to challenge votes which you feel are improper. Evidence of possible election fraud could show up here.

Make sure that each outer envelope bears the required identifying marks; if not, you may challenge it. (Challenged envelopes should be set aside *unopened* and disposed of later.) If there seems to be an unusually large number of unidentifiable envelopes, that could be a disquieting sign and should put you on guard. The same, for outer envelopes from individuals whose names do not appear on the eligible voters list. If the envelope appears invalid, don't hesitate to challenge it.

Watch carefully for multiple voting which could be a sign of a serious problem if it is substantial. But what is "substantial"? If out of, say, a thousand votes only one or two double votes turn up, that could be the result of a trivial error in the mailing list. But if, say, 20 double votes appear out of that thousand, it could be a symptom of massive fraud. You might imagine that 20 bad votes out of a thousand can't be too significant, but that is not true. If those 20 votes were cast by actual voters, each of whom cast two votes instead of one, that might be annoying but not necessarily critical. But consider quite another possibility.

Suppose each of those 20 voters had actually cast only a single, proper, legal vote each; but that some shadowy ghost,



"BEFORE WE JUMP TO RASH CONCLUSIONS, I WONDER IF HE'S ON THE ELIGIBLE VOTERS LIST?"

who somehow had gotten hold of extra blank ballots, had cast a second vote in their names. Remember now that one easy way to steal a mail ballot is to send in fraudulent votes in the name of those whom the perpetrator thinks will not vote. In such a case, those 20 votes could be evidence of massive vote fraud. For that same ghost voter might have mailed in hundreds of illegal votes in the name of other voters *who did not vote at all* or who may never even have received ballots. And since the legal voter did not vote at all, the illegal vote does not show up as a double vote. In other words, a substantial amount of double voting casts a heavy shadow over the entire election process; if manipulated with care, that kind of fraud is hard to catch. If you suspect it, be scrupulously observant when it comes to the count.

While the outer envelopes are being inspected—and some may be challenged—they remain unopened. Before the actual count begins, the outer envelopes of all unchallenged ballots are opened, and the sealed inner envelope (which contains the actual ballot) is removed but not yet opened. To safeguard the secrecy of the ballot, the still-sealed inner envelope must be physically separated from their outer envelopes and all intermingled. Then, and only then, the inner envelopes are opened and the ballots removed.

As ballots are inspected and counted, you have another chance to make challenges. The outer envelope identified the voter; but if the ballot itself bears identifying marks, it is subject to challenge. Challenged ballots are not counted at that point, but are set aside for later disposition.

Candidates may assign an observer to every single station where ballots are being counted and tallied. If you are serious about monitoring the election, exercise that right.

In person voting: by paper ballot

If officers are not elected by mail ballot, then voters must appear in person to cast their ballots at the union hall or other voting sites. We've already gone into tedious detail on the process of voting by mail, because that seems to be the most difficult system for any opposition to monitor. Many of the precautions which you must take to avoid the traps in a mail election apply with equal force to in-person voting at the hall.

Some unions still vote by mechanical machine, but renting mechanical machines has become so costly that many elections are by paper ballot. Whatever system your union uses, we suggest that you study carefully the sections of this booklet on voting by mail, a system which requires paper ballots. (Increasingly, electronic computerized machines are being used in public elections because they are cheaper, lighter, and convenient. But the problem of overcoming and controlling fraud and error by computerized machines remains unsolved.)

Even though in-person voting may require a larger staff during the actual voting, it is normally easier to police than mail balloting. After all, an actual human being has to get to the polls, and it is more difficult to produce a person than a piece of paper. The voter comes to the polling place, is identified, gets a ballot, marks it in secret, deposits the marked ballot into a receptacle of some kind. When the voting is over, the boxes are opened and the ballots counted. A verification of each step is possible in full view of the observers. But that assumes you have observers enough to watch at every site.

Before deciding on the merits of any election method, remember that any election supervised by a reputable impartial outside agency is usually preferable and safer than any unsupervised election. It would be prudent to choose a *supervised* election by mail rather than an *unsupervised* in-person election.

Since it is physically possible to count the actual number of voters who come to the polls, do it! That's how Frank Schonfeld and his reform supporters in the New York Painters union were able to convince a federal judge that there had been vote fraud in their elections. At the voting site, the reform observers clicked off the number of voters on little hand-held counters. When they were kicked out of the hall, they remained outside on the street, continuing the count of all who entered the building. The incumbent administration

reported that there had been over 300 votes cast, overwhelmingly in favor of the officials. But the reformers could prove that only 150 people had entered the building. The judge concluded that such a result was the product, not of divine intervention, but of human fraud. If you can prove that this kind of arithmetical magic occurred in your election, you may convince the Labor Department and a judge to void the election.

Is the ballot box empty at the beginning?

It may seem too obvious and elementary to ask, but was the ballot box empty before voting began? Scientific experiments, long ago, demonstrated that spontaneous generation does not take place in sealed containers. Someone inserted those premature ballots. Lock that barn before the election is stolen.

Identifying voters

Do you recognize that voter? In a large local, you can't possibly know all members by sight. An early warning of impending fraud in one local union came when a new administration amended the bylaws to eliminate certain effective means of identifying the voters.

There should be some means of verifying the eligibility of those who come to vote. Your union bylaws may already have the answer: union books, dues receipts, signatures, company badges with photos—any one or in combination. The law (LMRDA) establishes no specific requirement; but it does require, in general fashion, "adequate safeguards to insure a fair election." Surely, one safeguard should be a reasonable means of insuring that ballots are cast only by actual and eligible voters.

A list of eligible voters should be available at the polls. If the name of someone who comes to vote does not appear on the list, you can properly challenge his or her vote. The same applies to anyone who cannot present the required means of identification; even if they are adequately identified, their names must appear on the voters list.

You will know whether dues books alone are a foolproof means of identification in your union. In some construction locals where dues are not paid by checkoff some members mail their dues books with payments to the financial secretary who stamps the books and mails it back sometime later. Some dues books are always in the hands of an officer, even during the election period; it is difficult to detect whether they are misused at the polls. Members should be cautioned, well in advance, not to let books out of their hands until the election is over.

Check for double voting

When voters come for the ballots, it is simple to determine whether anyone has already voted under their names—so simple that any effort by the election officials to resist verification should be viewed with utter suspicion. Identification

documents can be stamped; names of those who have voted can be checked off the official voters list.

Numbering the ballots

For in-person voting, it is common practice to print a consecutively numbered stub on the corner of each ballot. Just before the ballot is handed to the voter, the stub is removed and stored separately so that the voter cannot be identified with the ballot. It is a good system. Obviously if the same number shows up twice, something is wrong. Or, if ballots are numbered from, say 1 through 300, and stub number 325 turns up, someone may have manufactured counterfeits. Numbering the ballot stubs makes it more difficult to pass phoney ballots.

However, remember that *the stub must be removed before the member votes* in order to guarantee secrecy. Some members are leery of any kind of numbers on the ballot for fear that somehow "they" will know how people voted. That fear may be baseless, but where opposition to those in power often means blacklisting that fear is understandable. You should insist upon the prompt removal of those stubs and reassure uneasy voters.

Secrecy

A secret ballot means just that. It must be impossible for anyone know how the member voted, impossible to see and impossible to discover it. You should insist upon a closed booth with a curtain that can be drawn when the voter enters.



PRESENKER

"REMEMBER, THIS TIME YOU'RE # 368, IF YOU'RE CHALLENGED, # 91 AND 265 ARE YOUR TWIN BROTHERS!"

Voting by mechanical machines

When voting is in-person by mechanical machines, it is simpler to police because there are fewer paper ballots fluttering about. (There is a distinction between *mechanical* machines and *electronic* machines.) But that doesn't mean you can let down your guard. If you trust NASA always to conduct flawless space flights and all auto mechanics to do a fine job on your car, you will give implicit trust to all voting machines. Better to retain a healthy skepticism, because anything with pawls and gears and levers can go wrong—or even be rigged.

Incumbent union officials rented the machines that were used in one big stolen union election in New York City. One evening, after votes had been cast but not yet officially tallied, some individuals showed up where the machines were stored, displayed what appeared to be credentials from the election machine company, entered rooms containing the machines, and with a swift push of levers erased all the votes from machines which were known to have been used by a large proportion of opposition voters.

If the machines are rented by a reputable outside agency which is running your election, you can probably rest easy, but in any event, no matter who is running the election, watch those machines. And test them in advance.

Protective counter and public counter

Every machine should have two separate registers for recording the total number of votes cast, each something like the odometer on your car which registers the number of miles you have driven. But each serves a separate function.

The *protective counter*, as its name implies, offers a kind of permanent check against error. It records all the accumulated votes ever cast on that machine, in many elections over the years, much like your car's odometer shows the total mileage regardless of who ever owned that car. If before your election begins, 24,782 votes had been cast on that machine in four previous years in six different elections, the protective counter should read exactly 24,782. If 200 votes are cast on that machine in the course of your election, the number will rise to 24,982. Before actual voting begins, your observer should record the number on the protective counter; when voting ends, the new, higher number is also recorded. The difference between the two figures is obviously the maximum number of votes that could have been cast on that machine in your election.

The *public counter* should be set at zero when your voting begins. When voting is over, your observer notes the number on the public counter, *which is the actual number of votes cast on that machine in your election.*

Calculations from the protective counter should correspond with the figure shown on the public counter. If 200 people vote, the public counter should read 200; and the protective counter should rise by 200, as in our example, and go from 24,782 to 24,982.

Testing the machine

Before voting begins, in the presence of your observers, the machines should be tested to determine whether they are working properly. The voting levers for each position should be tested, say ten times to see if those votes are correctly recorded. After the test, the *public counter* should be set back to show zero when actual voting begins. (The *protective counter* cannot be set back but will advance as test votes are made. Your observer should record the number on the protective counter just before the actual voting begins.)

Recording the vote

When the voting is over the number cast for each position will be recorded on the machine's registers. Your observer should personally examine these figures and copy them. You may need at least one other observer to assure an accurate and honest tally. It is not good enough for your observers simply to listen to figures called out by one election official and marked down by another. Your observers must see for themselves that the correct figure is called out and that the same figure is actually written down on the official tally sheets. In one hotly contested election in a major union, an election official was caught reversing figures on the tally sheets so that regardless of what was read off the machines, the incumbents were always credited with the highest number.

When the voting has been completed and the tally recorded, the machines should be closed and sealed, front and back, with tamper-proof seals. If these seals bear numbers, your observers should note them down. Seals should be provided by the company that owns the machines.

Paper ballots

Even when election machines are used, a supply of paper ballots must be available. If the machine breaks down, or can't handle an unexpected load, voters can use paper ballots. Challenged votes must be cast by paper ballot and segregated.

Computerized machines

Electronic machines are becoming common in public elections, but their reliability is still under scrutiny. They are programmed to process votes by computer and are adaptable both for in-person voting and for counting mail ballots. We

have had only meager reports on their use in union elections.

One big statewide local in New York has conducted elections by mail using computerized machines for the count. Voters mark their choices on card-ballots which are easily read by computer. A hundred thousand ballots with the names of many candidates for many positions can be counted in only a few hours, which is a real advantage. The disadvantage, reported by insurgent candidates, is that they have had no way of checking voter eligibility.

Another very large local in New York City once ran part of an in-person election by electronic machine. Observers for an opposition slate didn't like it. They reported that the final tally was run off on clumsy computer printout sheets which they had no chance to inspect before the sheets were quickly whisked away by the election officials.

These are only incidents but they do give pause. The vulnerability of computerized machines to election fraud was the subject of several articles by David Burnham in the *New York Times* beginning on July 29, 1985 from which we take much of the information that follows.

The Federal Elections Commission reports that about 60% of American voters used some kind of computerized system in 1984. According to David E. Sanger in the *Times*, these machines will soon be selling for around \$3,000; and they're fast and convenient to use. In time, elections by computer are likely to make other systems obsolete. Right now, however, the safeguards built into current laws, rules, regulations, and practices are adapted to traditional election systems and are inadequate to deal with computer electronics.

The federal government's National Computer Security Center, according to Burnham, "is investigating whether a computer program that counted more than one-third of all votes in the United States in 1984 is vulnerable to fraudulent manipulation." Lawsuits have been brought in several states challenging computer-reported election results. ". . . [C]omputer consultants hired by the plaintiffs in three states and two independent experts working for the *New York Times*," wrote Burnham, "have examined the programs used in [two states]. All five concluded separately that the computer programs were poorly written and highly vulnerable to secret manipulation or fraud."

Unionists will have to remain wary and skeptical until adequate safeguards are devised for computerized systems. Meanwhile, your best assurance when confronted by the computers, as in almost every other aspect of union elections, is supervision by a reliable outside agency. If there must be computers, let the electronic blips be impartially controlled.

Counting the ballots

The polls close, it is time to count the ballots and get the good news or the bad.

You prefer to have the count take place immediately without interruption; if there is an interlude, watch those ballots. You want an accounting of all ballots: how many printed, how many used, how many left over and where are they? You want observers at every single counting position; you must ask that the election records be protected; if you sign the tally sheet, make sure that you do not testify to the authenticity of a suspect election.

Interrupting the count

Your mind will be more at ease if the count is completed at one uninterrupted session, leaving no interlude during which lonely, unguarded ballots could suffer mishaps. But in a big local with thousands of votes, it may truly be impossible to complete the work in a single day, so that the count may have to be suspended and resumed the following day. Ballots must be safeguarded during the intermission. Some observers, nervous over possible fraud, sleep outside the locked room in which ballots are stored overnight. Ballots might be deposited into a locked safe or box, tape sealed around all six sides, and the tape signed by observers. One way or another, ballot kidnapers and quick-change artists must be discouraged.

If in your union the count could easily be completed at one sitting, but the administration or the election committee insists unaccountably on an interruption, watch out! especially if your side is running strong, even ahead of the incumbents. Or, if it is legitimately necessary to interrupt the count, but the committee resists reasonable suggestions for safeguarding the ballots, pilferage could be in the making. The more obstacles they create, the greater your need for caution. You've got to tax your ingenuity to come up with protective devices. If all fails, keep the usual records and be prepared to challenge the validity of the election.

Copy the tally

When the count is completed, make sure you keep—or make—your own copy of the tally. Miraculous transformations sometimes occur—usually to the advantage of the incumbents—between the actual tally and the final official announcement. You want a copy of the original count before magicians can go to work.

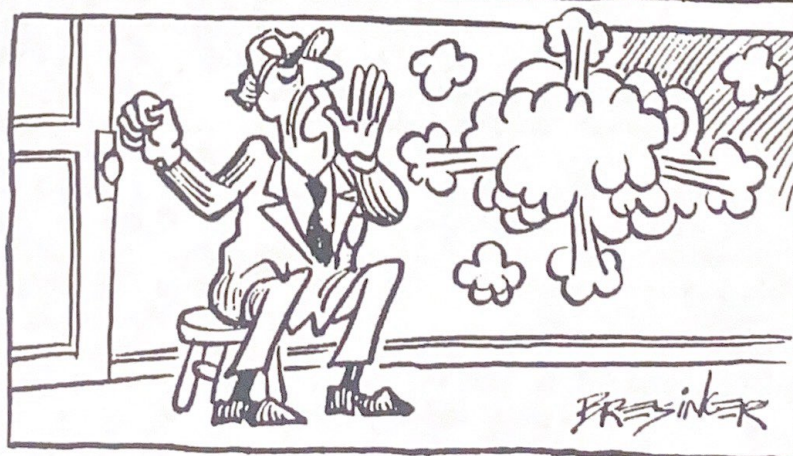
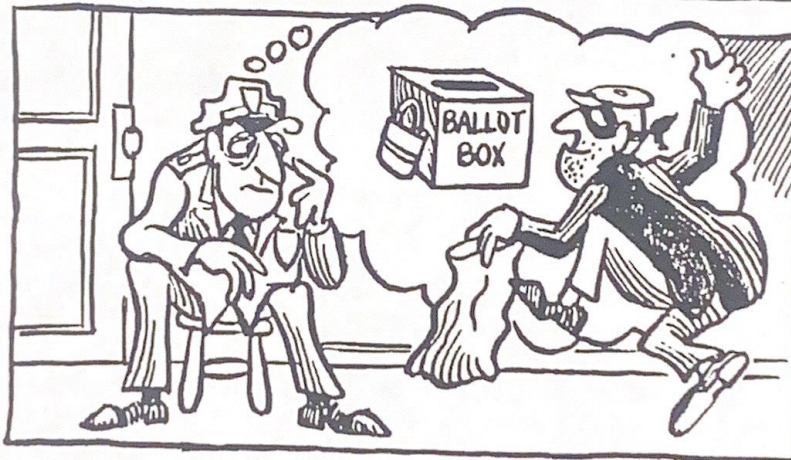
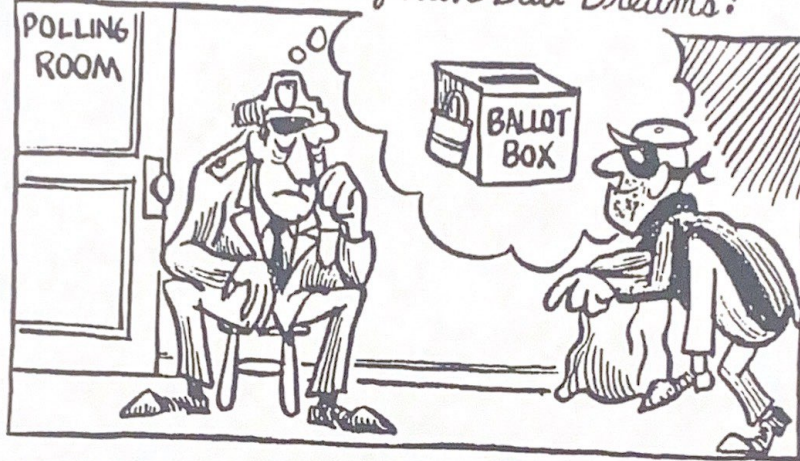
Safeguarding election records

The law provides that the union “shall preserve for one year the ballots and all other records pertaining to the election,” but it doesn't specify how they are to be protected

during those long twelve months. If you are worried over how the election was conducted, you might also worry over how the records are preserved, especially if you are contemplating a possible election challenge. It would be nice if they put everything into a big sealed box with tape all around it and observers signatures marked across the tape. If they won't do that, you might ask, even before the election, how they intend to protect those records.

Counting the ballots

Stay Awake Bud, Why have Bad Dreams!



Conclusion

In reading these lines, you may have detected a suggestion that there may be nasty people around who have devised a thousand and one ways to steal an election. Where there's a will, there's a way. "That," you may say, "is a gloomy outlook on life. Why not be more positive?" If you want positive, you need only put a plus wherever we have a minus. By eliminating all the malpractices, you end up with good ones.

Besides, there are plenty of other publications which dwell on the bright side of life, because they deal mainly with conventional conduct by nice people. Your own international union, the educational department of the AFL-CIO, the U.S. Labor Department, and various private labor educational programs can supply excellent manuals on how well elections can be, and have been, conducted. What they include, sprinkled with outlines on labor history, is always useful and instructive. But their defect is what they omit. They don't prepare you for meeting up with those mean characters who may never have read their books but who do run some unions. We aim to fill that gap.

You may need 60% to get elected

You may have the old fashioned notion that you should be able to win a union election with only an old fashioned majority vote. But, for an opposition, that's not always good enough. When your adversaries control the printing, distribution, and counting of the ballots, you may not be able to eliminate fraud completely, but you should be able to limit it. If you actually get 60% of the votes, you can win an election if you succeed in getting credited with only 51%. Cynicism, no. Realism, yes.

This booklet aims to help you get a reasonably fair union election and an honest count. But that is all. It does not aim to put you in office. For all we know, your opponent may be the better choice. If you hope to be elected, you can study the rules and insist upon your rights until the sun goes down, but it will not be enough. Your obligation is to reach out to the membership and convince them to give you their votes.

Through you, dear reader, this booklet is intended to serve the membership, whether they read it or not. By defending your rights, win or lose, you defend the right of unionists to choose their own leaders in democratic elections. That right is the precious foundation of a free labor movement. We remain partisans of a free labor movement, one which is not only free of government domination but which provides freedom for its members, because that kind of labor movement is an essential foundation for democracy in society.

Election rules approved by a federal judge

Where can you get a good set of election rules? Instead of beginning from zero, and inventing our own rules, we can start by studying the detailed rules which were ordered by a Federal judge in the State of Washington on September 14, 1981, for the conduct of a local union election. The case was *Marshall v. Local Lodge 79, International Association of Machinists*. (Western Dist. Washington C78-399M). After suit by the Labor Department, Judge Richard M. Bilby voided the contested election and ordered a new one under Department supervision. The original draft of the rules was prepared by the Labor Department; the final version was mandated by the judge.

These are not rules dreamed up by zealous complainers and chronic malcontents just to give dedicated union leaders a hard time. They were formulated by accredited Labor Department representatives and are based upon the careful reflections of an impartial Federal judge as the best way to run a fair, honest, and lawful election. They have legal authority behind them; you are on solid ground if you draw upon these ideas when you make requests inside your union, or even in court. A wide range of situations is covered: the election involved in-person voting at a hall by election machine and also absentee mail-voting by paper ballot.

A word of caution for those who are looking for model election rules applicable to their own locals: When a Federal court orders a government-supervised election, the law (LMRDA) specifies that the election shall be conducted in accordance with the union's own rules except where they conflict with the law. This IAM election, therefore, was conducted largely according to the IAM rules, so that any particular procedure prescribed for this election may not necessarily be the best conceivable procedure, even though it was legal and permissible. Your own union bylaws may provide for other rules which might be just as acceptable to a Federal judge.

What follows next is a summary of the plan of election ordered by Judge Bilby. Only the sentences in quotation marks are from the text signed by the judge. This summary version, including all the heads and subheads, is prepared by Herman Benson. Where rules are derived from the local's own bylaws, that fact will be noted by (LBL); from the international constitution by (IC); from the law by (LMRDA); and from Labor Department regulations by (CFR).

Election calendar

Dates: Nominations are scheduled for the 3rd Monday in November 1981 at the regular local meeting. The election will be held on the 3rd Monday in December (LBL)

Term of office: The candidates elected will take office on January 1, 1982, and will hold office until December 31, 1984.

Notices: A combined nominations and election notice shall be prominently printed in the October and November issues of the local's bulletin and mailed to the last known home address of every member.

Tellers: The local president will appoint 3 election tellers by the time of the nomination meeting. Tellers may not run for office. (LBL and IC)

Nominations

The local president, or the vice president in the president's absence, will preside at the nominations meeting and take nominations for officer positions. Nominations will be held whether or not a quorum is present.

Any local member may be nominated for *any and all* positions, but may run for only one office. No seconds are required; self-nomination is permitted. Nominations may be made by mail.

The day after the nominating meeting, the tellers will examine the local records and determine the eligibility of each nominee. The election Supervisor is empowered to decide disputes on eligibility.

Acceptances and declinations: The tellers committee will notify members who are nominated; and, with the concurrence of the Supervisor, will set a deadline for acceptances. Failure of a nominee to meet the deadline will constitute rejection of the candidacy.

Since members could be out of town and not reachable on the date of nominations, any member can file a written advance notice of acceptance for any single office; or, if nominated for several posts, may list an order of preference.

Listing of candidates on the paper ballot or on the voting machine shall be decided by lot.

Qualifications for office

Continuous good standing: Candidates must have been in continuous good standing in the local for one year prior to nominations and must be free of any delinquency to the union. (LBL and IC)

Financial obligations are payable within the month due. But a member may be in arrears for up to 2 months before losing membership rights. (IC) Therefore, to remain in good standing, a member must have paid each month's dues by the last day of the following month. Example: July dues must have been paid by August 31. By the time of nominations in this election, a candidate must have been in continuous good standing from November 1, 1980, through October 31, 1981, and, at the time of nominations, must have paid all financial obligations due in October 1981 and earlier.

Member on checkoff: A member whose dues are paid by voluntary checkoff may not be declared ineligible because of delay or default in dues payments. (LMRDA)

Working at trade: To be eligible as a candidate, a member must have been working at the trade during the six months prior to the nomination meeting (IC)

However: this requirement does not apply to 1) full-time salaried employees of the union, 2) members who have been unable to find employment at the trade because of a strike, lockout, or temporary disability, or to retired pensioners paying full dues. (IC)

In addition, the following members will be considered to be working at the trade and may not be disqualified under that rule: those who are 1) unemployed but actively seeking employment, 2) familiar with the trade but temporarily not working because of illness, economic conditions, or other good reasons, 3) paying full dues but discharged or laid off. Members may not be disqualified merely because they are working part-time. (CFR 452.41)

Every nominee will be assumed to meet the "working at the trade" requirement unless his or her eligibility is challenged in writing. Unless the challenge is clearly "erroneous or frivolous" the tellers will ask the nominee for a reply. The tellers and the Supervisor will decide on the eligibility. If there is an irreconcilable dispute, the Supervisor's position will prevail.

(Note: A candidate should be permitted to take time off from work to campaign without endangering his or her candidacy. —H. B.)

Non-citizens and "totalitarians": "The provisions of Article I Section 5, of the International Constitution requiring citizenship in a country included in the territorial jurisdiction of the IAM and disqualifying from candidacy 'a member who advocates or encourages communism, fascism, Nazism, or any other totalitarian philosophy, or who, by other actions, gives support to these philosophies or isms or advocates or supports movements or organizations inimical to the interests of the IAM or its established policies and laws is not eligible to hold office in the IAM . . .' will not apply as qualifications for candidacy to office in this election as being unenforceable and contrary to U.S. Department of Labor regulations (29 C.F.R. 452.53)."

(Note: The original text of the court decision cited the wrong regulation number. This typographical error was corrected by the Department of Labor in a letter to AUD. —H. B.)

Rights of candidates

Membership list: Once within 30 days before the election, every candidate may inspect the list of local members who are covered by a collective bargaining agreement which requires membership as a condition of employment (LMRDA). The list shall be available in the local offices during normal working hours and shall show the names and addresses of all members regardless of their good-standing status. The right to inspect the list does not include the right to copy any

information from the list, but it does include the right to compare the list with private information in the possession of the candidate. The Supervisor shall have access to the membership records required to verify the list's accuracy.

Mailings: The local must comply with all reasonable requests of any candidate to distribute campaign literature, at the candidate's own expense, by mail or otherwise. The local may not discriminate for or against any candidate in the use of the lists. (LMRDA)

Candidates who desire a mailing of campaign literature by the local must make a request to the local secretary-treasurer at least 15 days in advance of the election. The secretary treasurer will provide an estimate of the mailing cost and will receive payment in advance. Upon receipt of the payment the secretary treasurer will promptly mail the campaign literature to all local members. The local shall use its bulk mail permit. All costs will be paid by the candidate.

(Note: This provision is defective. The campaign period is only one month. Bulk mail is too slow. The rule should permit the candidate to pay first class postage.—H. B.)

If the election Supervisor finds that mailings are not promptly and impartially handled by the local, he will instruct the local officers to deliver a mailing list to a professional mailing service of the Supervisor's choice. Thereafter the candidates will deal directly with that service for the mailing of their own literature.

The local officers will promptly report changes in the mailing lists.

Selective use of mailing lists: To the extent that the local's mailing system permits, the candidates have the right to mail campaign literature to selected membership groups, for example: to retirees only, to selected ZIP code groups. (CFR 452.68)

Number of mailings: Every candidate may have as many mailings as he or she desires, provided that such requests do not impose an unreasonable burden on the union. The Supervisor will decide any disputes over what is reasonable.

Censorship: The local may not censor the statements of any candidate. It may not require that it be permitted to read any campaign literature before processing a mailing. (CFR 452.70)

Identification: Each page of all campaign literature must identify the candidate and the office being contested.

Miscellaneous: "No person shall make any use other than provided above of membership records for campaigning purpose." *(Note: Defective rule. It is ambiguous and states no penalty and no limits to the penalty that may be imposed for violating this very vague provision.—H. B.)*

Observers: All candidates are entitled to observers at the polls and at the count. Candidates must designate observers in

writing; they must be local members. *(Note: we are informed that the requirement for local membership was in the local bylaws.—H. B.)*

Number of observers: "Each candidate will be permitted only one observer at any one function. However, a candidate can designate alternate observers to relieve each other at the polls and provide continuous observation at all election functions. A candidate may not act as his or her own observer."

(Note: A footnote to this provision reads, "This proposed rule is based on the ruling of the Court in the Order entered in this issue." The rule is badly defective. One observer at any one function is not necessarily enough. A candidate needs as many observers as are necessary at each polling and counting station to assure an honest count. Where, as in this case, election machines are used, at least two observers are necessary at each machine: one to verify the tally on the machine and another to verify the accuracy of the count written down by the tellers. It is possible for someone to call off one set of figures from the machine and for someone else to write down quite different figures on the tally sheets.—H. B.)

The election process

The voting in this election is by manual voting using voting machines, supplemented by an absentee mail ballot.

Voting machine procedures

Renting of machines: At least three machines will be rented from the County. A County official will supervise the setting up of the machines to ensure their proper operation. The County official will return at the close of polling and assist the tellers in reading the vote totals. Only the County official or the election tellers will have keys to the machines.

Time and place of voting: The local will arrange for the exclusive use of a hall for the election. The polls will be open continuously from 9:00 AM to 9:00 PM on December 21.

Supervision: At least one teller, under the supervision of the election Supervisor, will be present throughout the voting to ensure a fair election.

Verification of voting list: Before the polls open, the local secretary will furnish the tellers with an alphabetized list of members to check against double voting. The list will contain space for voters to sign their names and union book numbers opposite their names.

To prove good standing, each member must present a dues book. In accordance with past practice, however, if a member cannot produce a dues book, he or she can present a certification of good standing from a local official which will be accepted by the tellers as evidence of good standing vote.

Secrecy: The tellers will ensure that each member casts a ballot in secrecy.

Challenges: The eligibility of any voter may be challenged by a candidate's observer, a teller, the Supervisor, a union officer or employee, or any local member. "If that challenge is not clearly erroneous or frivolous," the member will be permitted to cast a challenged vote by paper ballot.

After marking the paper ballot in private, the challenged voter will place it in an inside envelope. (*The rule is not explicit here, but the inside envelope should be sealed.—H. B.*) The inside envelope is then inserted into an outside envelope, on which the voter places his or her name and membership number. "The tellers will indicate in writing on the outside envelope the reason for the challenge . . . and will provide a ballot box for the deposit and safekeeping of such challenged ballots."

Counting challenged ballots: "At the conclusion of the election, if the number of such challenged ballots would clearly not affect the outcome of the election for any position, the issues involved in the challenge will not have to be resolved, and the challenged ballots will not be opened and counted. However, if the number of challenged ballots could affect the election for any position, the legitimacy of each such ballot will have to be resolved by the tellers committee under the supervision of the Supervisor. The inner envelope containing the ballot will be removed from the outer envelope of any challenged ballot deemed acceptable, and all such inner envelopes will be commingled prior to opening and extracting the ballot to insure the secrecy of all such challenged ballots. In case of an irreconcilable dispute between the election tellers and the Supervisor of the Election as to the eligibility of any challenged ballot, the Supervisor's position shall prevail."

At the polling place: Except for official observers, election tellers, and representatives of the Supervisor, no member will be permitted to loiter in the polling area before or after the voting.

No campaigning will be permitted in the polling hall; no member may bring campaign literature into the polling area for distribution. Neither observers nor tellers may wear any buttons or other devices to indicate their preferences, nor may they discuss the candidates' merits at the polling site during the election.

The tellers will periodically inspect the voting machines and remove any campaign literature left by voters.

Supervisor's representatives will remain continuously at the polls during voting hours.

The local will have available, throughout the polling period, the necessary staff and records to check the good standing of voters who come without their membership dues books. A representative of the Supervisor will monitor this certification process.

Absentee ballot procedure by mail vote

Who may vote by absentee ballot: The following may vote by absentee ballot: those who 1) live more than 25 airline miles from the polling place; 2) are on vacation away from the city, 3) are confined by illness, 4) on official union business, 5) on employer travel assignment. (LBL and IC)

Notice of the conditions for casting absentee ballots will be included in the election notice mailed to all members. To receive an absentee ballot, a member must send a written request to the local recording secretary no later than ten days before the election. Within 48 hours the tellers shall mail the absentee ballot to the applicant. (IC)

Certification: In applying for the absentee ballot, the applicant must provide written certification to the recording secretary that he or she meets one or more of the stated conditions for absentee voting. Without such a certification, no request for an absentee ballot will be honored.

(A footnote to the plan of election makes the following significant points:

1. The International constitution provides that only members eligible to vote may receive absentee ballots. But the plan adopted by the Court overruled this provision: any request for an absentee ballot that meets the procedural conditions will be honored; the validity of the vote will be decided on election day or the day after. Reason: the applicant might not be eligible when making the request but might become eligible by election day.

2. The International constitution provides that the recording secretary is to mail out the absentee ballots. However, in this election the position of recording secretary was to be filled, and the incumbent might be a candidate for reelection. “. . . Control of the ballots by a candidate seeking reelection could . . . constitute inadequate safeguards to insure a fair election in violation of . . . LMRDA. Therefore the Supervisor takes the position that custody and control of the ballots, to include the mailing of absentee ballots, should be the sole responsibility of the tellers of the election, subject to supervision of the Supervisor.”)

Challenged absentee ballots will be processed in accordance with the procedures for processing challenged votes at the polling hall.

How to get an absentee ballot: The local will include an official form for requesting an absentee ballot along with the election notice mailed to all members. “This official form shall be the *exclusive* means by which a member may obtain an absentee ballot.” Absentee ballots will be sent only by mail to the members’ last known home address; “. . . under no circumstances will an absentee ballot be hand-delivered to any representative or messenger for the requesting member.”

Handling absentee votes: A U.S. Post Office Box will be rented by the local for the months of November and December to

be used exclusively for the receipt and custody of absentee ballots. Under supervision of the Supervisor, postal official will be instructed that mail to this box be impounded and delivered only at a specified date and time to a committee consisting of at least one teller and one representative of the Supervisor. Candidates have the right to have an observer present when ballots are picked up.

Absentee voters will be informed in writing that their ballots must reach the post office box by no later than 8:00 a.m. on December 22, 1981. (A footnote to the election plan makes an interesting and valid point: The plan requires that the ballots actually be in the box by a specified deadline. An alternative requirement, that the ballots bear a certain post mark date, would leave the tellers in a state of uncertainty; a delay of mail might bring ballots after the count was over even though they were properly postmarked. The election plan provides "a definable and certain cutoff point for determining the eligibility of all absentee ballots.")

Only one mail pickup from post box: "Only one pickup of mail will be made from that post office box during the period of election, and that will be at 8:00 a.m. on December 22 by at least one teller and a representative of the Supervisor. Any absentee ballots delivered to that post office box after 8:00 a.m. on December 22 and any absentee ballot mailed or delivered to any address other than the designated post office box, will not be considered valid nor counted."

Printing of paper ballots: Immediately after the candidates are declared qualified, the tellers shall design a paper ballot, under the supervision of the Supervisor. This ballot will be used 1) for casting an absentee ballot, and 2) for casting a challenged ballot at the polling place on election day.

A sample of the ballot will be printed in the December issue of the local's bulletin. (LBL)

A local officer will arrange for the immediate printing of the ballot.

"The printer shall deliver the completed ballots only to an election teller(s), with a representative of the Supervisor present, and shall certify to the teller and Supervisor the number of ballots printed and delivered to the teller(s). From that point on, custody and control of the ballots shall be the responsibility of the tellers, who will store the ballots in a safe location to which no one other than the teller(s) and Supervisor have access. The tellers of the election and the Supervisor shall agree on what constitutes adequate safeguards for custody and control of the ballots and, in the case of an irreconcilable dispute, the position of the Supervisor shall prevail."

Guarding against forgery: "After the tellers have custody of the blank ballots, and before mailing any of them to an absentee ballot requester, the Supervisor shall imprint a distinctive marking on the reverse of each ballot for authentication purposes."

Keeping accurate records: The tellers shall make complete records of the handling of absentee ballots, including the names of the applicants and the date of mailing the ballots. These records are open to inspection by the Supervisor.

Special provision on voting for a partial slate: If two or more are to be elected to the same post, a voter is *not* required to vote for the full number to be elected. Example: If five delegates are to be elected to a convention or committee; and there are, say, ten candidates, a voter may vote for fewer than five, even only for one. The provision of the international constitution which would invalidate a ballot cast for fewer than the total number to be elected "shall not be enforced in this election."

[A footnote here is enlightening: "This requirement [of the union constitution] might require a voter to vote against his own perceived best interests by requiring him to cast a vote for a candidate in competition with the voter's preferred candidate(s), or for a candidate otherwise unacceptable to the voter merely to avoid loss of his vote for the preferred candidate. This appears to the Supervisor to constitute an infringement of the member's right . . . 'to vote for or otherwise support the candidate or candidates of his choice. . . .'" (Section 401(e), LMRDA).]

Write-in votes shall not be tabulated (IC)

Secrecy of the mail ballot: Absentee voters receive a ballot and two envelopes: an inner and an outer envelope. The voter marks the ballot and seals it in the inner envelope. "Neither the ballot nor this inner envelope shall contain any voter identification or the ballot will be voided as not constituting a secret ballot." The sealed inner envelope is placed inside the outer envelope for mailing. Before mailing the package, the voter must write, on the outside envelope only, name, address, and membership number. The information on the outer envelope will help determine whether the voter is eligible. If the information is not supplied (on the outer envelope only) the ballot will be voided. (LBL and IC)

Determining eligibility of absentee voters: After picking up the absentee ballots from the post office box on December 22, the tellers bring them to the local office to check the voters' eligibility under the supervision of the Supervisor. Observers may be present during this process "but will not be permitted to . . . impede the orderly process . . . or the regular business of the local." The local records must be present, and observers may inspect "the dues cards or other dues information to determine whether the review of voter eligibility is accurate." Individual absentee ballots may be challenged "for good cause."

Preventing double voting: Manual voting at the hall takes place on December 21 and the count of the absentee ballots begins the next day, December 22. Working from the voting record of December 21, the tellers record next to the appropriate members name the fact that an absentee ballot was

received from the member. If an absentee ballot is received from a member who is recorded as already having voted at the polls on December 21, the absentee ballot will be processed like all other challenged ballots.

Opening the envelopes: "After determining the eligible absentee ballots, the sealed inner envelopes will be removed from all outer envelopes. These sealed inner envelopes will then be intermixed in such a fashion as to make the identification of any voter impossible. Only then will the inner envelopes be opened and the ballot extracted."

Counting absentee ballots is by the tellers under supervision of the Supervisor. The totals are combined with the results of the manual balloting on December 21 to reach the grand total for each candidate.

Deciding challenges: "The tellers will also ascertain the number of challenged ballots on hand and unresolved. If the total number of challenged ballots could not affect the outcome of the election for any office, the question of the validity of any such ballot need not be resolved. If, however, the number of challenged ballots could affect the outcome of election for any office, any such challenges must be resolved at that time. In case of irreconcilable dispute over the legitimacy of any ballot between the tellers and the Supervisor, the Supervisor's position shall prevail."

Accepting the intent of the voter: If some paper ballots bear more than a simple "X" mark in the proper boxes, the clear intent of the voter will be the guide. Erasures and strikeouts, for example, will not void any section of a ballot if the voter's intent is clear. If the voter errs in one section of the ballot—for example, if votes are cast for two candidates for secretary and only one is to be elected—only that section of the ballot will be voided. "However, any ballot containing any information which could provide voter identification will be voided."

Voter eligibility

Any member delinquent for two months in the payment of financial obligations to the local will not be in good standing to vote. (IC) In this election [On December 21], payments must have been made for October 1981 and earlier.

Voting in person: Any member who comes to the polls, and is found delinquent in payments, may make the necessary payments on election day and become eligible to vote.

Absentee ballots: Absentee voters must be in good standing on December 22 when the ballots are opened. Since the envelope will not be opened if the absentee voter is delinquent, he or she will be cautioned in writing to make the necessary payments in person and not to include dues payments in the voting envelope.

General provisions

A plurality of votes determines the winner of any elections. (IC and LBL). In case of a tie vote, a run-off election will be held under the same rules as the original election.

Campaign contributions: "No moneys received by any labor organization by way of dues, assessments, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in this election." (LMRDA 401 (g))

Officer and employee campaigning: "No union officer or employee may conduct any campaigning of any nature during the normal work day for which he is paid and while on the clock."

Local union paper: Advance galley proofs of the union paper, prepared after the final court order on the elections, will be submitted before printing to the Supervisor. "If the Supervisor determines that any article in the galley proofs constitutes campaigning in violation of the [the LMRDA] such article shall be removed from the proof and not printed."

Election records are to be preserved by the local recording secretary for one year after the completion of the election.

The Supervisor: "No person shall take any action, or make any decision, concerning the conduct of this election without the personal presence of and/or prior concurrence of the Supervisor of his designated representative."

Election protests and certification: "Any member may file a written protest with the Supervisor concerning the conduct of any aspect of this election. Any such protest must be filed no later than (10) days after the election. Thereafter, the Supervisor shall report the results of the election to the Director, Office of Labor Management Standards, U.S. Department of Labor, who will certify the election results to the Court."

Note on the Supervisor: These rules make repeated reference to the "Supervisor," who has final authority in deciding disputes. Since this election was supervised by the U.S. Labor Department in accordance with a federal court order, the Supervisor has final authority to decide disputes, so that appeals could be made to an authority outside the union power structure. But in normal circumstances, when the union runs its own election without supervision, the appeals process is usually dominated by the union administrative group. Candidates who are not part of the administration, or in opposition to it, will have to work harder to make sure that they enjoy the benefits of even the best rules. --H.B.

More on meeting attendance rules

The status of meeting attendance rules has changed since this book was first published in early 1987. The change has been for the better, but the legal situation has become complex. Late in 1987, the federal Appeals Court for the District of Columbia, in *Doyle v. Secretary of Labor*, voided an attendance rule which disqualified over 90% of members from running for local union office. The restrictive "impact" of the rule was enough to kill it. That seemed to settle the issue: Most such rules do disqualify most members; and most major unions are headquartered in DC where the DC court's ruling applied.

But the peculiarity of the American legal system permits each appeals court to interpret the law in its assigned area (its "Circuit") as it sees fit. And so the law can be applied differently in each circuit until the Supreme Court resolves the differences. In two other circuits, unions resisted the DC ruling with some limited success.

Early in 2000, the First Circuit Appeals Court in Massachusetts upheld a meeting attendance rule even though its "impact" disqualified 96% of the members of an American Postal Workers local. The court applied a different standard: It held that a rule which required attendance at three meetings in the year before nominations was valid because it was not "burdensome." [*Herman v. APWU Local 497* -- 163 LRRM 2129]

Later that year the Seventh Circuit Appeals Court in Indiana, in *Herman v. Steelworkers Local 1011*, agreed with the First Circuit and adopted the same "burdensome" standard. However, it rejected as too burdensome a rule which required attendance at eight meetings in the twelve months before nominations.

Until the Supreme Court gets around to reconsidering the issue, if ever, the status of attendance rules will remain confusing. One circuit, based upon an "impact" standard, is likely to invalidate any rule which disqualifies over 90% of the members. Two circuits, applying a different standard - is it "burdensome?" - may validate even rules which disqualify most members. The question of what precisely is too "burdensome" remains open.

Under these conditions, if you want to challenge a meeting attendance rule imposed by your union, contact AUD for guidance.

