



Six Ways to Have Your Union Officer Election Overturned

By Jeffrey T. Zaino

American Arbitration Association®, Vice President of Elections

Whether your union officer election is administered internally or by an administrative agency, the union is ultimately responsible for ensuring a fair and proper election. In 1959, the federal government established rules and standards that all unions must follow (i.e., Labor-Management Reporting and Disclosure Act of 1959). Elections are most often overturned when these regulations are disregarded or misapplied. Even in cases where the elections are not overturned, failure to follow the required rules and standards, even just the appearance of impropriety, often lead to time consuming and expensive investigations. This article discusses six common problems and mistakes union officials make that lead elections to be overturned.

1. Voter Database Problems

The most common election problems arise from the use of a voter database with incorrect names and addresses. Database errors are most often unintentional (i.e. failure to properly update...) but regardless of the reason for the error the outcome is the same. These types of administrative problems are often costly and time consuming to correct. This is particularly true when conducting a mail ballot election because there is a limited time period for the ballot packets to be issued and returned. Moreover, ballots must be distributed to all members in good standing.

If the database problem is discovered early in the balloting process, however, corrective measures (i.e. re-mailings of ballot packets) can be implemented to avoid disenfranchising voters and having the election overturned. To limit database errors and update voter information, a mailer to all voters should be done a few months prior to the election to allow time to correct and update the voter database.

The use of a bad voter database at onsite elections may also be problematic, causing both delays at the polls and with the release of election results. One way to counter this problem is to always have plenty of challenged ballots available for those whose names do not appear on a voter database. Use of challenged ballots ensures that no voter is turned away at the polls and it allows election administrators to investigate why the voter's name was not on the list.

2. Ballot Errors/Problems

A ballot that is confusing or contains errors may also lead to an election being overturned. Some common ballot problems are misspelled candidate names, unclear instructions and the failure to include a ballot return date. More serious problems include the use of ballot design that may be deemed to favor one candidate over another (e.g., larger font size/bolding one candidate name).

To limit ballot errors, all candidates and/or slates should review the final ballot proof. In addition, union officials are encouraged to access the sample ballot designs and language recommended by the U.S. Department of Labor. Using these sample ballot designs and language is one important way to help ensure compliance.



3. Election Events not Observable—Limited Access & Lack of Transparency

Each phase in the election process must be transparent and observable. If candidates and their representatives are denied this right, it is grounds for overturning the election. This includes the right to have access to all polling locations and where the ballots are tabulated. The right to observe also extends to each phase of the mail balloting process, including the ballot packet preparation, mailing, receipt, opening and tabulation. The best way to avoid this problem is to prepare and issue a detailed scheduling order to all candidates with relevant election dates and times. In addition to preparing and communicating the schedule to all candidates/observers, it is also important that the election calendar is followed and any changes are communicated to the relevant parties in advance. Simply sharing this type of basic information and ensuring that candidates are aware that the process is open and transparent is a low cost but important way to minimize these types of problems.

4. Secrecy of the Ballot Violated

A secret ballot election is required for all union officer elections. Even one violation of ballot secrecy may compromise an entire election. The secrecy of the process and balloting should not be violated by anyone, including neutral administrators or poll workers. Depending on the type of election there are several ways to ensure secrecy. For onsite elections, for instance, privacy booths and voting methods/systems should be utilized. With a mail ballot election, officials should use a ballot packet design (i.e., double envelope system) and opening process that allows for absolute secrecy.

5. Inconsistent Rulings by Election Committee or Administrator

Inconsistent rulings or decisions by the election committee or administrators can compromise the integrity of an election. The requirement that all rulings and decisions be applied consistently extends not only to candidates but to all voting members as well. An example of a common mistake with mail ballot elections, for instance, is to allow some voters to hand deliver a ballot packet and deny that right to others. In many cases, this is done to help last minute voters who are anxious to participate. Regardless, however, the failure to allow all voters to hand deliver their ballot packet makes this an example of an inconsistent application of a rule that can ultimately lead to overturning an entire election.

6. Preservation of Balloting Materials

The U.S. Department of Labor reserves the right to investigate any union officer election. It is essential, therefore, that all balloting materials, records, etc. be properly preserved and stored for a period of at least one year. This helps ensure that, if need be, the DOL can conduct a proper investigation or recount. One common mistake is for the union to assume compliance if they preserve only portions of the balloting materials or records. In fact, federal regulations require preservation of “all” related materials and records (this includes the empty secret ballot envelopes when conducting a mail ballot election!). As a result, it is recommended that the preservation of materials takes place immediately following the election, under observation, and with a sealed and dated container.

The successful administration of union elections is not “rocket science;” however, locals should reach out to their national organizations for guidance and consult, when needed, with neutral third-party elections administrators whenever there is uncertainty as to how to proceed with the process. The Department of Labor has many resources available for unions to avail themselves of at www.dol.gov. Making sure that your election process is on the right track can save thousands of dollars and will minimize confusion and chaos.