



1972

The 1969 United Mine Workers Election: Why No Pre-Balloting Investigation by the Secretary of Labor

Edwin S. Hopson

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>



Part of the [Administrative Law Commons](#), [Election Law Commons](#), and the [Labor and Employment Law Commons](#)

Recommended Citation

Edwin S. Hopson, *The 1969 United Mine Workers Election: Why No Pre-Balloting Investigation by the Secretary of Labor*, 18 Vill. L. Rev. 37 (1972).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol18/iss1/5>

This Article is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

NOVEMBER 1972]

THE 1969 UNITED MINE WORKERS ELECTION:
WHY NO PRE-BALLOTING INVESTIGATION
BY THE SECRETARY OF LABOR?

EDWIN S. HOPSON†

I. HISTORICAL SETTING

TITLE IV of the Labor-Management Reporting and Disclosure Act of 1959¹ (the "Act") sets forth, among other provisions, regulations concerning the election of union officers. The Secretary of Labor (the "Secretary") administers most of these union election provisions and is responsible for investigation and enforcement.²

The substantive provisions governing union election of officers under Title IV of the Act are contained in section 401;³ section 402⁴ outlines investigative and enforcement procedures. When a union member believes an election has been tainted with irregularities, he must first file a post-election protest of the election with the union,⁵ and exhaust or attempt to exhaust all internal union remedies.⁶ If unsuccessful, he may then complain to the Secretary.⁷ If the Secretary is satisfied that the complaining union member has properly exhausted union remedies for protesting the election, he is mandated to investigate the complaint.⁸ After an investigation, if he finds "probable cause to believe"⁹ that a violation of section 401 has occurred within 60 days after the filing of the union member's complaint, he is then directed to institute a civil action against the union to set aside the election.¹⁰ Generally, it may be said that invocation of each of section 402's procedural steps is conditioned upon the successful completion of the preceding step in the sequence. Thus, that portion of section 402 providing for and authorizing investigation of a union election by the Secretary is limited to the situation where a complain-

† Attorney, National Labor Relations Board. B.S.L., 1967; J.D., 1969, University of Louisville; LL.M., 1971, George Washington University. Member, Kentucky and Florida Bars.

The views expressed herein are those of the author and do not necessarily represent those of any department or agency of the United States Government.

1. 29 U.S.C. §§ 481 *et seq.* (1970).
2. *Id.* § 482.
3. *Id.* § 481.
4. *Id.* § 482.
5. *Id.* § 482(a).
6. *Id.*
7. *Id.*
8. *Id.* § 482(b).
9. *Id.*
10. *Id.*

ing union member has, after the election, properly exhausted or attempted to exhaust his internal union remedies and filed a timely complaint with the Secretary.¹¹

Section 601 of the Act¹² delegates broad, general investigatory power to the Secretary to be utilized under Titles II, III, IV, V and VI:

The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except Title I . . .) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto.

Thus it appears that section 601 grants the Secretary "blank check" investigative authority, including the investigation of a union election prior to election day.

Although it might be argued that sections 601 and 402 conflict and that section 402, being more specific, should prevail (thus precluding investigations prior to the exhaustion of Title IV procedures), the courts and the Department of Labor (the "Department") have not adopted such a strict interpretation. In *Wirtz v. Teamsters Local 191*,¹³ the Secretary, in conducting an investigation of a union election (after balloting), issued a subpoena duces tecum which was resisted by the union on the grounds that the complaining union member had not properly exhausted his internal remedies and that, since there had not been compliance pursuant to section 402, the Secretary was without authority to initiate investigation. The Second Circuit, in affirming the district court's order requiring the union to comply with the subpoena, answered this contention and ruled that no conflict was created by reading sections 402 and 601 together. Since Title IV is not listed as an exception to section 601's broad reach (as Title I is), the court presumed that Congress intended no such limitation on the Secretary's power under Title IV. However, it did note that some or all of the section 402 limitations may be "relevant to the suit which that section authorizes."¹⁴ Thus, the Secretary is authorized to investigate a union election prior to balloting to determine if section 401 of the

11. *Id.* § 482(a).

12. *Id.* § 521(a).

13. 321 F.2d 445 (2d Cir. 1963).

14. *Id.* at 448. See *Local 57, Operating Eng'rs v. Wirtz*, 346 F.2d 552 (1st Cir. 1965); *Wirtz v. Teamsters Local 560*, 61 L.R.R.M. 2470, 54 CCH Lab. Cas. ¶11,433 (D.N.J. 1965); *Wirtz v. Edmonds*, 58 L.R.R.M. 2695, 51 CCH Lab. Cas. ¶ 19,573 (D. Colo. 1965); *Wirtz v. Local 125, Int'l Hod Carriers*, 231 F. Supp. 560 (N.D. Ohio 1964), *vacated and remanded*, 375 F.2d 921 (6th Cir. 1966), *rev'd and remanded*, 389 U.S. 477 (1968).

Act may have been or is about to be violated, and to make reports thereof to interested parties.¹⁵ Although there are no cases on point,¹⁶ there is language in leading cases and some legislative history indicating that limitations on this broad investigatory power may have been intended by Congress.

In *Calhoon v. Harvey*,¹⁷ the Supreme Court declined to allow an individual union member to block or delay a union election, limiting his redress (the limitation does not apply in certain situations, such as suits to enjoin discriminatory uses of union membership lists and suits to obtain compliance by the union with a bona fide candidate's reasonable request to mail campaign literature at his own expense)¹⁸ to the provisions of his own union constitution and section 402 of the Act. The Court, in discussing the statutory scheme of the Act, found that "[s]ection 402 of Title IV . . . sets up an exclusive method for protecting Title IV rights."¹⁹ The Court also noted that reliance on the Secretary to enforce Title IV rights through the procedures of section 402 was in harmony with the "congressional policy to allow unions great latitude in resolving their own internal controversies . . ."²⁰

Section 402 procedures were again before the Court in *Wirtz v. Local 153, Glass Bottle Blowers*,²¹ involving an appeal by the Secretary from an unfavorable decision in the district court. While the appeal was pending, the defendant union had held its next regularly scheduled election, and the court of appeals dismissed the case considering the prior challenged election as moot.²² The Supreme Court, reversing, determined that the congressional intent was that governmental intervention under Title IV be postponed until the union had been afforded an opportunity to remedy possible violations itself, thereby preserving the maximum in independence and self-government in the labor movement.²³ The Court cautioned against a literal reading of labor legislation which, it stated, must often be interpreted as a product of compromise between opposing views.²⁴ Rather, the Court

15. It should be noted that the Secretary has never intervened to investigate possible Title IV violations prior to the balloting in a union election.

16. In *Local 57, Operating Eng'rs v. Wirtz*, 346 F.2d 552 (1st Cir. 1965), a subpoena enforcement case, the circuit court noted the union's argument that allowing the Secretary to intervene and investigate possible election violations prior to the date of an election could unduly influence the outcome of the election, but refused to speak to the issue since the investigation in question had begun after the balloting. *Id.* at 555.

17. 379 U.S. 134 (1964).

18. See 29 U.S.C. § 481(c) (1970).

19. 379 U.S. at 140.

20. *Id.*

21. 389 U.S. 463 (1968).

22. *Id.* at 467.

23. *Id.* at 472-73.

24. *Id.* at 468.

noted, a proper interpretation frequently compels an examination beyond the mere statutory language into its legislative history, thereby affording an appreciation for the underlying congressional policy objectives.²⁵

Reiterating its strict construction of section 402, the Court, in *Hodgson v. Local 6799, Steelworkers*,²⁶ rejected the Secretary's position that a complaining union member need not inform his union of all the violations he eventually brings before the Secretary in order to authorize the inclusion of those additional charges in the Secretary's action brought against the union. Rather, the Court construed section 402 to authorize legal action by the Secretary only upon matters complained of to both the union and the Secretary and only after proper exhaustion of internal union remedies.²⁷ In reaching this result, the Court stated that the exhaustion of remedies requirement, a precondition to enlisting the aid of the Secretary, was in harmony with the objective of avoiding any unnecessary governmental intervention into union affairs.²⁸ In fact, the relevant legislative history, as indicated in the Court's decisions, clearly stated a desire to keep governmental intervention in internal union matters at a minimum.²⁹

The Supreme Court, in *Calhoon, Local 153*, and *Local 6799*, afforded legislative history much deference in interpreting the scheme of the statute. To allow the Secretary to begin routine investigation of union elections prior to receiving a timely complaint from a union member would clearly not be preserving a maximum amount of independence and self-government so as to provide every union the opportunity to correct improper elections by its own mechanisms. It should be noted that, for a complaint to the Secretary to be considered timely, the protesting member must have initiated his prosecution of internal union remedies *after* the completion of the election process.³⁰ Thus, one might conclude that the Court, if it were to entertain the precise issue dealt with herein, would decide that pre-balloting investigation by the Secretary was proscribed by the application of section 402 limitations.

25. *Id.* Cf. S. REP. NO. 187, 86 Cong., 1st Sess. 7 (1959).

26. 403 U.S. 333 (1971).

27. *Id.* at 340-41.

28. *Id.* at 340.

29. See generally S. REP. NO. 187, *supra* note 25. The report, after discussing the provisions of what would become section 402 of the Act, observed that, when filing a complaint with the Secretary, the protesting union member must show that he has properly pursued any remedies available to him within his union, so as to preserve the "maximum amount of independence and self-government." *Id.* at 7.

30. *Id.* at 21. See 29 U.S.C. § 482 (1970). Section 403 states in part:

Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.

Id. § 483.

II. THE 1969 UNITED MINE WORKERS OF AMERICA ELECTION
OF INTERNATIONAL OFFICERS AND THE REQUEST FOR
PRE-BALLOTING GOVERNMENTAL INTERVENTION

A. History

On May 29, 1969, the late Joseph A. Yablonski, a member of the United Mine Workers International (the "UMW") Executive Board, announced his candidacy for the office of International President.³¹ Under the UMW constitution, a candidate for president must be nominated by at least 50 local unions before he may be placed on the ballot for the election.³² The local unions were to hold their nominating meetings in July and August 1969.³³ On July 9 and July 18, 1969, counsel for Mr. Yablonski, in letters to the Secretary, alleged various violations of the Act and requested an investigation to gather evidence.³⁴ On July 23 the Secretary replied to the request with a detailed explanation that such an investigation was uncalled for at that time.³⁵ This reply was followed by further allegations and additional requests for intervention. In two written communications prior to the close of nominating meetings in the locals, the Department informed both the incumbent and the Yablonski factions that, should the numerous allegations of violations continue after the nominating phase, the Department might be compelled to reconsider its decision not to intervene during the election.³⁶ On or about August 11, 1969, it was announced by the UMW tellers that Joseph A. Yablonski had been nominated by 96 locals and would appear on the ballot.³⁷ Shortly thereafter, Yablonski's counsel again urged the Secretary to intervene and investigate the election.³⁸ In August and again in early September, the Department declined to investigate, on the grounds that the developing circumstances had not overcome the reasons previously stated for not investigating prior to the election.³⁹ During the period after nomination and before the election, approximately four months, allegations

31. *Hearings on the United Mine Workers' Election Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare*, 91st Cong., 2d Sess. 38-77 (1970) [hereinafter referred to as *Hearings*].

32. CONSTITUTION OF THE INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, art. XI, § 6 (1968) (on file with the U.S. Dept. of Labor, Office of Labor-Management and Welfare Pension Reports). The election for international officers (excepting the International Executive Board) is conducted at the local union level by referendum vote in the UMW. *Id.* §§ 10 & 11.

33. *Hearings*, *supra* note 31, at 38.

34. *Id.* at 10-11, 38-46.

35. *Id.* at 11, 48-50.

36. *Id.* at 14, 55.

37. *Id.* at 60.

38. *Id.*

39. *Id.* at 69.

of violations directed to the Secretary, particularly concerning violence, were few.⁴⁰

Between May 29, the date Yablonski announced his candidacy, and December 9, 1969, the date of the election, Yablonski instituted and successfully pursued four private actions against the UMW and various incumbent officials.⁴¹ The first concerned Yablonski's removal as Acting Director of the UMW's Labor Non-Partisan League.⁴² The second concerned the union's failure to mail out Yablonski's campaign literature prior to his official nomination by the locals.⁴³ The third concerned the incumbent officers' use of the *United Mine Workers Journal* as a propaganda organ to advance only their candidacies, thus discriminating in the use of union membership lists used in the distribution of the *Journal*.⁴⁴ In the fourth suit, Yablonski sought certain "fair campaign practices"⁴⁵ and although the action was dismissed, he obtained several concessions from the incumbent.⁴⁶

On the eve of the election, Yablonski's counsel requested that the Secretary station a Department employee at each of the polling places in the UMW locals on election day.⁴⁷ The request was turned down; both factions were urged to take every reasonable precaution to insure the integrity of the election. On December 9, 1969, the election was held and W. A. Boyle, incumbent International President, outpolled Yablonski almost two to one.

*B. The Department of Labor's Position of Non-Intervention
in Union Elections Prior to Balloting⁴⁸*

The practice of non-intervention in union elections prior to balloting (by refusing to investigate possible violations of section 401 of the Act) has been justified by the Department as a policy consistent with the purposes of the statute. In his May 4, 1970 statement before the

40. *Id.* at 60-70.

41. A fifth suit, presently pending, was filed in the District Court for the District of Columbia seeking an accounting and restitution from certain officials. *Yablonski v. UMW*, Civil No. 3436-69 (D.D.C., filed Dec. 4, 1969).

42. *Yablonski v. UMW*, 71 L.R.R.M. 3041, 60 CCH Lab. Cas. ¶ 10,312 (D.D.C. 1969).

43. *Yablonski v. UMW*, 71 L.R.R.M. 2606, 60 CCH Lab. Cas. ¶ 10,204 (D.D.C. 1969).

44. *Yablonski v. UMW*, 305 F. Supp. 868 (D.D.C.), *clarified*, 305 F. Supp. 876 (D.D.C. 1969).

45. *Yablonski v. UMW*, 61 CCH Lab. Cas. ¶ 10,487 (D.D.C. 1969).

46. *See Hearings, supra* note 31, at 72-73.

47. *Id.* at 70.

48. *See* U.S. Department of Labor, Discussion of Senator Williams "Status Report" of June 24, 1970 Concerning a Senate Labor Subcommittee's Investigation of Activities of the United Mine Workers (mimeograph on file at the *Villanova Law Review*) [hereinafter cited as Position Paper]. This document is the source for the positions attributed to the Department in this Article.

Senate Labor Subcommittee investigating the Department's role in the UMW election, then Secretary of Labor George P. Shultz noted:

The Department should not, as a matter of policy, *and I believe may not, as a matter of sound, statutory construction*, investigate and publicize the activities of one faction in an election in order to assist the campaign of the other.⁴⁹

A Department position paper reaffirmed this position, noting that it was merely a change of emphasis to call such a position a "practice required by the statute."⁵⁰ Thus, after eleven years of experience in the administration of Title IV, the Department had concluded that investigations of election violations during the course of an election campaign were "not contemplated by the statute."⁵¹ In addition to case law and legislative history bearing on the subject, the following reasons were advanced in the Department position paper to justify, buttress, and support this position.

First, it was argued that, since the Secretary, in his discretion, institutes court action to set aside an election only if the violations found may have affected its outcome,⁵² it would be incongruous, impossible, and fruitless to attempt to properly investigate an alleged violation prior to the election when it could not be determined whether or not it would affect the outcome of an election yet to be held.⁵³ Second, it was argued that, due to the large number of union elections held each year (estimated at 20,000) and to the numerous election challenges filed with the Secretary, it would be necessary that the Secretary's investigatory staff be increased substantially.⁵⁴ Third, it was asserted that, should the government intervene in an election prior to the balloting, such action could, and almost invariably would, become the central issue in the election campaign.⁵⁵ Further, the government would be hard pressed to avoid taking sides or at least appearing to have taken the side of one or another of the factions chiefly because

49. *Hearings*, *supra* note 31, at 340 (emphasis added).

50. Position Paper, *supra* note 48, at 4.

51. *Id.* The position paper summed it up thusly:

A limitation of investigative power under section 601 in election cases to circumstances [only post-balloting] which will not unduly influence the outcome of the election is a rational harmonizing of these two different provisions of the statute.

Id. at 7.

52. Although the statute provides that the court must find violations that "may have affected the outcome of the election" in order for the election to be overturned, the Secretary has indicated he will not institute court action to set aside an election, unless there is probable cause to believe that the violations found may have affected the outcome of the election. 29 C.F.R. § 452.16(b) (Supp.1972).

53. Position Paper, *supra* note 48, at 8.

54. *Id.*

55. *Id.* at 9.

of two factors: (1) the very decision to initiate an investigation could in itself be interpreted as action by the Secretary indicating that he had taken the side of the party alleging the violation; and (2) at the conclusion of the investigation, the Secretary could do only one of two things — report his findings or remain silent — either of which course would leave him open to charges of “whitewash” or “partisanship.”⁵⁶ In support of this argument, the Department offered the analogy of the procedures followed by the National Labor Relations Board (the “Board”) when unfair labor practices are alleged during a representation election campaign. In such a situation, it was noted, the Board, which supervises and actually runs the balloting process in a representation election, will not proceed with the election while it is investigating alleged unfair labor practices, unless the charging party waives his right to have the unfair labor practice charge delay the election.⁵⁷

Finally, it was argued, if Congress wanted the Secretary to investigate alleged election violations and announce his findings prior to balloting, with the attendant risk of the impact it might have on the voting, then Congress should have amended the statute so as to provide such a remedy, and, perhaps, grant the Secretary authority to supervise the conduct of union elections of officers.⁵⁸ It was considered significant that the prejudice which a party might suffer from pre-balloting investigation of, and reporting on, alleged violations by the Secretary is not now subject to court review.⁵⁹

C. *The Argument for Intervention*

In a letter dated May 26, 1970, addressed to Senator Harrison Williams, Chairman of the Senate Labor Subcommittee, Yablonski’s counsel summarized the position which had consistently been urged upon the Secretary.⁶⁰ This letter was in response to the statement of May 4 by Secretary Shultz to the subcommittee.⁶¹ The letter urged that the Secretary’s policy of non-intervention was without legal foundation, and was apparently based only on his own and his predecessors’ inaction. In response to the Secretary’s argument that pre-election investigation might do prejudice to the party against whom allegations of violations were levied, it was argued that emphasis should more appropriately be placed on screening the allegations and charges in order to discard those thought to be baseless and frivolous, and to in-

56. *Id.*

57. *Id.* at 10 n.6.

58. *Id.* at 11.

59. *Id.*

60. *Hearings, supra* note 31, at 503-13.

61. *Id.* at 340.

investigate those with merit.⁶² While acknowledging that the policy against pre-election investigation might be justified in the ordinary case, such an inflexible rule should not, it was asserted, be adhered to "in the face of the UMWA bosses' massive violations of law."⁶³ Next it was urged that the reason a pre-election investigation by the Secretary was requested was not to publicize the existence of violations, but rather to obtain a federal or investigatory presence so as to insure greater compliance with the law and prevent further violence.⁶⁴ It is clear, however, that Congress did not intend, and section 601 does not authorize, the Department to supervise union elections *ab initio*. Lastly, it was asserted that to carry out the functions requested of him, the Secretary needed no authority in addition to that already vested in him by the Act.⁶⁵

In addition to its interpretation of limitations imposed by the statute, legislative history, and the cases, the Department contended that pre-balloting investigations would necessitate a substantial increase in its investigatory complement or result in overtaxing the present staff,⁶⁶ since the exhaustion of the union remedies "screening process" would be eliminated and many cases which would not normally reach the investigatory stage would require consideration. The Yablonski faction contended, however, that pre-election investigations would be called for only in extraordinary cases, where "massive" violations had taken place. Thus, the pre-election investigation would take place in a case which undoubtedly would have been investigated in any event, so that the caseload would remain the same. However, in order to determine whether to investigate prior to balloting (in those cases where there are *allegations* of "massive violations"), the Department would clearly be forced to resort to some sort of "screening" process to eliminate baseless or frivolous allegations.

D. Discussion of the Contentions

Were one to yield to such arguments it would seem that a candidate could obtain investigation of his union's election, just prior to the balloting, on unsubstantiated allegations of massive violations of section 401, reap the benefits of having the Department on "his side," lending some credence to his allegations, and be swept into office. Should the Department be unable to convince a reviewing court to overturn the election, on the basis that the unsubstantiated allegations

62. *Id.* at 504.

63. *Id.*

64. *Id.*

65. *Id.*

66. See text accompanying note 54 *supra*.

were intentionally and willfully falsified for the purpose of obtaining intervention, the candidate so elected would remain in an office won not so much on the strength of any legitimate positions on issues of importance to the union electorate, but rather on the strength of his adept manipulation of the inescapable influence of the Department.

Any pre-election investigation must conclude with one of two actions on the part of the Department: some type of report on the results of the investigation, or silence. Of course, should the Department issue a report prior to the balloting, there would be an incalculable effect on the outcome of the election. Silence could be the result of an arbitrary decision not to release results (affirmative or negative) prior to the election, which could also have some effect on the outcome, or silence could indicate that the investigation had not been completed.

The Yablonski faction's argument that pre-election investigation should have been utilized to prevent violence seems, at first glance, imposing. However, Secretary Shultz, in his May 4, 1970 statement to the subcommittee and in the testimony that followed, somewhat defused this contention by noting that the allegations of violence made by the Yablonski faction were, in fact, referred to the FBI for investigation.⁶⁷ Thus, investigations of violations of sections other than section 401 were made, which violations and their remedies are covered by other titles of the Act.⁶⁸ The Yablonski faction's view⁶⁹ of the law was and is that section 601, in and of itself, specifically authorized the Secretary to investigate union elections prior to balloting, unfettered by the limitations of section 402, in light of the general purpose of the statute and the decision of the Second Circuit in *Wirtz v. Teamsters Local 191*.⁷⁰ This author is of the opinion, however, that the Department's interpretation of the law is, on the whole, the correct one. The *Local 191* case, although generally holding section 401 limitations not to constrict the Secretary's investigatory authority under section 601, must be limited to its fact situation — a *post*-election investigation by the Secretary, which was rudely interrupted by a union's refusal to obey a subpoena and which resulted in a subpoena enforcement action against the union.

It should also be noted that, as section 403 of the Act indicates,⁷¹ individual union members' redress of certain forms of election mis-

67. *Hearings, supra* note 31, at 357-63.

68. The Department of Labor also began an investigation of the expense accounts of the UMW international officers in March 1969 and released a report of its findings on November 28, 1969. N.Y. Times, Nov. 29, 1969, at 1, col. 1; Nov. 30, 1969, at 1, col. 1.

69. *Hearings, supra* note 31, at 503.

70. 321 F.2d 445 (2d Cir. 1963). See text accompanying notes 13-14 *supra*.

71. 29 U.S.C. § 483 (1970). See text accompanying notes 18 & 41-46 *supra*.

conduct are preserved and provided through private court suits during the pre-balloting stage. The Secretary's power and authority to attempt to *remedy* election abuses is specifically set out in section 402 and may be brought to bear *only* after certain procedural steps are taken by a complaining union member and only *after* the election process is completed.⁷² Section 403 of the Act provides that the remedy provided in section 402 for challenging an election shall be exclusive. It could be persuasively argued that interjection of a federal "presence" into a union election campaign is a form of a remedy — an attempt to prevent violations. Under such a premise, the Secretary would clearly be evading not only the spirit, but also the letter of sections 402, 403, and 601 of the Act.

Legislative history and the scheme of the statute itself indicate a congressional intent to temper any governmental intrusion into union affairs and specifically into the regulation of their elections. However, the possibility of pre-election investigation of section 401 violations by the Secretary should not be totally ruled out by an interpretation that such intervention would be illegal. Even if the power was never to be used, the subtle threat to use it, a sort of "jawboning," could be of great value. Such an interpretation of section 601, so as to leave open the possibility of pre-election investigation, could also be used to support some future action by the Department, not now contemplated, such as supervision of a union election by agreement of all the candidates.

III. CONCLUSION

Aside from the cases, the congressional history, and the scheme of the statute, all of which seem to militate against pre-election investigation of possible section 401 violations by the Secretary of Labor, there is one problem involved in pre-election investigations which seems, by far, the most insurmountable. That problem is the effect of a pre-balloting investigation on the already complicated question of whether the violations which occurred affected the outcome of the election.

It is submitted that introduction of another unknown factor, investigatory intervention by the Secretary, into what is usually (and particularly in the UMW situation) an already complex factual setting with which the judiciary must contend, can only add to the difficulty of solving the legal controversy involved. A court might conclude that the mere presence of the Department had created a backlash against the candidate requesting the investigation and that this pres-

72. Even the *Local 191* court felt that some or all of the section 402 limitations might be "relevant to the suit which that section authorizes." 321 F.2d at 448.

ence was solely responsible for his defeat. Should a report of the findings of such an investigation be made public by the Department prior to balloting, the violations alleged to have been found could have an added impact on the outcome of the election in *favor* of the candidate responsible for the violations. Therefore, in reviewing a case involving publication of a report of violations, a court would be justified in refusing to overturn the election since its outcome might have been significantly affected by that publication.

The United States District Court for the District of Columbia, on May 1, 1972, overturned the 1969 UMW election of its international officers.⁷³ It is clear from a perusal of the Secretary's charges and the court's decision that the major violations of section 401 alleged and proved at the trial could not have been prevented by pre-balloting investigation, especially since the facts were virtually undisputed.⁷⁴ The UMW incumbents apparently differed only as to the applicable law and, therefore, undoubtedly would have conducted the same campaign regardless of governmental intervention. Furthermore, after Yablonski's nomination in August 1969, nothing the Yablonski faction presented to the Secretary in support of its request for intervention warranted, in this author's opinion, such drastic action.

Pre-election investigation, although perhaps not precluded by law,⁷⁵ nevertheless should not, as a discretionary tool of the Secretary, be utilized by the Department of Labor except under the most extraordinary circumstances. Rather, the Act should be amended by Congress to allow greater freedom on the part of individual union members to remedy or prevent violations of Title IV. Congress might also require government supervision *ab initio* of union election of officers. It is, however, this author's opinion that any such "problem" could best be solved within the Labor movement, perhaps by the adoption of a Code of Fair Campaign Practices appended to union constitutions.

73. *Hodgson v. UMW*, 344 F. Supp. 17 (D.D.C. 1972).

74. *Id.* at 21-32.

75. See notes 12-15 and accompanying text *supra*.