
Semper Fi . . . Unless You Happen To Be An Active Servicemember In A Labor Union: Union Shortcomings Regarding Service Members

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SEMPER FI . . . UNLESS YOU HAPPEN TO BE AN ACTIVE SERVICEMEMBER IN A LABOR UNION: UNION SHORTCOMINGS REGARDING SERVICE MEMBERS

INTRODUCTION

Voting equals power. On a large-scale political level, the power that one vote elicits is sometimes hard to see. On a small-scale labor union level, however, the power in one vote hits closer to home. The job security that labor unions generate allows union members to bring stability to their families. Therefore, when voting in a union officer election, union members have their families in mind. Every move that a union makes, from its wage increases and decreases to its health insurance decisions, affects union members and their families.¹ While the right to vote is inherent to U.S. citizens, the right to vote in a labor union officer election comes from union members paying dues to their local unions.² Unfortunately, unions have excluded active military service members in unions from this right that they have paid for.

Active military service members frequently partake in “civilian job[s]” while they are not deployed.³ If these civilian jobs are unionized, service members have the option to join the union and receive union benefits.⁴ However, when service members are deployed and want to exercise their right to vote in union matters such as union officer elections and contract ratifications, it is almost impossible for them to do so because of the practices followed by most unions. The irony of this is that in American society, service members are considered pillars of their communities. They voluntarily risk their lives to serve their country and ask for nothing in return. They exude bravery,

1. *The Top 10 Advantages To Joining A Union*, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS (June 30, 2015), <https://www.insulators.org/blog/bid/78247/The-Top-10-Advantages-To-Joining-A-Union>.

2. *Id.*; Nw. Justice Project, *Do Not Vote Unless You Are a U.S. Citizen*, WASHINGTON LAWHELP, <https://www.washingtonlawhelp.org/resource/dont-vote-unless-you-are-a-us-citizen> (last updated Nov. 27, 2017).

3. *The Right to Reemployment*, MILITARY.COM, <https://www.military.com/spouse/career-advancement/military-spouse-jobs/usera-right-to-reemployment.html> (last visited Feb. 23, 2020).

4. *Id.*

courage, and humility, so much so that there are even national holidays dedicated to them.⁵

Unions refuse to afford service members with a means to vote in the union officer elections, which is a right meant to be guaranteed by the payment of union dues. Two of the biggest selling points of union membership are the union's dedication to its members and the solidarity that members benefit from when they are able to use their voices and votes to enact change in their workplaces.⁶ In a current political climate that does not favor labor unions, these unions are doing themselves a disservice when they deny service members the right to vote in union officer elections. All U.S. labor unions should issue absentee ballots to their active service members for the purpose of voting in union officer elections because it is the fair, consistent, and correct decision.

Part I of this Comment begins by detailing a brief history of labor unions and their benefits before continuing with a discussion of historic National Labor Relations Board (Board) decisions that address absentee balloting and active service members as they relate to internal union officer elections. Part II delves into the current standard that determines whether absentee ballots can be issued during union elections and details why that standard should be abandoned. Finally, Part III describes the effect that an abandoned absentee balloting standard will have on active service members in unions.

I. BACKGROUND

Labor unions are organizations made up of workers in recognized bargaining units who typically belong to the same trade or work in a particular industry.⁷ Unions engage in collective bargaining with employers to ensure that the union members' interests are being upheld; these interests usually include wages, working conditions, and employee benefits.⁸ Labor unions also represent vastly different workers, including teachers, auto workers, and firefighters.⁹ Regardless of a labor union's size, the Labor Management Reporting and Disclosure Act of 1959 (LMRDA) protects union members' rights and details the

5. *Patriotic Holidays*, NATIONAL ARCHIVES, <https://www.archives.gov/boston/patriotic-holidays.html> (last visited Feb. 23, 2020).

6. *Today's labor unions give workers the power to improve their jobs and unrig the economy*, ECON. POL'Y INST. (Aug. 24, 2017), <https://www.epi.org/press/todays-labor-unions-give-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/> [hereinafter ECON. POL'Y INST.].

7. *What Is a Labor Union?*, FINDLAW, <https://employment.findlaw.com/wages-and-benefits/what-is-a-labor-union.html> (last visited Feb. 23, 2020).

8. *Id.*

9. *Id.*

responsibilities of union officials who have been voted in by members.¹⁰ These rights include freedom of speech, having a voice in wages and member dues, and the right to nominate and remove elected union officials.¹¹ Congress enacted the LMRDA to ensure union democracy and protect union members' rights to participate in the elections of union officials.¹²

The Uniformed Services Employment and Reemployment Rights Act (USERRA) ensures that active service members can keep civilian employment and benefits, in addition to seeking employment that is free from discrimination if they leave their civilian jobs to perform military services.¹³ In other words, active service members are able to take military leave from their civilian jobs when necessary.¹⁴ Labor unions also allow for military leave and do not penalize active service members for leaving their jobs to serve the country.¹⁵ In addressing the USERRA, the Supreme Court explained in *Fishgold v. Sullivan* that “no practice of employers or agreements between employers and unions can cut down the service adjustment benefits which Congress has secured the veteran under the Act.”¹⁶

It is unlawful for a member of the armed forces to join or maintain membership in a military labor organization.¹⁷ Active service members are included as members of the armed forces.¹⁸ A military labor organization is one that attempts to engage in, or does engage in, negotiating or bargaining with a civilian officer; representing a member of the armed forces; or striking, marching, or picketing against the U.S. government.¹⁹

Active service members who also happen to be labor union members have historically had a difficult time receiving absentee ballots to vote in elections for their union officers while they are deployed. This Part begins by discussing the Board's view on absentee balloting relating to active service members before moving on to detail the current requirements regarding voting in union officer elections and member voting. This Part continues with an explanation of the standard for

10. *Id.*; see generally Labor Management Reporting and Disclosure Act of 1959, 29 C.F.R. § 452 (2018).

11. *What Is a Labor Union?*, *supra* note 7.

12. Allan J. Topol, *Union Elections Under the LMRDA*, 74 *YALE L.J.* 1282 (1965).

13. 38 U.S.C. § 4301 (2018).

14. *Id.*

15. *Id.*

16. *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946).

17. 10 U.S.C. § 976 (2018).

18. *Id.*

19. *Id.*

determining when absentee ballots can be issued to union members. It ends by analogizing union elections to political elections and the process by which active service members use absentee ballots to vote in political elections.

*A. The Board's Interpretation of Absentee Balloting
and Active Service members*

Historically, the Board has ruled that absentee balloting for active service members is unfeasible and, therefore, not required.²⁰ The Board has only directly addressed the issue a few times.²¹ In *Mine Safety Appliances Co.*, the Board explained that it would be unfeasible to ensure the right to vote in union elections to all active service members.²² The Board further explained that with the number of individuals scattered in various units of the armed forces throughout the world, it would be virtually impossible to ensure that a ballot was able to reach every member and offer them the opportunity to vote.²³

Similarly, in *Esser, T.C., Co.*, the Board declined to allow the plaintiff company to issue absentee ballots to active service members.²⁴ It reasoned that the company offered no persuasive argument as to why the Board should alter the decision in *Mine Safety* and therefore denied the plaintiff's request.²⁵ These decisions, however, pre-dated the current requirements for absentee balloting set forth in the Labor Management Reporting and Disclosure Act (LMRDA). Thus, these decisions do not carry as much weight as more recent Board decisions.²⁶

B. The Labor Management Reporting and Disclosure Act

Union officer elections are governed by the LMRDA.²⁷ The LMRDA election rules generally apply to unions that represent workers in private industries.²⁸ Union officer elections mimic U.S. local, general, and primary elections in that union members in good stand-

20. See generally *Mine Safety Appliances Co.*, 55 N.L.R.B. 1191, 1194 (1944); *Esser, T.C., Co.*, 60 N.L.R.B. 105, 108 (1945).

21. *Mine Safety Appliances Co.*, 55 N.L.R.B. at 1194; *Esser*, 60 N.L.R.B. at 108.

22. *Mine Safety Appliances Co.*, 55 N.L.R.B. at 1194.

23. *Id.*

24. *Esser*, 60 N.L.R.B. at 108.

25. *Id.*

26. See generally *Wirtz v. Local Union 169*, 246 F. Supp. 741 (D. Nev. 1965).

27. See generally Labor Management Reporting and Disclosure Act of 1959, 29 C.F.R. § 452 (2018).

28. *Id.*

ing elect union officers by secret ballot.²⁹ Good standing requires that a union member has paid his or her dues.³⁰ Labor union officer elections can be held for local officials, delegates, and international union officials.³¹ Union elections also occur quite infrequently.³² National and international labor union organizations elect their officers at least every five years, officers of intermediate bodies are to be elected at least every four years, and officers of local labor organizations at least every three years.³³

Under the LMRDA, when “the union knows in advance that a substantial number or a particular segment of the members will not be able to exercise their right to vote in person,” the Act requires that “absentee ballots or other means of voting must be made available.”³⁴ The LMRDA also requires every labor organization to “conduct its periodic election of officers in such a way as to afford all of its members a reasonable opportunity to cast ballots.”³⁵ It is not explained, however, exactly what constitutes a reasonable opportunity.³⁶

C. *The Road to Reasonable Opportunity*

Since the LMRDA did not explicitly state criteria for determining whether a union member is given a reasonable opportunity to vote, multiple courts have attempted to create a standard to determine this.³⁷ The district court in *Wirtz v. Local Union 169* set forth a specific test when it held that a local union was not required to provide mail ballots to members residing at a distance from the polling place.³⁸ The court found there was no unreasonable deprivation of the members’ right to vote because the union had sound reasons for requiring personal appearance at the polls.³⁹ It stated it was not impractical for a member of the union to travel from any place in its jurisdiction to the polling place to vote once every three years for union officers, and

29. U.S. DEP’T OF LABOR, *Electing Union Officers*, OLMS, <https://www.dol.gov/olms/regs/compliance/elecofficer/elecofficer.htm> (last visited Feb. 23, 2020) [hereinafter *Electing Union Officers*].

30. *Id.*

31. *Id.*

32. *Id.*; 29 C.F.R. § 452.23 (2018).

33. 29 C.F.R. § 452.23.

34. *Id.* § 452.95.

35. *Id.* § 452.94.

36. *Id.*

37. *See generally id.* § 452.95.

38. *Wirtz v. Local Union 169*, 246 F. Supp. 741, 753 (D. Nev. 1965).

39. *Id.*

that the expense of establishing separate polling places must be weighed against the benefits to be gained.⁴⁰

Under *Wirtz*, determining whether or not union members are to be issued absentee ballots in union officer elections requires a consideration of a few particular factors.⁴¹ Specifically, the test requires that the court or Board take into account: (1) circumstances and evidence of the particular union, (2) its election procedures, and (3) the effect those procedures have on the members in question.⁴² This test, however, did not gain much traction and is not the test that is used today.

Other relevant case law has only required the issuing of absentee ballots during union officer elections in specific circumstances.⁴³ Absentee balloting in a union officer election was held to be a necessary component of the LMRDA's reasonable opportunity requirement in *Wirtz v. National Maritime Union*.⁴⁴ The district court in *National Maritime* found that the failure of the maritime union to provide for absentee balloting in union elections was a clear violation of the LMRDA because of the itinerant nature of the employment of seamen in the union.⁴⁵ Seamen in this union were spread out aboard flag vessels sailing all throughout the United States, making it difficult, if not impossible, for all of them to reach their respective ports to vote in time. Therefore, all members in good standing were unreasonably deprived of their right to vote because they had absolutely no way of voting in the election aside from the use of a mail ballot.⁴⁶

D. Reasonable Opportunity Unearthed

The Seventh Circuit, in *McGinnis v. Local Union 710*, laid out criteria for determining when multiple polling places or mail balloting are necessary for officer elections, and these criteria are still followed today.⁴⁷ The following criteria are to be considered: "(a) the number of members remotely situated; (b) the geographic areas covered by the Local; (c) whether members voluntarily assume the risk by locating outside the local's jurisdiction; and (d) whether the local uses alterna-

40. *Id.*

41. *Id.*

42. *Id.*

43. See generally *Wirtz v. Nat'l Mar. Union*, 284 F. Supp. 47 (S.D.N.Y. 1968); *McGinnis v. Local Union 710*, 774 F.2d 196 (7th Cir. 1985); *Dobson v. Chicago & Ne. Illinois Dist.*, 707 F. Supp. 348 (N.D. Ill. 1989); *Hodgson v. Local Union No. 920*, 327 F. Supp. 1284 (E.D. Tex. 1971); *Donovan v. Local Union 725*, 1982 WL 2046 (S.D. Fla. 1982).

44. *Nat'l Mar. Union*, 284 F. Supp. at 53.

45. *Id.* at 61.

46. *Id.* at 51.

47. *McGinnis*, 774 F.2d at 203.

tive voting procedures for other important union referenda or elections.”⁴⁸ The court held that the union’s in-person-only voting requirement placed an unequal and unreasonable handicap on the voting and participation rights of members living and working far distances from the polling place, since polling was in Chicago, and almost half of the members lived and worked over 100 miles away.⁴⁹ The members were remotely situated, so they were not given a reasonable opportunity to vote since the union failed to offer other means for voting.⁵⁰

After the *McGinnis* criteria were laid out, other courts began to interpret and apply them.⁵¹ The district court in *Dobson v. Chicago & Northeast Illinois District* limited the application and criteria of *McGinnis*.⁵² Plaintiffs in *Dobson* alleged that the union denied them their reasonable opportunity to vote because the union failed to provide absentee ballots to members who were working on election day and were therefore unable to vote.⁵³ The *Dobson* court said that *McGinnis* cannot be read so as to require the mailing of ballots to those members who choose to work on the date of the vote.⁵⁴ Since election dates are pre-determined, members’ decisions to work on the day of the election does not warrant the issuing of absentee ballots.⁵⁵ In other words, the members were not remotely situated and could have voted in the election without hassle if they had chosen not to work.⁵⁶

Conversely, the district court in *Hodgson v. Local Union No. 920* held that it was not a denial of a reasonable opportunity to vote when the union failed to provide absentee ballots to members of the union who were out of the city during the three-day election.⁵⁷ The court explained that the three days held open for the election were adequate for anyone to vote, even those who were 140 miles away from the polling place.⁵⁸ Thus, the court ruled that the election “committee exercised their best judgment in holding the polls open for several days rather than providing absentee ballots and risking wrongful ma-

48. *Id.*

49. *Id.* at 199.

50. *Id.*

51. See generally *Dobson v. Chicago & Ne. Illinois Dist.*, 707 F. Supp. 348 (N.D. Ill. 1989); *Hodgson v. Local Union No. 920*, 327 F. Supp. 1284 (E.D. Tex. 1971).

52. *Dobson*, 707 F. Supp. at 348.

53. *Id.* at 349.

54. *Id.* at 352.

55. *Id.*

56. *Id.*

57. *Hodgson v. Local Union No. 920*, 327 F. Supp. 1287 (E.D. Tex. 1971).

58. *Id.*

nipulation of ballots.”⁵⁹ The defendant in *Hodgson* offered an ample amount of time for a small number of geographically distant members to vote in union elections in an effort to avoid the risks associated with absentee balloting.⁶⁰ The court held that this multi-day election afforded all members the reasonable opportunity to vote, thereby satisfying § 452.94 of the LMRDA.⁶¹ Thus, under *Hodgson*, when a union has members that are not centrally located to the polling places, and the union still makes a sensible effort to give all of its members an equal opportunity to vote, absentee balloting will not be required.⁶²

E. Union and Political Elections: A Similar Tale

In 1982, the district court in *Donovan v. Local 725* made a point to analogize political and union elections.⁶³ The court explained that under the Federal Voting Rights Act, states are not required to provide absentee ballots for state and local elections to specific individuals, including members of the armed forces while in active service.⁶⁴ The court further explained that if absentee voting were allowed in this case for the 127 out of 1,126 members who were on a travel card and unable to vote, then the defendant union would be required to do more in terms of absentee voting than Congress requires of the states in both local and state elections.⁶⁵

The voting process for active military members in political elections is much different today than it was back when *Donovan* was decided.⁶⁶ Under the Federal Voting Assistance Program (FVAP), active military members can fill out a Federal Post Card Application (FPCA) to register to vote and apply for an absentee ballot for all federal elections.⁶⁷ Thus, FVAP provides service members and their families with the resources to be able to cast their vote back home.⁶⁸

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Donovan v. Local Union 725*, 1982 WL 2046, *21 (S.D. Fla. 1982).

64. *Id.*

65. *Id.*

66. See generally FEDERAL VOTING ASSISTANCE PROGRAM, <https://www.fvap.gov/> (last visited Feb. 23, 2020).

67. *Absentee Voting Overview*, FEDERAL VOTING ASSISTANCE PROGRAM, <https://www.fvap.gov/military-voter/overview> (last visited Feb. 23, 2020) [hereinafter *Absentee Voting Overview*].

68. *Id.*

F. Military Absentee Voting in Political Elections

When active service members wish to vote in federal or state elections, the process is clearly laid out.⁶⁹ After filling out the FPCA, a servicemember will then request an absentee ballot, fill out the received ballot, and then mail in the ballot before the due date.⁷⁰ The FPCA is made easily accessible through an FPCA online assistant or a hardcopy version from a Voting Assistance Officer.⁷¹ The online assistant guides service members through the process of completing the form, and once it is completed, service members can download and print the PDF package to sign and send to their election office.⁷² The PDF package even includes a pre-addressed and pre-paid postage label, making it as easy as possible for service members to fill out and turn in their ballots.⁷³

The process for sending mail from the United States to overseas active service members from the United States is also clearly laid out.⁷⁴ The United States Postal Service and the Department of Defense negotiated an agreement, now called Overseas Military Mail, which formalized the activity of sending mail overseas to military personnel.⁷⁵ There is a specific addressing scheme for domestic mail that people must follow—senders address their mail according to specific military states and their city equivalents, which represent different post offices throughout the world.⁷⁶ Mail is then sent to a processing center in either Miami, New York, or San Francisco, where it is processed, sorted, and sent out to the relevant overseas location.⁷⁷ Since the mail is initially being sent to a facility in the United States, senders only have to pay domestic shipping costs, rather than international.⁷⁸

II. ANALYSIS

The road to issuing absentee ballots for active service members in union officer elections is a rocky one. As it stands today, it is practi-

69. See generally FEDERAL VOTING ASSISTANCE PROGRAM, *supra* note 66.

70. *Absentee Voting Overview*, *supra* note 67.

71. *Id.*

72. *Id.*

73. *Id.*

74. *What is an APO/FPO/DPO address?*, SHIPIT APO, https://www.shipitapo.com/personal/apo_fpo_guide.php (last visited Feb. 23, 2020).

75. *Id.*

76. *Id.*

77. *Id.*

78. *Military & Diplomatic Mail*, USPS, <https://www.usps.com/ship/apo-fpo-dpo.htm> (last visited Feb. 23, 2020).

cally impossible for active service members to receive absentee ballots to vote in their own union officer elections. This Part will first discuss what the current standard is for issuing these ballots, why that standard is unfeasible, and why that standard should not apply to active service members in unions. This Part will then explain the simplicity of employing an absentee ballot system like the one the United States already uses in political elections, and this Part will argue that this political elections' system be adopted for union elections as well.

A. *Abandoning the Current Standard*

After the LMRDA required that a union member be given a reasonable opportunity to vote, courts developed and applied a standard to determine "reasonable opportunity."⁷⁹ The standard set forth in *McGinnis*, while effective for non-military union members, should be abandoned in relation to active service members in unions because the factors cannot be fairly applied to them.⁸⁰

B. *Why the First, Second, and Fourth Factors of the McGinnis Test Are Not Relevant*

It is no secret that active service members are not geographically situated in relation to union election polling places. They are more than a simple few hundred miles away from their polling places, and they have not decided to forego in-person voting because of personal or union-work-related obligations. Service members are instead spread out among the world serving their country.⁸¹ Their situation is in direct contrast to that of the non-military union members in *Dobson* and *Hodgson* who chose to work or leave the city on the days of their elections.⁸² Those members could have very easily driven to their polling places or chosen not to work in order to vote, as opposed to active service members who do not have either luxury because they are stationed so far away and they can be punished for being absent

79. See generally *McGinnis v. Local Union 710*, 774 F.2d 196 (7th Cir. 1985).

80. The following criteria are to be considered under *McGinnis*: "(a) the number of members remotely situated; (b) the geographic areas covered by the Local; (c) whether members voluntarily assume the risk by locating outside the local's jurisdiction; and (d) whether the local uses alternative voting procedures for other important union referenda or elections." *Id.*

81. Daniel Brown & Skye Gould, *The U.S. has 1.3 million troops stationed around the world – here are the major hot spots*, BUS. INSIDER (Aug. 31, 2017), <https://www.businessinsider.com/us-military-deployments-may-2017-5>.

82. See generally *Dobson v. Chicago & Ne. Illinois Dist.*, 707 F. Supp. 348 (N.D. Ill. 1989); *Hodgson v. Local Union No. 920*, 327 F. Supp. 1284 (E.D. Tex. 1971).

without leave (AWOL).⁸³ Punishments for being AWOL can vary from a loss in pay to an administrative discharge.⁸⁴

The general autonomy that these non-military union members possess does not exist for active service members. Active service members are bound by the U.S. government; therefore, their transportation decisions are more complex than simply deciding whether they want to drive to a polling place. Furthermore, it would be absurd and unnecessary for an active servicemember to receive a punishment from a military branch for returning home to vote in a union officer election when an absentee ballot could have very easily been issued.

Any effort that a union attempts to make to accommodate its geographically distant members will fall short for active service members. For example, if a union decides to open up multiple polling places for its members to vote in an officer election, active service members will still be unable to vote unless one of those polling places happens to be situated in the country where the active union members are stationed. It is highly unlikely, however, that a local union in Illinois or Indiana will have the time, money, or resources to open a polling place in Kuwait or Bahrain for its few members that are stationed there.

Additionally, if a union decides to spread its election out over multiple days, active service members will still be unable to vote unless they are somehow able get reprieve to fly home for a union election. Active service members are not generally allowed to return home for the birth of their children or the death of a loved one, so it is again highly unlikely that they will be able to return for a union officer election.⁸⁵ To put it simply, union election locations epitomize inconvenience for active service members. Union elections are small-scale elections that typically take place over a very short amount of time.⁸⁶ Even if a union makes an actual effort to extend the length of the election or spread out the locations of the election, these efforts are still irrelevant for active service members. The most viable way for deployed active service members to participate in union officer elections is to vote via absentee ballot because it is convenient, affordable, and low risk for both the unions and the service members.

83. *Dobson*, 707 F. Supp. at 348; *Hodgson*, 327 F. Supp. at 1284; Rod Powers, *AWOL and Desertion: Maximum Punishments*, THE BALANCE CAREERS, <https://www.thebalancecareers.com/awol-and-desertion-3354177> (last updated Nov. 29, 2018).

84. Powers, *supra* note 83.

85. *Can Troops Come Home for Emergencies?*, MILITARY.COM, <https://www.military.com/spouse/military-benefits/military-family-emergency-leave.html> (last visited Feb. 23, 2020).

86. *Electing Union Officers*, *supra* note 29.

Active service members are in a unique spot—much more unique than non-military union members—because when they posit that they are unable to travel to a polling place or attend a union election, they mean it literally. The LMRDA made it a point to ensure that all union members are given a reasonable opportunity to vote.⁸⁷ The only reasonable opportunity that active service members have to vote in union officer elections is through absentee ballots. It is far more convenient for unions to send out absentee ballots to its active service members than it would be for these service members to leave their stations to attend a union officer election.

C. *Why the Third Factor of the McGinnis Test is Not Relevant*

Some may question whether the third factor of the *McGinnis* test can be applied fairly to active service members because of their geographic location in relation to the polling place. As is required by the third element—whether members voluntarily assume the risk by locating outside the local’s jurisdiction—a union member is not denied his or her reasonable opportunity to vote if that member is situated outside of the local’s jurisdiction.⁸⁸ Thus, the argument follows that active service members assume the risk of losing their opportunities to vote when they decide to join a union, fully aware that they may deploy at any time. This concern is misplaced, however, because it seems to apply to a union member’s actual residence, not her deployment location. In *McGinnis*, for example, the court applied this factor to the large amount of union members who worked in Chicago yet lived many miles away.⁸⁹

If an active servicemember’s home residence is near the local, then her deployment location does not matter. By arguing that an active servicemember’s deployment location places her out of the local’s jurisdiction and therefore bars her from voting in union officer elections, it is implied that a voluntary assumption of risk relating to union officer elections is created simply because someone decided to join the military. This is an asinine assumption. All union members pay dues to partake in union activities and receive union benefits, therefore a union member’s deployment location during the time of an

87. See generally Labor Management Reporting and Disclosure Act of 1959, 29 C.F.R. § 452 (2018).

88. See generally *McGinnis v. Local Union 710*, 774 F.2d 196, 203 (7th Cir. 1985).

89. *Id.* at 199.

election should not bar her from voting in the election, since she essentially pays to have the opportunity to vote.⁹⁰

D. *More Money, More Problems?*

There would be no economic strain on a union to send out what is likely to be a small number of absentee ballots to requesting active service members. These ballots could be sent in the same way that a civilian sends mail to an active servicemember. When sending military mail overseas, civilians are only required to pay domestic shipping costs because the mail is first sent to a designated armed forces mail location within the United States.⁹¹ That armed forces location is then responsible for sending the mail overseas to the service members.⁹² Furthermore, unions will likely not send a large number of ballots, so the cost of domestic shipping for a few pieces of paper would hardly burden the union economically.

In balancing the cost of providing the absentee ballot against the democracy and policy of being protected by the ability to vote, it becomes even clearer that the current state of active service members and absentee balloting in unions is wrong. Voting in union officer elections is a democratic process.⁹³ If dues-paying union members in good standing are disenfranchised by the current election rules, then the system becomes far less democratic. Providing active service members with absentee ballots allows them to vote in an election that has the potential to affect and influence their non-military lives. Voting in union officer elections is a benefit that should not be overlooked for any member. Allowing a domestic shipping price to get in the way of a dues-paying member's right is foolish.

The union does not face any unjustifiable burden in choosing to mail absentee ballots to its active service members who wish to vote in officer elections. Most unions do not contain many active service members; therefore, mailing a small number of ballots to an address within the United States would be a very manageable task. The doing-nothing attitude of unions relating to absentee ballots and active service members is disappointing and hypocritical, especially considering that unions want their members to have voices. Yet, unions are actively stunting those voices by refusing to issue absentee ballots.

90. *Union dues*, N.L.R.B., <https://www.nlr.gov/rights-we-protect/whats-law/employees/i-am-represented-union/union-dues> (last visited Feb. 23, 2020).

91. *Military & Diplomatic Mail*, *supra* note 78.

92. *What is an APO/FPO/DPO address?*, *supra* note 74.

93. *Electing Union Officers*, *supra* note 29.

E. *Not an Active Servicemember? The McGinnis Test
May Work for You*

The standard for absentee balloting and giving union members a reasonable opportunity to vote should not be completely abandoned. When it comes to non-military union members, the *McGinnis* factors can be applied fairly and understandably, just as they were in *McGinnis*, *Dobson*, and *Hodgson*.⁹⁴ While emergencies and unavoidable conflicts may arise on an election day for these non-military union members, they are nevertheless in a far better position to participate in these elections than active service members. Active service members, however, are in an extremely distinct and unavoidable situation; therefore, there is no way that the *McGinnis* factors will ever be applied fairly to these members.

If unions are able to pick and choose which members receive voting rights, then union dues should reflect those decisions. Active service members who are not given the reasonable opportunity to vote in union officer elections should, at the very least, be paying less dues than those members who are given the reasonable opportunity to vote. Paying for a right and then not being able to exercise that same right is unreasonable. How can labor unions be trusted or taken seriously if they do not afford all of their members the same rights?

The number of active military union members requesting absentee ballots should also not matter. Though all of the relevant case law holdings were decided in terms of groups of union members rather than one single member, the effect that the denial of an absentee ballot request can have on that member's union membership is not lessened because she is the only member making the request. Predicating this reasonableness standard on the amount of members seeking absentee ballots or the geographic location of the members is entirely unfair and unreasonable for active military union members. The notion that a group is more important or influential than one person is frankly wrong, and it goes against everything that unions and the right to vote stand for. Union members all pay dues and all have their own voices.⁹⁵ They may bargain collectively, but each member is just as important individually as she is in a group.

94. See generally *McGinnis v. Local Union 710*, 774 F.2d 196, 203 (7th Cir. 1985); *Dobson v. Chicago & Ne. Illinois Dist.*, 707 F. Supp. 348, 352 (N.D. Ill. 1989); *Hodgson v. Local Union No. 920*, 327 F. Supp. 1284, 1287 (E.D. Tex. 1971).

95. *Electing Union Officers*, *supra* note 29.

F. If Political Elections Can Do It, Why Can't Union Elections?

The process for voting in political elections is far different than in union elections for active service members.⁹⁶ The Department of Defense encourages service members to vote in political elections and wants them to participate in the democratic process.⁹⁷ The clear-cut voting processes offered by the U.S. government do not reflect those offered by labor unions.⁹⁸

As political elections approach, various advertisements arise and prompt all citizens to register for an absentee ballot if voting on the day of the election is not an option.⁹⁹ Unions, on the other hand, could not be more different. They make no effort whatsoever to include their active military members in the voting process. While they do encourage voting from their members, they fail to offer alternate ways in which their active military members can exercise their right to vote.¹⁰⁰ One would think that unions, which pride themselves on ensuring that all of their members have a voice within the union, would want all of their members to vote, especially those who are seeking to vote while overseas. Withholding an absentee ballot from a union member in good standing is a clear violation of the union member's right to vote in a union officer election.

In two separate decisions, *Mine Safety* and *Esser*, the Board explained that issuing absentee ballots for union elections to active service members throughout the world would be simply unfeasible because of the scattered nature of members and the uncertainty in trying to ensure that each member would receive a ballot and be given the opportunity to vote.¹⁰¹ Much has changed, however, since these decisions were rendered.

First, the United States has since created a successful system that issues absentee ballots to military members in political elections.¹⁰² Millions of active service members have been able to vote in political

96. See generally FEDERAL VOTING ASSISTANCE PROGRAM, *supra* note 66.

97. *Id.*

98. *Id.*

99. *Get Your Absentee Ballot*, VOTE.ORG, <https://www.vote.org/absentee-ballot/> (last visited Feb. 23, 2020); *Introducing the First Online Absentee Ballot System for Every State*, U.S. VOTE FOUNDATION, <https://www.usvotefoundation.org/news/introducing-first-online-absentee-ballot-system%E2%80%A8-every-state> (last visited Feb. 23, 2020).

100. Labor Management Reporting and Disclosure Act of 1959, 29 C.F.R. § 452 (2018); see generally *McGinnis v. Local Union 710*, 774 F.2d 196 (7th Cir. 1985); *Dobson v. Chicago & Ne. Illinois Dist.*, 707 F. Supp. 348 (N.D. Ill. 1989); *Hodgson v. Local Union No. 920*, 327 F. Supp. 1284 (E.D. Tex. 1971).

101. See generally *Mine Safety Appliances Co.*, 55 N.L.R.B. 1190 (1944); *Esser, T.C., Co.*, 60 N.L.R.B. 105 (1945).

102. See generally FEDERAL VOTING ASSISTANCE PROGRAM, *supra* note 66.

elections since the FVAP was developed in 1986.¹⁰³ Voting via absentee ballot has been made simple through this program, thus debunking any argument that issuing these ballots would be difficult or unreasonable. Unions operate on a smaller scale than the federal government, therefore adapting the FVAP should prove to be an easier solution.¹⁰⁴ Thus, there is no excuse for a union to not also issue absentee ballots in a similar manner.

Additionally, the armed forces take advantage of postal systems. Countless programs exist which allow people to write to and converse with active military members through letters.¹⁰⁵ Family members and friends are also able to send gifts and packages to soldiers.¹⁰⁶ The postal system opens up a direct line of communication between people in the United States and those stationed overseas.¹⁰⁷ Considering the development of the postal system and the armed forces' frequent use of it, the Board's concern that absentee ballots would not reach all service members in time is no longer an issue. The issues that the Board discussed in *Mine Safety* and *Esser*, which included whether it would be feasible or practical to send out absentee ballots to active service members, were on point for the time because each case took place in the mid to late twentieth century when the postal system was much more underdeveloped than it is today.¹⁰⁸ Now that over fifty years have passed, however, the Board's concerns can be laid to rest because, as the FVAP shows, issuing absentee ballots to active service members is a simple process.

G. *Creating a New System for Unions*

Though unions have both the means and the time to issue absentee ballots to active service members, the way in which they do so can and should differ a bit from the way that absentee ballots are issued in political elections. A successful labor union absentee balloting system will take both the service members' and the unions' positions into account.

103. *Id.*

104. Heather Perkins, *Understanding Overseas Citizen Voters: Research from the Field and Observations from 2016*, THE COUNCIL OF STATE GOVERNMENTS (Sept. 11, 2017), <http://knowledgecenter.csg.org/kc/content/understanding-overseas-citizen-voters-research-field-and-observations-2016>.

105. AMERICA'S ADOPT A U.S. SOLDIER, <https://www.americasadoptsoldier.org/> (last visited Feb. 23, 2020); Say "Thank You", OPERATION GRATITUDE, <https://www.operationgratitude.com/express-your-thanks/write-letters/> (last visited Feb. 23, 2020).

106. Say "Thank You", *supra* note 105.

107. *Military & Diplomatic Mail*, *supra* note 78.

108. See generally *Mine Safety Appliances Co.*, 55 N.L.R.B. 1190, 1194 (1944); *Esser*, T.C., Co., 60 N.L.R.B. 105, 108 (1994).

Labor unions should require active service members to indicate whether or not they would like to vote in union officer elections when they join the union. In doing so, unions would be made aware ahead of time how many absentee ballots would need to be mailed. Since sending absentee ballots to deployed service members takes extra time and effort on the union's part, requiring service members to indicate whether they will be voting gives unions adequate time to prepare. Furthermore, if an active servicemember indicates that she does not want to vote, the element of fairness is satisfied because the servicemember was at the very least given the option.

If there are active service members within the union that wish to vote, a system should be devised that is similar to the FVAP, but not identical. Allowing active service members to indicate whether they want to vote when they join the union would eliminate the need for an FPCA; therefore, all that unions would need to do is send the required number of absentee ballots to the requisite addresses under the Overseas Military Mail program, wait for the ballot to be returned by the active service members, and record the votes.

Unions would need to formulate a timeline based on the election date and the mailing system so that the service members' votes could be recorded promptly. They would additionally need to specify this timeline on the ballot so that service members are aware of just how long they have to fill out the ballot and send it back. Since active service members comprise a very small portion of union membership, the concern regarding the accuracy of absentee balloting is futile. Union officer elections, while gravely important to unions and their members, are not elections that are likely to be tampered with, especially by service members in different countries.¹⁰⁹ Knowing that the FVAP has yet to have any serious issues with voter tampering or accuracy, a union absentee balloting system will likely have the same successful result.¹¹⁰

III. IMPACT

The lack of an absentee ballot option for active military union members during union elections is a detriment to both the union itself and its members. By denying dues-paying members one of the most important union benefits, a union risks its reputation, denies its active service members the support of the union, and denies a right meant to

109. Jeffrey T. Zaino, *Six Ways to Have Your Union Officer Election Overturned*, AM. ARBITRATION ASS'N, https://www.adr.org/sites/default/files/document_repository/Six-Ways-to-Have-Your-Union-Officer-Election-Overturned.pdf (last visited Mar. 1, 2020).

110. Perkins, *supra* note 104.

be guaranteed to all union members. This Part will first detail the benefits of union membership and the hypocrisy of a union's denial of some benefits to certain members. This Part will then discuss the ramifications of denying a specific group of union members a benefit that they pay for. Finally, this Part will address and dismiss concerns regarding active service members receiving absentee ballots, and end by highlighting the hypocritical stance of unions on this issue.

A. *The Importance of Union Membership*

One in nine workers in the United States, approximately 16 million people, are represented by unions.¹¹¹ After negotiations are settled and a collective bargaining agreement has been finalized, union representatives and members work together to ensure that the obligations in the agreement are followed.¹¹² Joining a union means much more than simple union membership because membership grants protections to members by giving members a say in their own employment conditions.¹¹³ These conditions include wage increases, health care, workplace safety, and work hours.¹¹⁴

Over ninety percent of union members are entitled to medical benefits and have access to some sort of retirement benefit that their employer provides.¹¹⁵ Union members also operate on contracts that renew every two to five years, so members are frequently negotiating better wages.¹¹⁶ Their union dues are, on average, about 1.5% to 2.5% of their earnings, and those dues pay for grievance and arbitration costs, legislative representation, legal counsel, contract negotiations, and political lobbying.¹¹⁷

Union workers additionally make around \$200 more per week than nonunion workers, and have better health insurance and retirement packages.¹¹⁸ Studies have even shown that unions also help raise

111. Kenneth Quinnell, *9 Things You Need to Know About the Role of Unions in 2017*, AFL-CIO (Aug. 25, 2017), <https://aflcio.org/2017/8/25/9-things-you-need-know-about-role-unions-2017>.

112. *Id.*

113. Josh Bivens et al., *How today's unions help working people*, ECON. POL'Y INST. (Aug. 24, 2017), <https://www.epi.org/files/pdf/133275.pdf>.

114. *Id.*

115. Crystal Ayres, *13 Advantages and Disadvantages of Labor Unions*, VITTANA.ORG, <https://vittana.org/13-advantages-and-disadvantages-of-labor-unions> (last visited Feb. 23, 2020).

116. *Id.*

117. *Id.*; *What Do Your Union Dues Pay For?*, BENEFIT & PENSION FUNDS FOR HOSPITAL & HEALTH CARE EMPLOYEES, <https://1199cfunds.org/who-we-are/what-do-your-union-dues-pay-for/> (last visited Feb. 23, 2020).

118. Jordan Yadoo, *U.S. Labor Unions*, BLOOMBERG (June 27, 2018), <https://www.bloomberg.com/quicktake/u-s-labor-unions>.

wages for nonunion workers by “setting a higher prevailing wage.”¹¹⁹ The recent decline in union membership has even been said to have a negative effect on the economy.¹²⁰ Chief Justice Charles Hughes stated in *N.L.R.B. v. Jones & Laughlin Steel Corp.*,

Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer.¹²¹

Given that union benefits are still readily available to active service members who are deployed, voting in union elections should be available to these union members. Unions should not be able to pick and choose which benefits apply to which members. This inconsistency is unfair to active service members and allows unions to have unfettered and erroneous control over their members.

The issuing of absentee ballots to active military union members is especially important considering the infrequency of union elections.¹²² Officer elections occur, at most, every three years.¹²³ Union members are able to vote for a union official, and then they must deal with the results of the election until the next one arises.¹²⁴ If a member is unsatisfied with a union official, she can take that lack of satisfaction to the next union election and exercise her right to vote for a new official. Voting in union elections is one of the leading ways for union members to express themselves.¹²⁵ Without absentee ballots, active service members are denied their only opportunities to voice their concerns and frustrations. They must then wait at least another three or so years for another election and hope that they are not deployed so that they can finally cast a vote.¹²⁶

B. Withholding Benefits: Unfair Union Practices

What happens, however, when a union member is denied a major union benefit? The simple answer is that a wave of uncertainty and

119. *Id.*

120. *Id.*

121. *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

122. 29 C.F.R. § 452.23 (2018).

123. *Electing Union Officers*, *supra* note 29.

124. *Id.*

125. *ECON. POL'Y INST.*, *supra* note 6.

126. 29 C.F.R. § 452.23.

unfairness can spread. A union member in good standing should have access to all union benefits and be able to partake in all union-sanctioned events. Being able to vote for people in positions of power is a vital component of union membership. When someone thinks of unions, her mind is usually diverted right to collective bargaining. Union members have a collective say in what happens to them, specifically when it comes to who is representing them in the union.¹²⁷ Casting a vote is representative of an abundance of things, including freedom, uniformity, and having a voice.¹²⁸ If that vote is taken away from a member in good standing simply because her service in the armed forces prevents in-person voting, unions are undermining these members' votes and union membership.

Unions send a clear message when they fail to distribute absentee ballots to active service members. When a union member, who has done nothing wrong, is not allowed to cast a vote in a union election, faith and trust in her union is lost. These members are being punished for frivolous reasons and their voices are restricted because of their choice to serve their country. They are able to vote in political elections for the president; yet, they are unable to cast a vote in a union officer election, which has a very clear and direct effect on their wages, insurance, job security, etc.¹²⁹ In an organization that preaches guaranteed voting, the voting situation for active service members could not be more insincere and hypocritical.

The impression is given that these particular union members are less important than other members and they are being treated differently because of their service in the armed forces. This is in direct contrast with how active service members are traditionally treated. Those who serve their country are revered as strong, brave, honorable, and important.¹³⁰ Society goes out of its way to make sure that these individuals are respected because of their tremendous sacrifices. Many businesses offer discounts for veterans and current armed forces members, and the United States has multiple holidays and benefits

127. *Collective Bargaining*, AFL-CIO, <https://aflcio.org/what-unions-do/empower-workers/collective-bargaining> (last visited Feb. 23, 2020).

128. *What Does the Right to Vote Mean to You?*, TEACHING TOLERANCE, <https://www.tolerance.org/sites/default/files/general/what%20does%20the%20right%20to%20vote%20mean.pdf> (last visited Feb. 23, 2020).

129. Michelle Chen, *Union Benefits Go Far Beyond the Workplace*, THE NATION (Jan. 22, 2019), <https://www.thenation.com/article/unions-labor-welfare/>.

130. *Why We Must Honor Our Nation's Veterans*, DAILY CALLER (Nov. 11, 2015), <https://dailycaller.com/2015/11/11/why-we-must-honor-our-nations-veterans/>.

programs honoring service members.¹³¹ Unions, however, are not following suit. While an active military member may ordinarily feel revered because of her service, that feeling likely subsides when she finds out that her own union will not afford her the opportunity to participate in a typical union function.

As it stands today, active service members are a constituency that labor unions are actively ignoring. Unions would benefit greatly from allowing active service members to vote and treating them as the dues-paying members that they are. Unions should want all of their members to be as involved as possible in union functions because their bargaining power would increase. If active service members were treated more fairly and received attention from labor unions, they could be incorporated into the collective bargaining process and have military-specific rights and benefits negotiated. As a result, active service members would feel as though they were important members of their unions and the military-union bond would be bolstered.

C. *Every Vote Counts*

Some might argue that denying active service members absentee ballots for union officer elections is hardly an issue. If only a few votes are not recorded, then the sanctity of the union is still intact. Furthermore, a small number of votes is not worth the hassle of distributing absentee ballots. If active service members request and receive absentee ballots, what is to stop other members from requesting them? Union elections are far smaller and much more intimate than political elections. Therefore, if unions begin regularly incorporating absentee ballots into their elections, this intimacy may cease to exist.

A vote, no matter how inconsequential it may seem, is important. The fact that one vote may not change the outcome of an election does not negate its importance. When political elections arise, so does a dialogue concerning why every vote matters. Exercising a right to vote represents equality, freedom, and democracy.¹³² Within a union, however, the right to vote hits even closer to home. Voting in a union is important because members are voting for their families and their futures.¹³³ Union officers that are being elected hold a plethora of re-

131. *Patriotic Holidays*, *supra* note 5; *Military Discounts Offered by Stores, Services and Online Sites*, MILITARYBENEFITS.INFO, <https://militarybenefits.info/military-discounts/> (last visited Feb. 23, 2020).

132. *What Does the Right to Vote Mean to You?*, *supra* note 128.

133. *The Top 10 Advantages To Joining A Union*, *supra* note 1.

sponsibilities.¹³⁴ They manage funds and property for the union and its members, speak on behalf of the members and their specific needs and wants, and manage all labor organization reports concerning union financials.¹³⁵ To put it succinctly, union officer positions are important within the union. Therefore, the voting process for electing people into these positions is also important.

Regardless of whether an active military union member's vote would "make a difference," she should still be able to cast that vote because her voice is no less important than any other member's voice. By not issuing absentee ballots to these members, unions are making it clear that active service members' voices are in fact worth less than the voices of other members.

Though over half of Americans still support unions, union membership is on a steady decline, and the existing law regarding absentee ballots hardly helps union reputations.¹³⁶ Considering how respected active service members are in society, it would benefit unions to treat their own active service members with the same respect and admiration that society does. When seeking absentee ballots, these active service members are not asking for special treatment. They are simply asking to be treated the same as every other member. Union officials could not possibly represent the entirety of union members if every member was not given the opportunity to vote those officials into office.

D. *The Effect of Union Hypocrisy*

There is a difference between a union member who chooses not to vote in an election and a union member who is unable to vote due to uncontrollable circumstances—which is the situation for active service members. Active service members are essentially being punished because their choice to serve their country is inconvenient for unions. If a union member is eligible to vote and desires to vote, her vote should be recorded.

If the current standard for absentee balloting is not abandoned for active service members, unions will maintain a sense of hypocrisy.

134. *Union Administration: Union Member Rights & Officer Responsibilities under the LMRDA*, NALC, <https://www.nalc.org/union-administration/secretary-treasurer/union-member-rights-officer-responsibilities-under-the-lmrda> (last visited Feb. 23, 2020).

135. *Id.*

136. See generally Lydia Saad, *Labor Union Approval Steady at 15-Year High*, GALLUP (Aug. 30, 2018), <https://news.gallup.com/poll/241679/labor-union-approval-steady-year-high.aspx>; AJ Willingham, *64% of Americans support labor unions but membership is at a record low*, CNN (Aug. 31, 2019), <https://www.cnn.com/2019/08/31/us/labor-day-union-support-controversy-trnd/index.html>.

They cannot boast about dedication to their members while simultaneously denying members a right to vote for extremely trivial reasons. Abandoning this standard would be a win-win situation for both active service members and unions. The service members would have full access to the right that they pay for, and unions would be treating all of their members fairly, thereby maintaining their reputations as representatives for laborers' interests. Additionally, abandoning this standard could only help to positively shape the public's view of unions.

Unions pride themselves on the strong relationships that exist between union officials and members.¹³⁷ The reputation of a union is therefore diminished when it fails to offer absentee ballots to its active service members. How can an active military union member be certain that her desires are being considered by union officials when she was prevented from voting for those officials? If a union were genuinely concerned with its members and their input, a stronger effort would be made to ensure that no member is left behind and that all members are afforded the same benefits.

CONCLUSION

The current standard for determining whether union members are to be issued absentee ballots for union officer elections unfairly affects active service members in unions. Dues-paying service members are denied a benefit to which they are entitled simply because they have decided to serve their country. By abandoning the current standard as it relates to active service members, unions would be treating their active service members fairly and maintaining the member-driven values that they claim to hold. This Comment advocates for the use of absentee ballots in union elections for active service members, similar to the way absentee ballots are used in political elections, because the process is simple, straightforward, and economically feasible. Although unions may not be comprised of a large amount of active service members, they nevertheless deserve to be treated the same as other union members.

Dakota D. Treece

137. *How do Unions Work?*, UNIONPLUS, <https://www.unionplus.org/page/how-do-unions-work> (last visited Feb. 23, 2020); *Employer/Union Rights and Obligations*, N.L.R.B., <https://www.nlr.gov/rights-we-protect/rights/employer-union-rights-and-obligations> (last visited Feb. 23, 2020).

