



THE UNION'S DUTY OF FAIR REPRESENTATION

There is an increasing volume of litigation by workers represented by unions who claim that they were not properly represented by unions in the grievance process, in accordance with the "duty of fair representation," as required by Taft-Hartley and other laws.

The following are some general principles of the law of unfair representation:

1. Under the law, the union has exclusive representation rights. If a member in a bargaining union is aggrieved, the member should go to the union for relief. Customarily, he or she files a grievance or attempts to do so. The courts have made it clear that the union does not have a duty to take every case--not even every discharge case--to arbitration. It does have the duty to accept a grievance unless the grievance is, on its face, worthless and improper and even if it concludes that a grievance should not be accepted, IT SHOULD EXPLAIN WHY TO THE AGGRIEVED EMPLOYEE. While the union has no duty to "fight" every case, it does have certain duties which may make it legally responsible. Those duties are to be honest, to act in good faith, to be nondiscriminatory and to be informed and to have a rational basis for making a decision. In other words, the union owes a duty of "fair representation" to all those in units which it represents.
2. The union is accorded considerable discretion in the handling of grievances. In other words, the union is permitted "a wide range of reasonableness" in deciding whether to prosecute and how to prosecute a grievance.

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3. The latitude afforded a union under the law, however, is "subject always to complete a good faith and honesty of purpose in the exercise of its discretion."
4. No individual member has an absolute right to insist that his grievance be pursued through any particular step of the procedure. A union may screen grievances and press only those it concludes should be pursued in terms of benefit to the unit as a whole and to take into account such matters as time, expenses, and other considerations.
5. A union may not drop a grievance based on hostility, discrimination, or arbitrariness. It may not arbitrarily ignore a meritorious grievance or investigate or handle it in a perfunctory manner-- that is--by merely going through the motions.
6. In other words, a union may abandon a grievance as long as there is a reason and the union has a reasonable basis for adopting the reason. Mere whim or no reason will not support a contention that the union official merely exercised judgment.

Here are some examples of conduct which might appear to violate the union's duty of fair representation:

- a. **DISCRIMINATION** -- An all male shop committee decides not to appeal a discharge grievance by the leader of a female caucus within the local which is hostile to the incumbent administration, nor may a distinction be drawn between union members and non-members.
- b. **ARBITRARINESS** -- An international representative or a committeeman withdraws a grievance but, when

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- asked why, can offer no reason.
- c. **HOSTILITY** -- The chairman of the shop committee has a personal grudge against the grievant and brings pressure upon the committee to withdrawal the grievance.
 - d. **DISHONESTY** -- The chairman misleads, half-informs, or lies to the grievant.
7. Most courts require the exhaustion of reasonable internal union remedies before suit. In order to rely on a defense of non-exhaustion of such remedies, **THE UNION MUST TAKE CARE NOT TO MISLEAD THE MEMBER OR PLACE OBSTACLES IN HIS WAY SO THAT THE INTERNAL REMEDY CAN BE SAID TO BE MEANINGLESS.**
 8. **THE UNION SHOULD TRY TO AVOID EVEN THE APPEARANCE OF BAD FAITH, HOSTILITY, OR ARBITRARY CONDUCT.**
 9. Obviously, the union people handling grievances should distinguish between minor and serious grievances. A reprimand of three days seems unlikely to lead to litigation, but such matters as a six-month layoff, a discharge, the loss of seniority of valuable transfer or promotional rights are obviously serious enough to require more care. It is similar to the difference between a misdemeanor and a felony.
 10. In a case of the discharge of a high seniority person, the presumption is in favor of arbitration and only compelling facts involving the actual case should excuse resort to arbitration. A union representative is, first and foremost, an advocate. **WHERE THERE ARE**





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FACTUAL DISPUTES, THE UNION OFFICER WHO REPRESENTS THE GRIEVANT SHOULD ACCEPT HIS VERSION OF THE FACTS IF CREDIBLE.

Minimizing Duty of Fair Representation Charges

View on how to minimize Duty of Fair Representation charges to protect members' rights, local union structures and international unions' integrity:

- (a) Conduct a full and proper investigation of all complaints brought forth by members of the bargaining unit. The use of notes is most helpful and can be used as documentation. Do not make quick judgments about the merits of grievances.
- (b) Extend the same service of contract application to all members of the bargaining unit not just members of the union. Stick with the procedures of the collective bargaining agreement. Some DFR cases rise out of inconsistent behavior in contract application, including non-adherence to time limits.
- (c) Members must have contracts applied to their benefit. Be careful of management overtly trying to cooperate with the union and the union enforcing management's rules or objectives.
- (d) Ambiguous terms of the contract must be applied consistently on members' behalf.

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- (e) Consider with great care any dispute that may have any hint of discrimination, union politics, and non-union employees of the bargaining unit.

- (f) Every member should have equal access to the procedure in the resolution on the grievant's behalf. Arbitration may be mandatory for the SAME kind of case of a previous member's complaint taken to arbitration and won.

- (g) Members are entitled to reasonable care and diligence to have union represent them in all disputes. However, that does not mean that the union must take all cases to arbitration.

