

# The Duty of Fair Representation

Unions are the *exclusive* representatives of the workers in the bargaining unit. This role of representative carries with it the responsibility to fairly represent all members of the bargaining unit, regardless of the race, color, sex, political views within the union, and even regardless of whether or not they belong to the union. Failure to fairly represent *all* workers can subject the union to a lawsuit from a worker who believes that he or she was discriminated against by the union. The Supreme Court has held that the union breaches its duty of fair representation when its actions are "arbitrary, discriminatory, or in bad faith".

To ensure that the union is fulfilling its obligation to fairly represent the workers, a local union should follow some guidelines. These include:

- When you are approached about a grievance, do a full investigation. Interview the grievant and all witnesses. Review the contract to see if there are any potential violations. Request all relevant information from management. Keep detailed records of your investigation.
- Do not refuse to file a grievance because of race, sex, religion, politics, personality, or membership status. You must represent all members of the bargaining unit regardless of your personal opinion of the worker involved in the grievance.
- Treat grievants as you would want to be treated if it were your grievance. Keep them up to date on the progress of their grievances. Don't disregard a grievance simply because the grievant has filed a number of frivolous grievances in the past.
- If you decide to drop a grievance, notify the worker prior to formally removing the grievance. Give the grievant a specified time to provide additional relevant information. Keep records of conversations and written material used to notify the grievant that his or her case is being dropped.
- Prepare thoroughly for all arbitrations. Simply taking a case to arbitration is not a defense against a DFR charge if the union does not prepare for the arbitration.

## Duty of Fair Representation Questionnaire

1. We are grieving a one-day suspension. The grievant wants us to go to arbitration, but this could cost the union \$2,000 or more in legal expenses. It seems foolish to spend this much money for one day's pay, especially when the union is low on funds. Do we have to arbitrate?

Yes \_\_\_\_ No \_\_\_\_

2. A worker was suspended for two weeks because of absenteeism. At the third step of the grievance procedure, the company offered one week's back pay. We think this is a reasonable settlement, but the employee wants us to go to arbitration to get full back pay. If we accept the company's offer, can the employee sue us?

Yes \_\_\_\_ No \_\_\_\_

3. Several female employees have complained about sexual harassment from a supervisor. We have a non-discrimination clause in the contract and deferral of a grievance pending completion of an EEO complaint. I'd rather not file a grievance and just let them go through EEO, because I am afraid that the company will get its back up, and this will jeopardize several other important grievances that are currently pending a decision. Can we do this?

Yes \_\_\_\_ No \_\_\_\_

4. Our contract says that employees must serve a 90-day probationary period. Do we have to represent them during this time?

Yes \_\_\_\_ No \_\_\_\_

5. Two employees were suspended for one week for serious insubordination. At the first step of the grievance procedure, the company offered to reinstate one employee with back pay if we dropped the grievance of the second worker. Can we do this without risking a DFR suit?

Yes \_\_\_\_ No \_\_\_\_

6. We filed a grievance against a letter of warning. At the grievance meeting, the company presented good reasons for its actions. Do we have to make fools of ourselves by pursuing this grievance?

Yes \_\_\_\_ No \_\_\_\_

7. We filed a grievance for a member who now wants it withdrawn. The union thinks it is an important issue. Can we keep it alive without the grievant's permission?

Yes \_\_\_\_ No \_\_\_\_

8. We voted not to take an insubordination grievance to arbitration, because we were afraid of losing the case and setting a bad precedent. The worker says she is willing to pay the arbitration expenses herself and to hire her own attorney. Under these circumstances, can the union still refuse to allow the case to go to arbitration?

Yes \_\_\_\_ No \_\_\_\_

9. We lost an arbitration over a discharge. The worker wants us to appeal the arbitrator's decision to court. Our lawyer says this would be useless, but the employee is threatening to sue the union if we don't do it. Should we file the appeal?

Yes \_\_\_\_ No \_\_\_\_

10. If we decide not to arbitrate a grievance, how long does an employee have if she wants to file a DFR suit against the union?

6 months \_\_\_\_ One year \_\_\_\_ Two years \_\_\_\_ No limit \_\_\_\_

11. If a worker files a DFR suit, can she sue her steward along with the union?

Yes \_\_\_\_ No \_\_\_\_

12. Two members get into a fight. One is clearly at fault but both are suspended and want to file grievances. Can we refuse to take the grievance of the one who was at fault?

Yes \_\_\_\_ No \_\_\_\_

13. Fred Freeloader is not a union member. What's worse, he is constantly bad-mouthing the union. Yesterday he approached his steward saying that the company had awarded a job posting to someone with less seniority although Fred had the qualifications. Can we tell Fred that he must join the union before we'll represent him?

Yes \_\_\_\_ No \_\_\_\_

14. Last week I missed a time limit for appealing a grievance to the third step. The company will not let me file it now. I had a lot on my mind and just forgot even though I thought it was a legitimate grievance. Can the union be found guilty?

Yes \_\_\_\_ No \_\_\_\_