

The Duty of Fair Representation



All rights reserved. No part of this presentation may be used or reproduced by anyone other than members of the AFL-CIO Lawyers Coordinating Committee (LCC), employees or staff of the AFL-CIO, or employees or staff of AFL-CIO affiliates.

Objectives

- **Define the duty of fair representation (DFR)**
- **Know when the DFR applies**
- **Understand how accusations of DFR violations can harm the union**
- **Identify ways to prevent DFR accusations**

Good Grievant Relations

- Assume you're the grievant. You've been a good employee for a long time. Your employer accuses you of dishonesty on the job. The accusation is not true. Your employer fires you.
- What are the five most important things that the union can do to make you, as a grievant, feel like you've been represented well?

The Duty of Fair Representation

A union that is the exclusive representative of a bargaining unit *must* represent bargaining unit members in a way that is:

- Reasonable
- Fair and focused on the facts
- Acting honestly and in good faith

Breaching the **Duty of Fair Representation**

A union that is the exclusive representative of a bargaining unit **violates** the duty of fair representation when it acts in ways that are:

- Arbitrary
- Discriminatory or
- In bad faith

Focus on the Facts

Investigate:

- Interview the grievant
- Check the grievant's points
- Review your findings with the grievant

Focus on the grievance, not the grievant

Non-union? Anti-union? *Don't ask!*

Taking an answer into account violates the duty of fair representation

WHEN **When Does the Duty of Fair Representation Apply?**

- Union acting in collective bargaining context
 - - Grievance handling
 - - Contract administration
 - - Contract negotiations

NOT for statutory claim that individual can raise.

DFR and Arbitration

- Do *not* have to arbitrate every grievance.
- Do *not* have to provide grievant with attorney.
- Do *not* have to pay for grievant's own attorney.
- Do *not* have to raise every argument/theory grievant wants you do.

How Can an Accusation That Your Union Violated the Duty of Fair Representation Harm the Union?

- Back pay and benefits to affected workers
- Your attorneys' fees
- Your union staff time and effort
- Division and distraction
- Harmful publicity

Avoiding Accusations of a Violation

- **Treat the grievant as you would like to be treated**
 - Listen carefully
 - Respond fairly and thoughtfully
 - Keep informed
- Investigate thoroughly
- Check your contract, past practices, and earlier decisions - Meet grievance deadlines
- Document your case and efforts