

# UE STEWARD

## FIRST LINE OF DEFENSE

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA • JULY 2019

Union Responsibility as "Exclusive Representative"

### *The Duty of Fair Representation*

#### Issues

- **The duty of fair representation is the legal duty of a union to equally, and in good faith, represent every employee in a bargaining unit, regardless of whether the employee is a union member or not.**
- **This legal duty arises out of the exclusive representative status unions hold under the National Labor Relations Act in the private sector and under state collective bargaining laws in the public sector.**
- **The duty requires three things on the part of the union: all members' interests be served without hostility or discrimination; that discretion be exercised with good faith and honesty; and that the union not act arbitrarily.**
- **If basic UE principles in grievance handling are followed there should not be a problem with a "failure to represent" charge.**



Imagine this situation. Ralph thinks he has a problem and goes to his steward. "I didn't get paid for the holiday last Friday," he says.

"Do you know why?" the steward asks.

"My boss says it's because I didn't work the day before the holiday," Ralph says.

"Well did you?" Joan the steward asks.

"No, but I had a good reason not to. My boss has been getting on my back and I needed to teach him a lesson, so I didn't come in on Thursday."

"You know the contract says you have to work the day before and the day after a holiday. We don't like it, but for now that's the way it is." Joan says.

"Well, my boss is a jerk and I can prove it. I want to file a grievance." Ralph insists.

*What should a steward do?*

In UE we know that a big part of our job as a steward is to protect the gains we have won in our contracts, to fight to improve our wages, hours and working conditions, and to defend workers against injustice from management.

We also know that sometimes we have to defend workers that we or others may not personally like, because we must defend a principle bigger than the individual person.

Throughout the years a legal principle has been developed by the National Labor Relations Board called "the duty of fair representation" (DFR). This legal principle quite

simply states that a union must represent all workers equally and without prejudice. A union cannot refuse to represent or improperly represent a worker due to the worker's age, race, creed, nationality, sex, religion, political beliefs, union status or personality. If a union fails to represent a worker due to prejudice, or hostility, the union can be charged.

The idea of failure to represent includes failing to properly investigate a grievance, process a grievance, or in some cases, even to arbitrate a grievance.

The duty to represent all workers is especially true in the case where a non-member or anti-union worker files a grievance. Personal feelings or the feelings of the membership cannot be allowed to interfere

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with the processing of that person's grievance.

The key factor in a "failure to represent" case is that the union knowingly commits these acts because of prejudice or hostility towards an individual. If an honest mistake is made, that is not considered to be "failure to represent." If basic UE principles in grievance handling are followed there should not be a problem with "failure to represent" charges.

*Example:* A union loses a case because they missed the time table for advancing the grievance to the next step. The grievant files a complaint that the union violated the duty of fair representation because they missed the time limit. In this case, normally the union would not be found guilty of a DFR unless it could be proven that the union missed the time limit because they were prejudiced or hostile against the grievant for some reason.

### *What Should be Done*

Here are some basic guidelines.

#### **Proper Grievance Handling —**

- Listen to the worker's complaint(s) — don't blow them off.
- Investigate what happened, don't accept the bosses' word as fact.
- If the worker wants to file a first step grievance, file it, even if you're not sure of its merits.
- Keep all notes of the investigation.
- Discuss the grievance with the grievance committee or chief steward. Make a collective decision on processing the grievance to the next step.
- Keep the worker or workers involved in the grievance fully informed about what is happening to their grievance. If you must make a compromise settlement, make sure the reason for that decision is explained and fully understood.
- Never allow prejudicial statements to be made about the grievant in a discussion on whether to file their grievance.
- If there is a debate at a union meeting over whether or not to take a grievance to arbitration, make sure the grievance is debated solely on its merits. If one of the officers is personally involved, he or she should excuse themselves from the vote.
- The person chairing the union meeting must rule any derogatory discussion of the individual out of order. The minutes of the meeting should clearly note that such discussion was ruled out of order. If the members vote not to take a case to arbitration because the person who filed the grievance is anti-union, the union can be charged and will most likely lose. If the

case involves back pay, the union may be liable for paying that worker's back wages.

### *What We Don't Have to Do*

- If a grievance has no merit, there is no obligation to process it past the first step. Make sure the worker is told why this is happening. If necessary, have several stewards explain the reasoning behind the decision.
- A steward does not have to pound the table over a grievance that is questionable or non-existent. Present the worker's case in a straight forward manner if they ask you to do so.
- Sometimes a worker has suffered an injustice that we cannot win by pointing out a specific contract violation. Make sure the individual understands that you agree an injustice has occurred but it cannot be won as a contract violation issue.
- There is no obligation to process a "non grievance" all the way to the final step of the grievance procedure. If the committee decides not to process a grievance make sure the investigation is complete and the facts are in order.
- There is no obligation to take every case to arbitration or even conduct a vote on every grievance. As long as the issue has been debated and dealt with on its merits, there should be no problem.

### *UE's Role in Fighting Discrimination or Harassment*

We in the UE have always felt it is the role of the union to fight against any kind of discrimination or harassment a worker may be suffering related to their race, nationality or sex. "An injury to one is an injury to all." If a

worker approaches a steward or an officer and has a complaint of harassment or discrimination, it must be taken seriously. The incident must be investigated and, if necessary, action must be taken. If the harassment is coming from another worker the union must approach it just as seriously as if the harassment was coming from a member of management. Failure to help a worker who is the victim of harassment is wrong and can be a violation of the union's duty of fair representation.

Following basic UE Policy IS the solution: "...pursue at all times a policy of aggressive struggle to improve our conditions." This part of the Preamble to the UE Constitution says it all. The grievance procedure, and the union exist to improve the conditions of working people and by keeping this in mind we won't have to worry about complaints of failing to represent the membership.

### *So finally, what should Joan do?*

Joan goes and talks to some of the other stewards. None of them think Ralph has a good case although there are some factors complicating the situation. One of them points out that the reason that the company demanded in the last negotiations that employees had to work the day before and the day after a holiday was because of a few people like Ralph, who always took extra days off. Another steward points out that Ralph's boss is a jerk and maybe he has been harassing Ralph.

Joan decides to investigate more on the possible harassment of Ralph. She is going to let Ralph present his case in the first step of the grievance procedure. She will try to make the discussion deal with the attitude of Ralph's boss. The stewards agree that Ralph doesn't have a chance to get the holiday pay, so they won't pursue that grievance past the first step, but they will pursue the question of harassment. They will also tell Ralph that the way to deal with harassment is through the grievance procedure.

### *NLRB General Counsel announces tougher policy for enforcing DFR complaints*

On September 14, 2018, the Office of the General Counsel of the National Labor Relations Board (NLRB), issued Memorandum ICG 18-09, explaining the General Counsel's position regarding certain cases alleging union violations of the **Duty of Fair Representation** (DFR) under Section 8(b) (1) (A) of the National Labor Relations Act (NLRA). The General Counsel raised the bar for enforcement of these cases, so it is extremely important for UE locals and stewards to also raise the bar on the handling of their members' grievances and representational work in order to avoid getting hit with a violation of the **Duty of Fair Representation**.