

THE UNION'S DUTY OF FAIR REPRESENTATION

"The Union shouldn't proceed with that grievance for...

...him because nobody likes him."

...her because she used to take drugs."

...them because they have a weird life style; they aren't like us."

...him because they didn't file one for me."

...her because that grievance will cost too much."

Although these are comments we sometimes hear, they are not acceptable reasons to waive Duty of Fair Representation. Unions do have a wide range of discretion in grievance handling, including the right to settle a grievance with or without the grievant's permission. Unions do not have to get every remedy a grievant wants to satisfy Duty of Fair Representation. However, Unions cannot discriminate in grievance handling for improper reasons such as race, sex, religion, Union activities; or personal life style of the grievant.

In exchange for the right to be exclusive bargaining representative for a group of employees, the Union has a duty to negotiate and enforce the contract honestly and in good faith. However, the Union is allowed by law to make a reasoned judgment about the merits of a grievance, to balance the interests of the whole bargaining unit and to take sides between two members if necessary.

The merits of a grievance depend on a combination of factors including the contractual or legal basis, the facts of the case, the impact on the bargaining unit and the contract, the gravity of the violation and the remedies available through the grievance procedure. If merit is sufficient, the Union must file the grievance timely, investigate, keep records, inform the grievant of the progress of the grievance through the steps of the grievance process.

Arbitration is the final step if the grievance is not settled between the Union and the Employer. A neutral third party arbitrator is chosen from a list mandated by the contract. That arbitrator's decision is final and binding under Local 8 contracts.

A Union is not responsible for taking every case to arbitration, but it must be able to show a rational reason for not pursuing the case further. Some typical reasons include: (1) The nature of the violation and the degree of seriousness of the penalty or action. (2)

How the case could affect the unit as a whole. (3) Cost may be taken into account in a decision, but should not be the primary reason for dropping a case.

Unions may decide whether to take a grievance to arbitration, through a decision of the Grievance Committee, Business Agent or Executive Board, or through a vote of the body. Any method is acceptable to courts, so long as it is uniformly applied.

When an Employer refuses to go to arbitration, Unions generally are in a position to go to court to compel arbitration if there is an arbitration clause in the contract. Unions may also go to court to enforce arbitration awards. Courts usually enforce such awards.

Local 8 has recently taken an Employer to court to compel payment of a binding arbitration award won by Local 8. This Employer has refused to pay the award and has refused to provide proof of allegations made after the arbitrator made his decision. National Labor Relations Board charges were filed against the Employer, won by Local 8 and appealed by the Employer, who continues to withhold proof of the alleged misconduct. One has to ask, why would an Employer withhold proof of alleged misconduct if that would win his case?

In this case, Local 8 has a Duty of Fair Representation to obtain the binding arbitration award. Further, every other member under that contract could be subject to the same type of wrongful termination if we did not enforce our contracts when the merit of the case is clear.

Reference Source: Bureau of National Affairs Special Report.