

## **DUTY OF FAIR REPRESENTATION**

### **THE DUTY DEFINED**

Under federal law, the union has an obligation to represent the interests of all members *fairly, impartially* and *in good faith*.

The duty applies to all representatives and decision-making bodies of the union (both the Unit and NOLSW), including Officers, Executive Committee, Delegates Assembly and Delegates.

The duty extends to all employees in the *bargaining unit*, regardless of whether they are members of the union and/or participate in union activities.

The duty applies to all aspects of representation, including negotiation, administration and enforcement of the collective bargaining agreement.

The union is *not* required to process every grievance through all steps of the grievance procedure, as long as its decision is not motivated by bad faith or discriminatory reasons and the Union does not act arbitrarily.

### **COURT DECISIONS**

Under the doctrine of fair representation, the union has “a statutory obligation to serve the interests of all members without hostility or discrimination toward any, and to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.” *Vaca v. Sipes*, 386 U.S. 171, 177 (1967)

The duty of fair representation is breached "only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Id.* at 190.

Although a union “may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion” the individual employee does not have “an absolute right to have his grievance taken to arbitration”. *Id.* at 191.

“A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.” *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). See also *Air Line Pilots v. O'Neill*, 499 U.S. 65 (1991)

With respect to enforcement of the collective bargaining agreement, “mere negligence ... would not state a claim for breach of the duty of fair representation”. *Steelworkers v. Rawson*, 495 U.S. 362, 372-373 (1990).

## **GUIDELINES FOR AVOIDING DFR CLAIMS**

Carefully investigate every grievance to determine the merits.

Proceed with especial care in evaluating and handling any grievance that may involve disputes between members with opposing interests and/or conflicting rights, e.g. sexual harassment claims, disparate treatment, etc.

Carefully make and maintain records of such investigations.

Maintain adequate communications to assure the grievant of the local's concern, efforts and good faith; misunderstanding invites hostility and charges.

If the grievant hires private counsel, he/she should be treated courteously. However, an officer or steward of the bargaining unit should contact the NOLSW Office for discussion.

Process the grievance promptly. Scrupulously observe collective bargaining agreement time limits, and confirm continuances in writing.

Represent all members of the bargaining unit equally. Decide whether to pursue grievances, including arbitrations, on the merits of each grievance. Hostile and objectionable motivations such as horse-trading of grievances, arbitrary decisions, invidiousness, cursory investigations and/or discrimination are contrary to NOLSW and UAW policy and also U.S. labor law.

Have a valid reason for any action taken on a grievance.

The decision on whether or not to arbitrate should be made in consultation with NOLSW. Communicate any decision to withdraw a grievance, and the reason (simply stated), to the grievant - preferably in writing. If verbal, make a written record of the date grievant is notified, and keep for future reference.

If a grievance is settled, it should be backed by a written statement outlining the basis of the settlement.

*These are recommended guidelines intended to assist Grievance Handlers in handling grievances. All of them may not be legal requirements or even requirements under the NOLSW By-Laws and UAW constitution, but following them is the safest way to proceed.*