



### Factsheet

## The Duty of Fair Representation

The Duty of Fair Representation requires that the Union treat all members of the bargaining unit equally. Decisions to process a grievance or whether or not to go to arbitration must be made based on the objective facts, rather than subjective feelings about the grievant. It requires that the steward carry out the duties of the office in a responsible and competent manner.

### **As a Union Steward you must:**

- a. Treat all members of the bargaining unit equally.
- b. Consider all grievances on the basis of their merit, not on the personality of the grievant.
- c. Never discriminate against a member based on race, religion, national origin, disability, gender, sexual orientation, ethnic background, politics, union involvement (or lack of involvement), dues status, or any other protected reason when deciding whether to process a grievance.
- d. Be honest and direct with members. Be clear about whether you intend to process a grievance.
- e. Conduct a careful investigation of the facts before determining whether to process a grievance.
- f. Keep good records of all contacts and activities conducted on behalf of the grievant.
- g. Be sure to file grievances within the time limits provided in the grievance procedure.
- h. Let the member know how to appeal if you decide not to process a grievance.
- i. Ask your Chief Steward, Representation Chair, or Field Representative when you are unsure how to proceed.

The **Duty of Fair Representation** does not require that the Union process every member complaint as a grievance, nor does it require that every grievance go to arbitration. It does require that the decision to process the grievance or go to arbitration be based on the objective facts, rather than subjective feelings about the grievant and that the steward carry out the duties of the office in a responsible and competent manner.

### **THE HISTORY OF THE DUTY OF FAIR REPRESENTATION**

The Duty of Fair Representation (DFR) was imposed on Unions by the Supreme Court in 1944, under the Railway Labor Act. The Court held that since the union is the exclusive representative of members of the bargaining unit, it must treat all bargaining unit members fairly and equally.

At that time in history, Unions, like many other institutions, routinely treated white and African-American workers differently. In this case, *Steele v. Louisville & Nashville R.R.*, the Brotherhood of

Railroad Firemen was the exclusive bargaining agent for firemen employed by the railroad company. The railroad employed both African-American and white firemen, but the constitution of the Union prevented African-Americans from joining.

The Union and company negotiated an agreement which limited the numbers of African-Americans who could be hired. The company and the union were sued, and the Supreme Court rightly found this agreement unlawful.

The Court said that the right of exclusive representation carried with it the obligation to treat all represented workers fairly, impartially, and in good faith, without hostile discrimination. The Court did not challenge the right of the Union to exclude African-Americans as members, but found that the union had the same duty of fair representation for non-union members within the bargaining unit as it had for union members.

Today, of course, it is illegal for a union to deny membership based on race. However, the union bears the same duty of fair representation to all bargaining unit members, even those who choose not to join the union.

In 1967, the New York legislature enacted the Taylor Law, officially the Public Employees' Fair Employment Act. In the years since then, the federal doctrine of fair representation has been adopted and adapted for application under the Taylor Law to public sector workers in New York. Additionally, the federal doctrine of fair representation has been adopted for application under the New York City Collective Bargaining Law, Section 12-306 (b) (3), to city workers in New York.

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