

GRIEVANCE HANDLING

DUTY OF FAIR REPRESENTATION

In Labour Relations all workers have the right to be treated fairly.

By law, a Union has a duty to fairly represent all employees covered by their Collective Agreement. This duty extends to all union representatives; including stewards.

BC provincial labour law reads as follows under the BC Labour Code: Section 12 (as at December 2019):

http://www.bclaws.ca/civix/document/id/complete/statreg/96244_01#section12

“DUTY OF FAIR REPRESENTATION”

- 12** (1) A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith
- (a) in representing any of the employees in an appropriate bargaining unit, or
 - (b) in the referral of persons to employment whether or not the employees or persons are members of the trade union or a constituent union of the council of trade unions.
- (2) It is not a violation of subsection (1) for a trade union to enter into an agreement under which
- (a) an employer is permitted to hire by name certain trade union members,
 - (b) a hiring preference is provided to trade union members resident in a particular geographic area, or
 - (c) an employer is permitted to hire by name persons to be engaged to perform supervisory duties.
- (3) An employers' organization must not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employers in the group appropriate for collective bargaining.”

Similar provisions exist in other labour relations jurisdictions and provincial or federal labour codes.

If a member feels their union has not properly represented them under the Code, then they should exhaust all internal complaint processes available within their union. If no resolution has been achieved, then they may file a complaint at the Board.

The Labour Relations Board uses three standards to determine whether a union has failed to fulfill its Duty of Fair Representation:

- Is it Arbitrary?
- Is it Discriminatory?
- Is it in Bad Faith?

Is It Arbitrary?

Most cases involving Duty of Fair Representation occur because of bad process.

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The Board has described union conduct as arbitrary if union representatives:

- did not turn their minds to the merits of the issue (biggest mistake)
- did not do a meaningful investigation;
- considered irrelevant factors;
- ignored relevant factors; or
- displayed an attitude which was indifferent, capricious, non-caring or perfunctory.

Honest mistakes or errors of judgement will not usually be considered arbitrary, unless they are so serious as to constitute gross negligence.

Is It Discriminatory?

The Board has said that discrimination refers to cases where the union makes distinctions between workers without valid or legitimate reasons.

Negotiating an agreement for different wages grids for men and women, for example, would be discriminating. On the other hand, adopting a policy of waiving certain requirements in the Collective Agreement to protect the job security of disabled workers has been found not to be a breach of the duty.

Is It In Bad Faith?

The Board has described bad faith as acting on the basis of hostility or ill will, or dealing dishonestly with the workers about a particular matter.

Concealing information or lying to a grievor, for example, is likely to be considered bad faith.

So is having an ulterior motive. Acting on the basis of an underlying feud or grudge can get the union into trouble, for example, when decisions are made because of hostility between different camps in the union.

Steward Responsibilities

It is imperative that stewards complete their duties to the best of their abilities; and ensure their actions are not done in bad faith, not done in an arbitrary manner, and are not discriminatory.

When looking at WHAT YOU DO it is possible to be doing the right thing but not doing it in the right way.

For example, the union might make the right decision in deciding not to take a grievance to arbitration. But it might act in the wrong way by not listening to the grievor's side of the story.

When looking at HOW YOU DO IT there is the possibility of doing something in the right manner, but you are not doing the right thing.

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For example, a union might be very careful and considerate with a grievor, but in the end make a decision out of line with its responsibilities.

Stewards should note that the board looks for gross violations when deciding that the Duty of Fair Representation has been breached. The board understands if people make an honest error or mistake.

If stewards make sure grievors have unobstructed access to due process and seek advice from an LRO they are unlikely to run afoul of the Duty of Fair Representation.

If it does not feel right, or you are in doubt – please contact your mentor or LRO for guidance.