

## **VIOLATING THE DUTY OF FAIR REPRESENTATION**

The union is vested with the responsibility to represent all employees, both members and nonmembers, to the best of its ability. The **Duty of Fair Representation** dictates that no union official may represent an employee in an **arbitrary, discriminatory or bad faith** manner.

### **ARBITRARY**

The shop steward or union fails to follow procedural steps for processing a grievance.

#### **Example:**

The shop steward or union misses the contractual deadline for filing the grievance, or moving it to the next step in the grievance process.

### **DISCRIMINATORY**

The shop steward or union rejects a grievance because of the member's race, religion, gender, etc.

**Example:** If the shop steward or business agent refuses to file grievances of female employees, or ignores a grievance complaining of discriminatory treatment by the employer.

### **BAD FAITH**

The shop steward or business agent does not conduct a proper investigation before closing the case and puts forth little or no effort to determine the facts;

The shop steward or business agent allows personal feelings, union politics or bias to interfere with the representation of the employee.

#### **Example:**

The grievant gives the shop steward or business agent a list of witnesses to interview. The steward or agent has a heavy case load and does not follow up with the interviews;

If a grievance is withdrawn prior to going to arbitration, and it was later discovered that it was withdrawn because the grievant had supported the opposition candidate in a recent union election.

## **Rights of the Employee**

Although the courts do not define the standards reflecting the union's duty of fair representation, they do reject extremes and mark boundaries providing some guidelines to the limits of the duty. The employee has certain legitimate rights by which the union must abide such as:

- The right to clear and unquestionable terms of the collective bargaining agreement. The union cannot refuse to follow or enforce the rules and standards that it has established on behalf of bargaining unit employees.
- The right to have his or her grievance decided on its own merits. The union violates the duty of fair representation when it trades a meritorious grievance, to secure a benefit for another individual or group of individuals.

## **Rights of the Union**

The duty of fair representation does not prohibit the union from making sound, stable decisions to withdraw a grievance. Therefore:

- The union has no duty to process frivolous grievances, and it must be free to settle a grievance in accordance with any reasonable interpretation. However, in settling such disputes, similar complaints should be treated consistently.
- The union can make good faith judgments in determining the merits of a grievance, but must use reasonable care and diligence in investigating, processing and presenting grievances on the employee's behalf.

**SPECIAL NOTE:** Settlement of grievances for improper motives such as personal hostility, political opposition, or racial prejudices constitutes bad faith regardless of the merit of the case. The union violates its duty to represent fairly by refusing to process grievances for these reasons, even though the employer may not have violated the agreement.