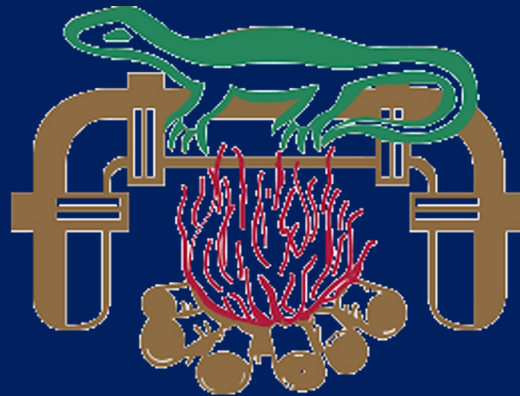


The Duty of Fair Representation

International Association of Heat and Frost
Insulators and Allied Workers



New Officers' Training

Created by the Courts



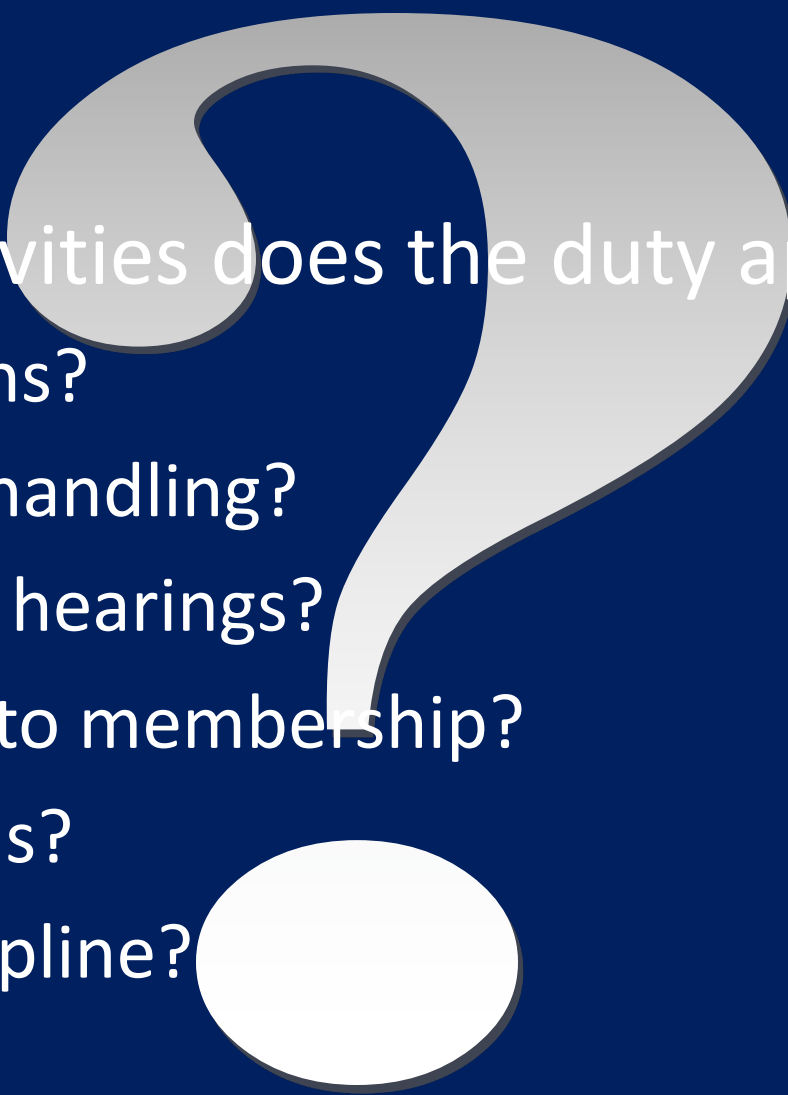
If you do not represent employees fairly, no one else will or even can

Steele v. Louisville and Nashville Railroad (1944)





If the law gives unions the right to represent everyone, it also requires them to represent everyone fairly.

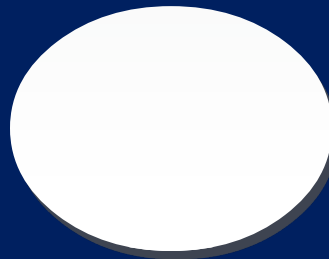
- 
- To what activities does the duty apply?
 - Negotiations?
 - Grievance handling?
 - Arbitration hearings?
 - Admission to membership?
 - Job referrals?
 - Union discipline?



- Who owes a duty of fair representation?
 - Local Union?
 - You?
 - Job Stewards?
 - Grievance Committee?



What type of conduct breaches
the duty of fair representation?



“Arbitrary,
Discriminatory,
or Bad Faith”



My grievance was
meritorious and my union
dropped it!

Negligence does not breach the duty of fair representation

I thought that Joe was
next on the out-of-
work list and called
him without checking
the list.



Arbitrary Conduct

- Conduct that is “so far outside a wide range of reasonableness . . . that it is wholly irrational.”
Airline Pilots Association v. O’Neill
- Refusing to investigate a grievance
- Handling an arbitration hearing in a perfunctory manner
- Accepting the employer’s version of events without investigating

Discriminatory Conduct

- Conduct based on irrelevant or impermissible classifications
- Refusing to process grievances filed by non-members
- Refusing to process grievances based on sexual harassment



BAD FAITH



- Conduct that is fraudulent, deceitful or dishonest
- Conspiring with the employer against the employee
- Refusing to process a grievance on behalf of a critic or political opponent

Trump vs. Biden Administration



- Trump-appointed GC
 - Issued memo expanding union liability for DFR
 - Limiting use of negligence defense
 - Requiring unions to have grievance tracking systems
 - Making unions liable for failing to communicate with grievants
- Biden-appointed GC
 - Withdrew Robb memo on DFR
 - Restored Pre-Trump DFR law

Reasons to Drop a Grievance

- It is not meritorious
- It is not winnable
- It does not justify the time and expense
- It may harm the interests of the overall unit

Example # 1

- An employee misses two days of work without calling in and is discharged.
- He claims that he tried to call in, but he has no record of the call.





Example # 2

- Employer has a past practice of ignoring the fact that employees sometimes return from lunch a few minutes late.
- The employer announces that it will dock the pay of anyone returning late.
- It is apparent that the issue is important to the employer.

Example # 3

- A female employee complains about sexual harassment by a fellow employee also represented by the local union.
- Pursuing a grievance might result in that other employee's discharge or discipline.



You didn't
talk to my
witnesses!

You didn't
talk to me!

You didn't call
the key
witness!

You didn't
make an
important
argument!



Unhappy Grievant

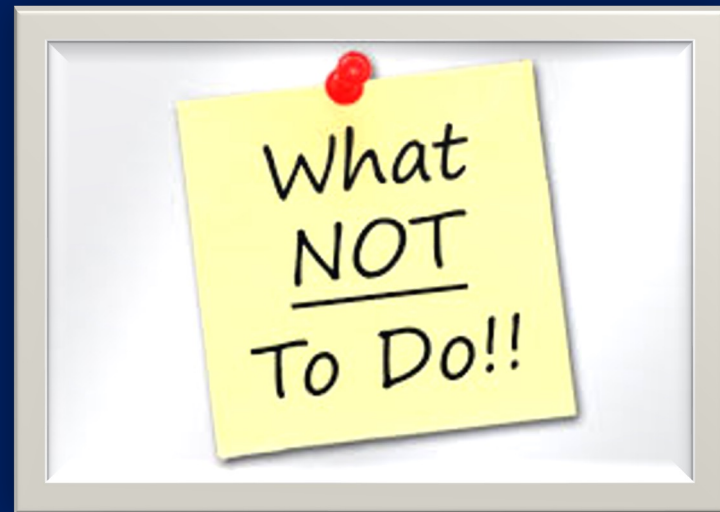
Suggestions on Grievances

- Know the deadlines. Create a system that prevents missing them
- Create a paper trail.
Explain your decisions
- Communicate with the grievant.
- Respond to inquiries



Things to Avoid

- Intemperate language
- Participating in employer decisions on discipline
- Making decisions without recording what you did and why



DFR and Contract Negotiations

- Contract ratification
 - No legal duty to ratify
 - Constitution does not require it
 - May be required by bylaws or past practice
 - Concealing information may breach DFR



Suggestions on Contract Negotiation and Ratification

- Be able to explain your decisions
- Follow your past practice on ratification
- Do not conceal information
- Make the new agreement available



What is the difference between an exclusive and nonexclusive hiring hall?



Rules for Exclusive Hiring Halls

- Referrals must be based on objective criteria
- All applicants must be notified of any change in procedure
- Discrimination against nonmembers is prohibited
- Intentional failure to follow hiring hall rules violates the DFR
- Applicants are entitled to review hiring hall records



Rules for Nonexclusive Hiring Halls

- DFR does not apply
- Hiring hall can operate for the benefit of local union members
- Discrimination against nonmembers and travelers is permitted
- Cannot refuse referrals because of union political activity

How can an employee file a DFR claim?

- Lawsuit



- Unfair Labor Practice Charge

Two Good Things About the DFR

- Short statute of limitations

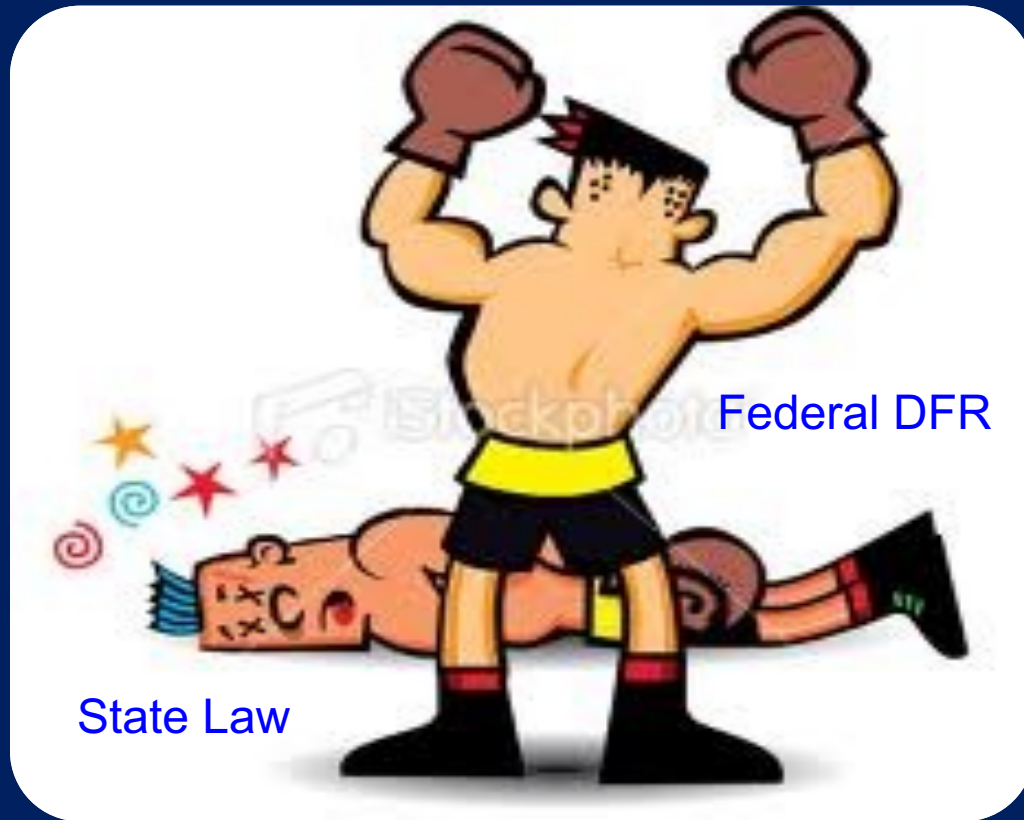
- Preempts state law



Six Months to File



Preempts State Law



State Law

Federal DFR